



Appeal Decision

Site visit made on 13 August 2025

by **J Smith MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1st October 2025

Appeal Ref: APP/E2340/W/25/3365324

Land to the West of Sheridan Road, Colne, Lancashire BB8 7HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Mr Roberts, Mr Ian Baxter, Mr Harry Dee and Ms Joan Whittaker against Pendle Borough Council.
 - The application Ref is 25/0035/OUT.
 - The development proposed is application for outline planning permission for the erection of 18 no. dwellings [Use Class C3] with all matters reserved except access.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mr H Roberts, Mr Ian Baxter and Ms Joan Whittaker, the appellant. An application for costs has also been made by Pendle Borough Council. This matter is subject to a separate decision.

Preliminary Matters

3. The application is submitted in outline with the details of access provided for consideration. All other matters of appearance, landscaping, layout and scale are reserved for future approval. I have treated all plans, other than those relating to access as illustrative.
4. The appeal stems from the failure of the Council to determine the planning application within the prescribed period. From my analysis of the evidence, the application was deferred after its consideration at the Colne and District Committee meeting. Subsequently, the appeal was lodged following the failure of the Council to determine the planning application within the prescribed period, in consideration of the development proposed.
5. In response to this appeal, the Council note that had the appellant not filed for non-determination, it would have approved the application. However, whilst this is noted, as the appellant has filed for non-determination, the decision-making responsibility is transferred to me as an Inspector appointed by the Secretary of State. I am therefore required and permitted to arrive at my own conclusions in my assessment of this case.
6. The Council also noted the provision of the Unilateral Undertaking which was provided by the appellant. It contends that elements of the Unilateral Undertaking would not provide the appropriate contributions. Therefore, this is reflected in the main issues as set out below.

Main Issues

7. The main issues are:

- whether the proposed access point of the development would have an unacceptable impact upon highway safety, or a severe impact on the operational efficiency on the road network; and,
- whether the submitted planning obligation is necessary and would provide an appropriate contribution in respect of matters relating to Biodiversity Net Gain and monitoring.

Reasons

Access

8. The proposed development would provide up to 18 dwellings within the appeal site. Access to the proposed development would be via Sheridan Road. Sheridan Road is a long, straight thoroughfare connected by Kingsley Road and Vernon Road through a one-way system. To facilitate the access from Sheridan Road and to assist in mitigating the effect of the development upon the highway network, several off-site works are proposed. Most significantly in relation to the matter of the proposed access is the widening of Sheridan Road from Vernon Road and the widening of its southern side footpath.
9. The National Planning Policy Framework (the Framework) stipulates at Paragraph 116 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.
10. The Highways Supporting Statement (prepared by AMA, June 2024) details the likely traffic generation of the scheme. It predicts that the proposal would generate 4 arrivals and 8 departures in the morning, with 6 arrivals and 4 departures in the evening during peak time. This equates to an additional movement approximately every 5 minutes in the morning peak period and one vehicle movement every 6 minutes in the evening peak period. This would provide a modest increase in movements to and from the appeal site.
11. Whilst only providing a single snapshot in time, my site visit was undertaken during a peak period. During my site visit, it was observed that Sheridan Road is lined with blocks of terraced residential properties, most of which lack dedicated off-street parking facilities. Off-highway parallel parking bays are provided along the northern side of the road. However, this provision is limited and does not appear to provide enough spaces to support the high number of dwellings without parking provision along Sheridan Road. Vehicles were also parked directly on the carriageway opposite these designated parking areas for a significant length of vehicles. It is therefore reasonable to assume that this is a consequence of the oversubscription of the off-highway parallel parking provision.
12. It is important to consider all reasonable future scenarios which may occur post construction of the scheme and following its mitigation. While the widening of the carriageway may offer some improvement to accessibility, the persistent lack of off-street parking along Sheridan Road would continue to result in extensive on-highway parking. As such, vehicles of varying sizes, including vans, would form

continuous lines along the highway. This would constrain the road space available along Sheridan Road, despite the enlargement of its width. As such, my attention is drawn to the effect of this on the flow of traffic in this location.

