

<b>Agenda Item</b> A6	<b>Committee Date</b> 19 September 2016	<b>Application Number</b> 16/00570/FUL
<b>Application Site</b> Brookside Whams Lane Bay Horse Lancaster	<b>Proposal</b> Demolition of agricultural building, erection of a detached residential dwelling, a garage/workshop, installation of solar array panel and erection of two polytunnels	
<b>Name of Applicant</b> Mr Ken Parker	<b>Name of Agent</b> Chris Weetman	
<b>Decision Target Date</b> 6 July 2016	<b>Reason For Delay</b> Awaiting additional plans, Committee cycle and deferral for a site visit	
<b>Case Officer</b>	Mrs Kim Ireland	
<b>Departure</b>	No	
<b>Summary of Recommendation</b>	Refusal	

**(i) Procedural Matters**

The proposed development would normally fall within the scheme of delegation. However, Councillor Charles has requested that the application be referred to the Planning Committee for a decision on the grounds that the proposal will enhance the character and appearance of the countryside area due to the replacement of an outbuilding and a garage with a dwelling, garage/workshop, ground-mounted solar panels and polytunnel.

The planning application was presented to Planning and Highways Regulatory Committee on 22 August, whereby Members voted to defer the application to allow a site visit to take place on 12 September.

**1.0 The Site and its Surroundings**

1.1 The land which forms the subject of this application relates to land to the north east of the dwelling Brookside on Whams Lane in Bay Horse. Whams Lane lies approximately 3km south east of the village of Galgate and is a classified road (C499) which forms the main rural traffic route from Bay Horse on the A6 to Quernmore. The site is located in the open countryside within a continuous ribbon of residential development bisected by the M6 Motorway where Whams Lane crosses by bridge. The wider area is characterised by farmsteads and small clusters of buildings and isolated dwellings.

1.2 The site is allocated as a countryside area in the Lancaster District Local proposals map. There are two trees covered by a Tree Preservation Order that are situated east of the site boundary.

**2.0 The Proposal**

2.1 The application proposes the erection of one detached residential dwelling, a garage/workshop, installation of solar array panel and erection of two polytunnels. The proposed dwelling is to be sited to the north east of the dwelling of Brookside.

### **3.0 Site History**

3.1 There have been three planning applications refused in 2005, 2007 and 2014 for the erection of a detached dwelling, two of which have been appealed and dismissed.

<b>Application Number</b>	<b>Proposal</b>	<b>Decision</b>
<b>05/01600/FUL</b>	Erection of a 2 storey detached dwelling and separate garage on land to the side	Refused
<b>07/01613/OUT</b>	Outline application for the demolition of existing bungalow and agricultural building and erection of two 4 bedroom houses	Refused (Appeal Dismissed)
<b>14/00647/OUT</b>	Outline application for the demolition of existing building and erection of one residential detached dwelling and detached garage	Refused (Appeal Dismissed)

### **4.0 Consultation Responses**

4.1 The following responses have been received from statutory and non-statutory consultees:

<b>Consultee</b>	<b>Response</b>
<b>Parish Council</b>	<b>No comments</b> have been received during the statutory consultation period.
<b>County Highways</b>	<b>No objections</b> , subject to conditions requiring additional information being submitted in relation to a construction method statement and the materials that are to be used on the access. Conditions also regarding the access and turning space is to be built as per drawings and that any gateposts are positioned 5m behind the nearside edge of the carriageway.
<b>Environmental Health</b>	<b>No objections</b> , subject to conditions restricting the hours of construction and mitigating contaminated land.
<b>National Grid</b>	<b>No comments</b> have been received during the statutory consultation period.
<b>Tree Protection Officer</b>	<b>No objections</b> , subject to conditions requiring a Tree Works Schedule and a detailed arboricultural Method Statement, a scheme indicating type and distribution of all new trees and a tree protection plan. Also to make sure that the development is carried out as per submitted Arboricultural Implications Assessment.
<b>United Utilities</b>	<b>No objection</b>

### **5.0 Neighbour Representations**

5.1 Two pieces of correspondence objecting to the application have been received. The reasons for opposition include the following:

- Poor design and the location of the dwelling severely impinges and overshadows the single storey adjoining premises.
- Much of the previous tree/orchard cover to the east of the site has been removed and would need to be replaced to preserve amenity.
- The site presents the last remaining open view area along this section of Whams Lane.
- The proposed plastic polytunnel, composting area and elevated solar panels will diminish the amenity value of the area and surrounding properties.
- The proposed polytunnels have the potential to create noise with flapping plastic