13. Should a vehicle approach from Sheridan Road while another travels in the opposite direction from appeal site, when vehicles are parked within the highway, the limited carriageway width would necessitate one vehicle reversing with vehicles parked on both sides, for a notable distance. For the vehicle approaching from Sheridan Road, this would also include the reversing of a vehicle close to this junction with Vernon Road, and the one-way system further back along Sheridan Road. Other vehicles may also be waiting to enter this location or leave the Sheridan Road area.
14. It is reasonable to expect that additional vehicles would also seek to enter or exit the appeal site and the wider Sheridan Road area, particularly during peak periods, whilst this manoeuvre is taking place. This would further intensify the operational strain on an already constrained highway environment and make movement increasingly difficult, through the presence of more vehicles waiting to access the wider highway network from Sheridan Road.
15. Furthermore, the anticipated highway impact would not be limited to the previously described scenario. It is reasonable to expect that additional vehicles may arrive at Sheridan Road seeking to park either along the highway or within the designated off-highway parallel bays, where available. This influx would introduce further manoeuvring demands within a constrained vehicular environment. Such conditions would likely coincide with vehicles attempting to access or exit both the appeal site and Sheridan Road itself, compounding the potential for congestion and vehicular conflict.
16. This would have a severe impact on its functionality, operational efficiency and would reduce its capacity to accommodate safe and fluid movement. This would be experienced particularly during busy periods when traffic volumes and parking pressures are at their highest. In my assessment of the proposed development, it has not been adequately demonstrated that vehicles could safely pass each other, whilst vehicles are parked within the highway, post mitigation. As such, the residual impact of further vehicle movements in this area of Sheridan Road would be severe.
17. It is important to acknowledge that the current configuration of this section of Sheridan Road comprises a short and narrow cul-de-sac, which lacks adequate turning facilities for vehicles, including refuse collection and emergency services. Consequently, vehicles are often required to reverse out of this area to exit via the Vernon Road junction, presenting operational and safety concerns. The proposed development includes the provision of a turning head within the appeal site, which would enable vehicles to manoeuvre and exit this area of Sheridan Road in a forward gear. While this represents a functional improvement, access to the turning head would necessitate navigation through extended stretches of parked vehicles along Sheridan Road, whilst vehicles would seek to exit the appeal site in the opposite direction.
18. Therefore, although the turning head would facilitate improved vehicle manoeuvrability, it would not, in isolation, resolve the conflicts which would arise from restricted carriageway width as a result of on-street parking, despite its

widening. The potential for vehicle obstruction and limited passing opportunities would remain a concern.

19. To conclude, the proposed development would therefore conflict with Policy ENV4 of the Local Plan for Pendle Core Strategy 2015 (PCS) and Paragraph 116 of the Framework. These policies note that where the residual cumulative impacts of the development are severe, following mitigation in the case of the Framework, planning permission should be refused.

Biodiversity net gain

20. The appeal was accompanied by a signed Unilateral Undertaking (UU) which has been submitted by the appellant. Amongst other things, this UU sought to make provisions in relation to biodiversity net gain. Comments were received by the Council with regard to the provisions of this UU. These comments suggested that the initially submitted UU could not be agreed. This is because the biodiversity net gain provision included a contribution for the provision of biodiversity units as a fallback option. However, Pendle Borough Council states that it is not a provider of biodiversity units. The initially submitted UU also made no provision for monitoring costs. As such, the UU has been revised during this appeal.
21. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 58 of the Framework sets out three tests that planning obligations must meet. First, they must be necessary to make the development acceptable in planning terms, secondly, they must be directly related to the development and thirdly, they must be fairly and reasonably related in scale and kind to the development.
22. The Biodiversity Planning Practice Guidance (PPG) states that to ensure that the BNG objective is effectively achieved, it is essential that biodiversity is integrated throughout the planning process. Applicants are expected to address BNG at the earliest stages and to incorporate it into site selection and design. Therefore, in following the first of the three tests as set out above, this obligation, and its subsequent monitoring, is necessary to make the development acceptable in planning terms.
23. Policy ENV1 of the PCS notes that adequate mitigation measures and compensatory habitat creation will be required through planning obligations and/or conditions. This is to ensure that there is no net loss of biodiversity and where possible, a net gain should be provided.
24. Schedule 2 of the revised UU addresses the matter of Biodiversity Net Gain provision. It notes that the development shall achieve no less than 10% in net gain over the baseline calculation. This would be achieved through the provision of a Biodiversity Gain Plan. This plan would include the proposed measures to deliver the net gain, a timetable for implementation, detailed arrangements for its monitoring over a 30-year period and the provision for the submission of annual monitoring reports. This obligation would require the provision of such details before the commencement of development.
25. The PPG notes that a monitoring fee can be charged through planning obligations. This will cover the cost of monitoring and reporting on delivery of that obligation. Monitoring fees can be used to monitor and report on any type of planning obligation, for the lifetime of that obligation. However, the PPG further notes that

monitoring fees must be proportionate and reasonable and reflect the actual cost of monitoring.