### **6.0 Principal National and Development Plan Policies**

6.1 The National Planning Policy Framework indicates that the purpose of the planning system is to contribute to the achievement of sustainable development. At the heart of the NPPF is a presumption in favour of sustainable development (**paragraph 14**). The following paragraphs of the NPPF are relevant to the determination of this proposal:

## National Planning Policy Framework (NPPF)

Paragraph 17 - 12 Core Principles

Paragraphs 14 – Presumption in Favour of Sustainable Development Criteria

Paragraph 47, 49, 53 and 55 – Delivering a Wide Choice of High Quality Homes

Paragraph 56 – Requiring Good Design

### 6.2 Development Management DPD

**DM20** – Enhancing Accessibility and Transport Linkages

**DM22** – Vehicle Parking Provision

**DM28** – Development and Landscape Impact

**DM35** – Key Design Principles

**DM41** – New Residential Development

**DM42** – Managing Rural Housing Growth

**Appendix B:** Car Parking Standards

### 6.3 Lancaster District Core Strategy

**SC1** – Sustainable development

**SC4** – Meeting housing requirements

### 6.4 Lancaster District Local Plan (saved policies)

**E4** – Countryside area

## 7.0 Comment and Analysis

- 7.1
- The principle of development;
  - Scale, layout and design;
  - Impact on residential amenity of neighbouring properties;
  - Access and highway impacts; and
  - Impact on trees.

### 7.2 The Principle of Development

7.2.1 Paragraph 49 of the NPPF sets out that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of housing. Although this is currently the case, the Council has a very clear approach to sustainable development within rural locations. It is not considered that a lack of a five year housing land supply justifies a dwelling in this location which does not comply with the Council's approach to sustainable development across the District.

7.2.2 In anticipation of the Local Planning Authority's policy position given its fairly recent determination of a similar proposal (14/00647/OUT) and the corresponding appeal decision by the Planning Inspectorate, within the applicant's supporting literature the applicant's agent advises that consideration should be given to the recent case law published in March this year following a High Court Decision (*Richborough Estates LLP v Cheshire East Council/DCLG*), which directly relates to whether Local Planning Authorities have a supply of deliverable sites to provide 5 years' worth of housing against their housing requirement.

7.2.3 This case law establishes 2 key legal principles:

- What policies should be considered relevant to the supply of housing; and
- How to apply the provisions of paragraphs 14 and 49 of the NPPF in the determination of planning applications.

7.2.3 On the first point, there appears to be no difference of opinion between the Local Planning Authority and the applicant's agent. Where a Local Planning Authority cannot demonstrate a 5 year supply of deliverable housing sites, Paragraph 49 of the NPPF states that "relevant policies for the supply of housing should not be considered to be up-to-date. Relevant policies are defined by the High Court Decision to not simply be those that "provide positively for the delivery of new housing in terms of numbers and distribution of the allocation of sites" but also to "policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed". It

recognises that “*policies may serve to form the supply of housing by either creating it or by constraining it*”. It is this wider interpretation of what are deemed to be ‘relevant policies’ that there is agreement on.

7.2.4 However, there is a differing opinion on the application of paragraphs 14 and 49 of the NPPF. The latter advises that “*housing applications should be considered in the context of the presumption in favour of sustainable development*” and the former states that “*where relevant policies are out-of-date permission should be granted unless any adverse impacts in doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole*”. The applicant’s agent argues that as this proposal is for a dwelling (i.e. a housing application) it is deemed to be sustainable development, and as the ‘relevant policies’ are out-of-date then the application should be approved.

7.2.4 The Local Planning Authority does not agree with what it considers is a narrow interpretation of the NPPF, and from its review of the aforementioned case law this does not appear to be what the Judges consider to be an accurate interpretation either. The High Court Decision accepts that there will be many cases where restrictive policies (whether they be specific or general in nature) will have sufficient weight to justify the refusal of planning permission despite such policies being not ‘up-to-date’ with reference to paragraph 49 of the NPPF. Paragraph 46 of their High Court Decision makes this very clear:

*“We [the Judges] must emphasise here that the policies in paragraphs 14 and 49 of the NPPF do not make ‘out-of-date’ policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision maker.”*

The same paragraph of the Decision goes on to state that policies should not simply be ignored or disapplied. Therefore the case law accepts that there will be many cases where restrictive policies (whether they be specific or general in nature) will have sufficient weight to justify the refusal of planning permission despite such policies being not ‘up-to-date’ with reference to paragraph 49 of the NPPF. This is reflected in paragraph 47 of the Decision.