26. The revised UU further adds that with regard to monitoring, the amount shall be agreed with the Council at the reserved matters stage to reflect the scope of monitoring required by the Biodiversity Gain Plan. Whilst this does not stipulate an amount, this would be agreed during the reserved matters stage and would be negotiated with the Council once the level of monitoring is known to inform the contribution.
27. As such, these provisions would be directly related to the development and at this outline stage of the proposal, fairly and reasonably related in scale and kind to the development. It would be lawful and would secure these provisions. I am therefore satisfied that the revised UU is a sufficient mechanism to capture and monitor Biodiversity Net Gains. As a result, this revised provision would accord with Policy ENV1 of the PCS. I have taken the provisions of the UU into consideration.

Planning Balance

28. I have found conflict with Policy ENV4 of the PCS and Paragraph 116 of the Framework with regard to the proposed access and its effect upon the operational efficiency of Sheridan Road. I have judged the consequence of increased movements to and from the appeal site, in light of the parking situation along Sheridan Road, to be severe. On this basis, it must be concluded that the proposal is in conflict with the development plan when considered as a whole. Furthermore, the Council is unable to demonstrate a five-year supply of deliverable housing sites. The evidence presented indicates a significant shortfall, with only 2.8 years of supply currently available.
29. In accordance with Paragraph 11 of the Framework, where the most important policies for determining the application are deemed out of date due to such a shortfall, the presumption in favour of sustainable development is engaged. As there are no relevant policies in this case that protect areas or assets of particular importance, the provisions of Paragraph 11(d)(ii) of the Framework apply. This requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. The Framework aims to significantly boost the supply of housing. In an era of national, and in this case, local housing shortfalls, the provision of up to 18 additional energy efficient units, including a provision for affordable housing, would make a notable contribution to that supply. I afford moderate weight to this benefit of the scheme.
31. The proposal would also provide several improvements to the highway and to overall pedestrian safety. These include a dedicated turning head within the appeal site, a pedestrian link from Sheridan Road to Alma Road, tactile paving in various positions outside of the appeal site, public transport accessibility upgrades, a street lighting review, a widened footway and a new pedestrian refuge island. The proposed development would involve the removal of two trees from Sheridan Road. These would be replaced within the appeal site. Collectively, these are benefits of the scheme which weigh positively in favour of the proposal. I apply moderate weight to these benefits.

32. The proposed development would also be within a location which is supported by shops and services which are a close distance from it. The future occupants of the development would support the local economy through their use of these shops and services. During the construction of the scheme, the proposed development would provide benefits to the local construction industry through the procurement of materials and labour. These benefits attract positive, but overall limited weight in favour of the proposal.
33. It must also be recognised that in addition to those highway and pedestrian safety benefits listed above, the proposal would include the widening of Sheridan Road. Whilst this may be beneficial, vehicles would still remain parked within Sheridan Road for a long length of its highway following this mitigation. In taking into account all of the reasonable future scenarios which may occur, this would not overcome the highway operational efficiency concerns I have identified within this appeal. This is the critical failure of this appeal.
34. Having considered all relevant matters, it is acknowledged that the appeal scheme presents certain benefits to the wider locality. These must be weighed against the identified conflict with the development plan, particularly in relation to the proposed access arrangements. In undertaking this planning balance, the proposed development represents a finely balanced scheme. The decision therefore hinges on a careful weighing of these competing factors.
35. Whilst the benefits are acknowledged and afforded moderate weight, the harm arising from the access location, specifically its adverse impact upon the operational efficiency along Sheridan Road, is considered to be severe. This attracts significant weight in my assessment of this scheme. When assessed against the policies of the Framework taken as a whole, the adverse impact of the development upon the highway is considered to significantly and demonstrably outweigh the benefits.

Conclusion

36. For the reasons given above, the proposal would be contrary to the development plan as a whole. There are no material considerations which indicate that I should take a decision otherwise than in accordance with the development plan in this case. Therefore, I conclude that the appeal should be dismissed.

J Smith

INSPECTOR



Costs Decisions

Site visit made on 13 August 2025

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st October 2025

Costs Application A:

Costs application in relation to Appeal Ref: APP/E2340/W/25/3365324

Land to the West of Sheridan Road, Colne, Lancashire BB8 7HW

- 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).
 - An application is made by Mr H Roberts, Mr Ian Baxter and Ms Joan Whittaker for a full award of costs against Pendle Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the erection of 18 no. dwellings [Use Class C3] with all matters reserved except access.
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Costs Application B:

Costs application in relation to Appeal Ref: APP/E2340/W/25/3365324

Land to the West of Sheridan Road, Colne, Lancashire BB8 7HW

- 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).
 - An application is made by Pendle Borough Council for a full award of costs against Mr Roberts, Mr Ian Baxter and Ms Joan Whittaker, the appellant.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the erection of 18 no. dwellings [Use Class C3] with all matters reserved except access.
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Decision

1. Costs application A is refused.
2. Costs application B is refused.

Reasons

3. 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.
4. The PPG provides examples of unreasonable behaviour by the two main parties in an appeal. The appellant alleges that the Council deferred the application to seek excessive information on an alternative access route, did not follow the appropriate procedure and that the application was pre-determined prior to its determination. In response, the Council allege that the appellant has demonstrated unreasonable behaviour by filing for an appeal for non-determination of the application whilst a clear and reasonable timescale was in place for the determination of the application.

Application A

5. It is alleged that the Council deferred the application to seek information and redesign the proposal through an alternative access point from Alma Road.

6. To start, it is contended that Lancashire County Council Highways (LCCH) had considered the Alma Road access point to be acceptable in principle. I note that the assistant engineer from LCCH requested information about an alternative access from Alma Road in an email to the case officer of the Council. It follows that whilst they did not object to the access proposed at Sheridan Road in their official consultation response, there is no convincing evidence before me to suggest that Alma Road itself was explicitly rejected by LCCH.
7. In following the recommendation by LCCH, it is important to note that planning committees play an important role in the decision-making process and are entitled to reach a different conclusion to its officers. Whilst planning law requires that applications be determined in accordance with the development plan, regard can also be had to material considerations as they are presented during that process. Throughout the application process, interested parties consistently questioned why an existing access point at Alma Road was not proposed.
8. It is important that decision makers in any capacity assess planning applications as submitted. However, material considerations, namely that an existing access was in situ and had been raised by many interested parties were before the committee. Councillors have a responsibility to come to a robust planning decision during planning committee meetings. Nevertheless, they also have a responsibility to inform their residents as to why a particular decision has been made, following the voicing of their concerns.
9. Following a review of the full transcript from the planning committee meeting, it is evident that the decision was deferred to enable further investigation into the appropriateness of the proposed access point. Additionally, the committee sought further dialogue with the appellant regarding the feasibility of utilising the existing access via Alma Road. The appellant asserts that, in an email dated 29 April 2025, the Council explicitly requested feasibility drawings, gradient calculations, tree impact assessments, and cost breakdowns pertaining to the Alma Road access. This email has been submitted as part of the evidence.
10. Upon examination, the email indicates that Councillors expressed a desire to understand whether access from Alma Road was technically and economically viable. It does not contain a direct or explicit request for the specific documentation cited by the appellant. Therefore, while the Council's interest in the feasibility of the Alma Road access is clear, the claim that detailed technical documents were formally requested is not substantiated by the content of the correspondence before me.
11. The appellant has provided an example of an appeal costs decision¹ for my consideration. They note that a full award of costs was allowed where the Council deferred its determination of an application where it requested unnecessary highway surveys and information, notwithstanding officer advice. I was the Planning Inspector appointed to this referenced appeal decision and therefore, I am able to confidently comment on the differences between these two cases.
12. In the referenced case, it was requested that the appellant provide additional survey information. Explicitly, the information requested included a speed survey, a breakdown of vehicle types which utilise the highway and a curvature and topography survey. As has been uncovered in this appeal, this is not the case here. The content

¹ APP/J4423/W/24/3356418

of the correspondence before me does not specifically request documentation to understand the feasibility of the access point at Alma Road.