7.2.5 Therefore whilst the applicant argues that in the absence of a 5 year housing supply the local planning policies relating to the supply of housing should not be applied, stating that policies cannot be used which restrict development across the district, this is incorrect. It does not mean that other, relevant, policies should not be given weight in the decision making process. It is for the decision maker to consider the level of weight that should be applied depending on circumstance.

7.2.6 In a follow-up letter to Members on this matter, the applicant’s agent states that the Local Planning Authority has not assessed the sustainability of the proposal correctly in light of the lack of a 5 year housing supply. He goes on to say that the sustainability of a location has to be considered in balance against the provision of housing, the removal of an eyesore of a building, the proposed dwelling will be carbon neutral and eco-friendly and there will be jobs, trades and businesses that will be benefit through the build process. Whilst the Local Planning Authority acknowledges that a proposal for a single dwelling is a housing application and therefore should be considered in the context of the presumption in favour of sustainable development, it cannot simply ignore other national and local planning policies. These points and associated policies are considered in turn below.

7.2.7 Bay Horse is not identified within policy DM42 as being a rural village that is considered to be in a sustainable location for new residential development. Development should be located in sustainable locations, where there is access to an appropriate range of local services that contribute to the vitality of these settlements. These services are local shops, education and health facilities, access to public transport and other valued community facilities. Proposals should demonstrate that they have clear benefits for the local community, and in particular will meet rural housing needs according to robust evidence. In terms of services, there are two public houses (The Fleece and the Bay Horse Inn) within 1.5km of the application site and a stop for school buses at Five Lane Ends (0.5km from the site).

7.2.8 In Paragraph 55 of the National Planning Policy Framework (NPPF) it sets out that where there are groups of smaller settlements, development in one village may support services nearby. This is

reflected in the wording of Development Management DPD policy DM42. However, this site would not have any discernible relationship with any of the other, more sustainable settlements in the surrounding area. Dolphinholme is the closest village but is located 2.5km to the east. Galgate, which contains more local services and facilities, is situated 3km to the north west. There are no safe walking routes to gain access to either of these settlements as the intervening highways are predominantly unlit with no footpaths and national speed limits. Therefore, any future resident of this proposal would be heavily reliant on private, motorised vehicles. There is not considered to be a convincing argument that the development of a single dwelling on this site would help sustain the vitality in either of the aforementioned villages given the distance and the absence of footpaths between them.

- 7.2.9 Policy DM20 of the Development Management DPD sets out that proposals should minimise the need to travel, particularly by private car, and maximise the opportunities for the use of walking, cycling and public transport and to focus development in locations which offer a choice of modes of transport. The villages of Galgate and Dolphinholme, which are in a similar part of the District, are currently identified as settlements where growth would be supported and these have more services which would reduce the need to travel. As such, by locating development in villages where there are services it will enhance or maintain the vitality of rural communities by supporting those existing services. This approach complies with the paragraph 17 of the NPPF, the overarching aim of which is a presumption in favour of sustainable development. As the proposal is not located within a settlement which is considered suitable for growth or in a location that can be made sustainable, the site would be dealt with in policy terms as it was located within the open countryside.
- 7.2.10 The NPPF (paragraph 55) sets out that new isolated homes in the countryside should be avoided unless there are special circumstances such as: the essential need for a rural worker to live permanently at or near their place of work in the countryside; where development would represent the optimal viable use of a heritage asset; where development would re-use redundant or disused buildings and lead to an enhancement of the immediate setting; or where a dwelling is of exceptional quality or innovative design. This proposal does not fall into any of these categories and as such it is considered that the proposal does not provide a sufficient justification for a new dwelling in a location which is considered to be unsustainable.
- 7.2.11 Notwithstanding the need to boost significantly the supply of housing (as defined by the NPPF, and paragraph 47 in particular), and the fact that housing applications should be considered in the context of the presumption in favour of sustainable development (paragraph 49), this proposal for a private detached residential dwelling in open countryside does not represent sustainable development. It is not a location that can be made sustainable and so approving the application would run contrary to the NPPF and Development Plan policies. This position has been supported by the Planning Inspector at the recent appeal for 14/00647/OUT. That appeal decision (23 July 2015), has been attached as a background paper. Members will note that the appeal was dismissed. The Inspector concluded that whilst utilisation of renewable energy, incorporation of sustainable building techniques, and self-sufficiency in respect of growing food would be factors that would weigh in support of the development, they do not outweigh the harm which was identified in respect of the sustainability of the location and therefore the proposal did not amount to sustainable development. Likewise the employment of builders for the construction period (which would be relatively limited given the proposal is predominantly for a single dwelling) would not weigh sufficiently in its favour either as an individual factor or cumulatively with those elements listed above. Matters relating to sustainability have not changed, and so the current application must also be recommended for refusal. The more recent High Court Decision has been considered, but it does not alter the outcome of the Officers' recommendation for the reasons stated.

### 7.3 Scale, Layout and Design

- 7.3.1 There is a mixture of different sizes and designs of dwellings in this locality that are predominantly two storey dwellings and bungalows. The proposed dwelling is of a simple design and proportion and will be made up of red brick walls, under a grey tiled roof with timber windows and doors.
- 7.3.2 The dwelling would be set back 8m away from the road with a small garden to the front. A shared footpath/driveway would be situated to the side, which would benefit from a permeable surface and form the access to a small parking court to the rear between the proposed dwelling and the proposed garage/workshop. The plans appear to show areas of private amenity space to the other side of the dwelling, which are considered to be an acceptable size and exceed the Council's adopted standard

of 50sq.m. However, the extent of the garden space is not explicitly stated on the submitted plan, so if Members are minded to approve this application the extent of the domestic garden associated with the new dwelling would need to be carefully considered and conditioned accordingly. Given the above, it is considered that the building is in keeping with the character and appearance of the area and will not have a detrimental impact on the locality.

7.3.3 The proposed garage/workshop would be 7m in width, 8.9m in length and 6.3m in height to the ridge and would be sited to the north west of the proposed dwelling and constructed of red brick walls, under a grey tiled roof with timber windows and side door. The proposed solar panels would be installed to the north of the proposed dwelling and would be 8.1m in length, 2.95m in width and 2.4m in height. The proposed polytunnels are to be sited to the north of the proposed solar panels and would be 23.5m in length, 15m in width and 3m in height.

7.3.4 Development Management DPD policy DM35 states that new development should make a positive contribution to the identity and character of the area through good design, having regard to local distinctiveness, appropriate siting, layout, palette of materials, separating distances, orientation and scale. Policy DM28 of the same DPD also states that the development proposals should, through their siting, scale, massing, materials and design seek to contribute positively to the conservation and enhancement of the protected landscape. Whilst the design of the dwelling is considered to be acceptable and meets the requirements of policy DM35, the polytunnels will all be highly visible from Whams Lane. However polytunnels are usually found in the countryside area and therefore the design, materials and having regard to the local distinctiveness are seen to comply with policies DM28 and DM35 and saved policy E4 of the Local Plan.

#### 7.4 Impact on residential amenity of neighbouring properties

Policy DM35 of the Development Management DPD states that new development should make a positive contribution to the identity and character of the area through good design, having regard to local distinctiveness, appropriate siting, layout, palette of materials, separating distances, orientation and scale.

7.4.1 There have been two letters of objections received from neighbouring properties. One of the grounds of objection relates to the location of the proposed development and how it would severely impinge upon and overshadow the single storey adjoining property. Paragraph 17 of the NPPF states that one of the twelve principles of planning should be to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. To the east of the site is the two-storey property of Oak Villa. The nearest part of the proposed development is the polytunnels that are sited 23m away from the neighbouring property. Consequently given the distance to the neighbouring property, the proposed development is not thought to have a detrimental impact upon the residential amenity enjoyed by Oak Villa and are found contrary to DM35 of the Development Management DPD and the provisions of paragraph 17 of the NPPF.

#### 7.5 Access and Highway Impacts

7.5.1 The application proposes access is to be established from Whams Lane. Given the road is used for access by all of the properties that are situated along Whams Lane and the nature and scale of the proposal, it is not considered that there would be an adverse impact upon highway safety. This is echoed by County Highways who have raised no objections to the proposal.