13. Secondly, in the appeal case cited by the appellant, the Council articulated its requirement for additional survey work without providing any clear indication of when a determination would be made. This procedural ambiguity contrasts with the circumstances of this appeal. Based on the evidence before me, it is apparent that the application was deferred with a site visit scheduled and the matter subsequently placed on the committee agenda within a matter of weeks. Given that planning committees typically do not convene on a weekly basis, this timeline suggests that the Council was actively working towards a prompt resolution. Accordingly, it would have been evident to the appellant that a decision was intended to be made at the next available committee meeting. Therefore, these cases are not immediately comparative to each other.
14. In bringing all of the above together, most crucially, it is not evidenced that there was an explicit request for the scheme to be redesigned to change the access point to Alma Road, or to provide specific documentation with regard to this access point. I am therefore not convinced that unreasonable behaviour has been demonstrated by the Council in this regard.
15. I now turn to the appellant's allegation of procedural impropriety and predetermination in relation to the application. The appellant refers to an email dated 4 February 2025 from the case officer, which they claim indicated that members were likely to refuse the scheme should access continue to be proposed via Sheridan Road. This email has been submitted for my consideration. Upon review, I find that this is incorrect. It does not contain the statement alleged by the appellant. Rather, it acknowledges that access via Sheridan Road presents several challenges and, as a result, the case officer was minded to recommend refusal of the application.
16. It is a fundamental principle of the planning system that local planning authorities should engage constructively with applicants to seek solutions where possible. In this instance, the correspondence reflects an effort by the Council to identify a more suitable access arrangement, consistent with its duty to work proactively with applicants.
17. A subsequent email dated 20 February 2025 has also been submitted for review. In this correspondence, the same case officer advises that despite a recommendation from LCCH, the access via Alma Road should be explored. They note that the planning committee may be minded to refuse the application if access continued to be proposed from Sheridan Road. As previously acknowledged, planning committees are entitled to reach a different conclusion from their officers, particularly where the potential impact of a development is considered to result in harm. This advice appears to be a continuation of the concerns outlined in the earlier email dated 4 February 2025. In my view, this is another helpful action by the case officer to work proactively with the applicant and gain approval on the site for the proposed development.
18. In continuing the examination of alleged predetermination, the appellant has raised concerns regarding the conduct of a Councillor, citing comments made on social media. The Councillor in question is identified in the transcript of the planning committee meeting and is therefore confirmed as a member of the committee.
19. Participation in planning committees carries a particular responsibility to approach matters with impartiality and to ensure that decisions are made objectively, based

solely on the evidence presented and the material circumstances of that case. Regardless of their other duties to the community outside of planning, for those engaged in public decision making, it is a fundamental expectation that elected Councillors conduct themselves in accordance with the highest standards of integrity, fairness, and accountability, including in their use of online profiles.

20. The comments made by the Councillor have been reviewed in full. They consist of general guidance to residents on how to raise concerns regarding the access proposed, a clarification that planning applications must be determined on planning grounds and a reference to the need for a neighbourhood plan. These remarks do not constitute evidence of a predetermined view on the application.
21. It is imperative that individuals in public office, particularly those serving on decision-making committees, uphold the highest standards of conduct. However, in this instance, the Councillor's comments do not indicate bias, nor do they undermine the integrity of the decision-making process. Having considered all submissions on this matter, I find no basis to conclude that the Councillor acted improperly or that the Council behaved unreasonably.
22. To conclude, I am not persuaded that the local authority acted unreasonably in the matters raised above. As such, unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, an award of costs on this issue is not justified.
23. For these reasons and taking into account all other matters raised, the application for costs made by the appellant is refused.

Application B

24. The Council contends that the appellant has acted unreasonably by submitting a non-determination appeal despite a clear and reasonable timeframe having been established for the determination of the application. In support of this position, the Council has provided a detailed timeline of events.
25. The PPG advises that applicants should engage constructively with the local planning authority to establish when a decision is likely to be made. In this case, following the initial deferral of the application to allow for a site visit, prompted by concerns regarding the proposed access via Sheridan Road, a specific date was subsequently set for its determination.
26. It is noted that the appeal for non-determination was lodged just one day prior to the scheduled planning committee meeting at which the application was due to be considered. This timing is significant. It suggests that the Council was actively progressing the application and had made arrangements for its determination.
27. The right to submit an appeal on the grounds of non-determination exists primarily to safeguard applicants from undue delay from situations where a local planning authority fails to provide a reasonable timeframe for determining an application. This is not the case here. The evidence clearly demonstrates that the Council had established a reasonable and transparent timeline for determination, including scheduling the application for committee consideration.
28. I appreciate that in following this route, the Council will have had to allocate resources to respond to this appeal. However, while the timing of the filing for non-determination of the application is unfortunate, the appellant did have the right to file for non-

determination. Therefore, in principle, this is not unreasonable. It would not be a demonstration of unreasonable behaviour for the purposes of this decision.

29. I therefore find that unreasonable behaviour by the appellant, resulting in unnecessary or wasted expense has not been demonstrated.

J Smith

INSPECTOR

Richborough