#### 7.6 Impact on Trees

7.6.1 There are existing trees that are to the north, east and south boundaries of the site, some of which are subject to a Tree Preservation Order (TPO). There are no proposals to remove the trees with the exception of those that are identified to the north west of the existing dwelling of Brookside that are in a poor overall condition and are not subject to the TPO. The Tree Protection Officer has raised no objections subject to the submission of a tree protection plan, a tree works schedule and an arboricultural method statement.

### **8.0 Planning Obligations**

8.1 There are no planning obligations to consider as part of this application.

## **9.0 Conclusions**

- 9.1 Whilst the Local Planning Authority acknowledges that it lacks a 5 year housing supply of deliverable sites and the presumption in favour of sustainable development applies, the principle of the proposed private single dwelling in this location is not supported as the harm which has been identified in respect of the sustainability of the location, and the associated transportation implications, outweighs the presumption. The site remains unsustainable, as the Planning Inspector concluded last year, and the proposal is clearly contrary to Policy DM42 and section 6 of the NPPF, as it is proposed to be located within Bay Horse, which contains minimal key services and consequently is not sustainable in terms of its location. Additionally the proposal has not demonstrated that there are clear benefits for the local community, and in particular has not provided robust evidence that it will meet an identified rural housing need. Furthermore, it falls into none of the circumstances set out in paragraph 55 of the NPPF.
- 9.2 The proposal fails to satisfy Policy DM20 that sets out that the proposal should minimise the need to travel, particularly by car. The villages of Galgate and Dolphinholme have been identified as sustainable villages that can support growth as there are services within these settlements that will enhance and maintain the vitality of rural communities in which they serve. However, the application site is divorced from both of these villages by at least 2.5km. Future residents would be heavily reliant on private forms of motorised transport, which is also contrary to the overarching sustainability aims of the NPPF. These national and local policies are deemed to hold sufficient weight to override the presumption in favour of sustainable development
- 9.3 The proposed polytunnels by reason of their size, scale and footprint are thought to have an unneighbourly feature at a relatively close proximity to the neighbouring property of Oak Villa and therefore are contrary to policies DM35 DPD and paragraph 17 of the NPPF.

## **Recommendation**

That Planning Permission **BE REFUSED** for the following reasons:

1. The site is located within Whams Lane in a central position of existing ribbon development in the rural hamlet of Bay Horse. Bay Horse contains minimal key services and as such is not considered to be sustainable in terms of its location. The site does not have immediate and direct access to key services and infrastructure and would realistically only be accessible by using a private car. In addition it has not been demonstrated that the development would enhance or maintain the vitality of the local community or help sustain services in nearby settlements. There has been no exceptional justification provided to support this development in an unsustainable rural location such as an existing agricultural or forestry need. As such the proposal is therefore contrary to the aims and objectives of the National Planning Policy Framework, in particular the Core Planning Principles, and does not fall within any of the circumstances set out in Paragraph 55, Core Strategy policy SC1, and Policies DM20 (criteria II) and DM42 of the Development Management Development Plan Document.
2. The proposed polytunnels, by virtue of their size, scale and footprint, will be a dominant feature in the wider landscape and will be an unneighbourly feature at relatively close proximity to the nearest neighbouring dwelling (Oak Villa). As a consequence they are considered to represent inappropriate development by virtue of the impact upon Oak Villa and are therefore considered contrary to policy DM35 of the Development Management DPD and the provisions of paragraph 17 of the National Planning Policy Framework.

## **Article 35, Town and Country Planning (Development Management Procedure) (England) Order 2015**

In accordance with the above legislation, the City Council can confirm the following:

Lancaster City Council takes a positive and proactive approach to development proposals, in the interests of delivering sustainable development. As part of this approach the Council offers a pre-application service, aimed at positively influencing development proposals. Regrettably the applicant has failed to take advantage of this service and the resulting proposal is unacceptable for the reasons prescribed in the Notice. The applicant is encouraged to utilise the pre-application service prior to the submission of any future planning applications, in order to engage with the local planning authority to attempt to resolve the reasons for refusal.

## **Human Rights Act**

This recommendation has been reached after consideration of the provisions of The Human Rights Act. Unless otherwise stated in this report, the issues arising do not appear to be of such magnitude to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

## **Background Papers**

1. Appeal Decision APP/A2335/W/15/3003571 – Brookside, Whams Lane, Bay Horse.