

<b>Agenda Item</b> A7	<b>Committee Date</b> 17 October 2016	<b>Application Number</b> 16/01041/VCN
<b>Application Site</b> Land Off Swallow Close Bolton Le Sands Lancashire	<b>Proposal</b> Erection of 30 dwellings with associated access and landscaping (pursuant to the variation of condition 2 on planning permission 15/01278/FUL for the substitution of house types on plots 5, 6, 7 and 8)	
<b>Name of Applicant</b> Mr Middlebrook	<b>Name of Agent</b> Mrs Kelly Hill	
<b>Decision Target Date</b> 18 November 2016	<b>Reason For Delay</b>  <b>None</b>	
<b>Case Officer</b>	Mrs Jennifer Rehman	
<b>Departure</b>	No	
<b>Summary of Recommendation</b>	Approve	

**i) Procedural Matter**

This 'major' application has been reported to Committee in accordance with the Council's Scheme of Delegation on the grounds that an objection has been received, despite the fact the applicant only seeks to amend 4 house types via a section 73 application.

**1.0 The Site and its Surroundings**

1.1 The application site relates to phase 2 of the residential development on land off Coastal Road on the southern edge of Bolton-le-Sands by Oakmere Homes. The site was former agricultural land but is now under construction following the grant of planning permission for 30 dwellings and associated access and landscaping in March this year. The applicant has practically completed their phase 1 located to the north. Access to the site is via the access off Coastal Road initially serving phase 1. Both phases 1 and 2 are located on land identified in the saved Local Plan as a Housing Allocation site.

1.2 Phase 2 comprises a linear parcel of land situated between Lancaster Canal and existing residential development to the west (properties accessed off Coastal Road) and the recently constructed development now known as 'The Orchards' (Phase 1). The southern boundary runs alongside the existing pedestrian footpath linking Coastal Road to the canal with existing residential properties beyond.

1.3 The southern and eastern boundaries of the site are marked by an existing hedgerow with trees. The Lancaster Canal, adjacent to the hedgerow, is 1.5m above the highest level of the site. The site slopes from the canal embankment down towards Coastal Road (A5105). The canal is a Biological Heritage Site.

**2.0 The Proposal**

2.1 The applicant seeks approval for minor material amendments to the previously approved development, comprising 30 two storey dwellings with associated access and landscaping, through the variation of condition 2 relating to the approved plans. The purpose of the application is to

amend the approved house types on 4 out of the 30 plots, namely plots 5-8. These plots form part of the affordable housing to be delivered on site. The amendments reflect the requirements of the Registered Provider.

2.2 For the purposes of clarification, the development as a whole comprises 30 two storey dwellings with access to the site taken from the access to the 'The Orchards' from Coastal Road. The dwellings would be orientated along a spine road running from south west to north east parallel to the Lancaster Canal. The houses on this phase are mainly repeats of the ones being used on Phase 1. The proposed materials would be stone facing, artstone and render walls, slate roofs and white uPVC windows.

2.3 The development of phase 2 modifies 'The Orchards' (phase 1) planning permission as follows:

- Plot 30 would be built over a turning circle;
- Plots 27, 28 and 29 build over land approved as open space; and
- Relocation of cycle link to Canal towpath

Phase 2 accounted for these modifications and incorporated amenity space and children play space within the layout. The amount of amenity green space across the proposed development (phase 2) and 'The Orchards' (phase 1) (when combined) would amount to 1,630 square metres. Existing hedgerows and trees on the important boundary to the canal are to be retained. An existing hedge would be partly removed within the site to allow construction of the spine road. New trees generally located to either side of the spine road and courtyard parking at the southern end of the development are incorporated into the scheme.

2.4 Twelve dwellings would be offered as affordable housing which would represent a 40% contribution. The 12 affordable dwellings now comprise two 1-bed dwellings, eight 2-bed dwellings and two 3-bed dwellings are to be located to the south west of the site (plots 1 to 12 inclusive orientated around courtyard parking). The remaining houses would be located to the south east of the spine road with gardens to the rear facing the canal, except for one which is located to the north of the spine road. The affordable housing would use the same palette of materials as the market housing.

2.5 A link would be provided between Coastal Road and the canal towpath to the south of the site within the red edge. The connection to the canal (approval 13/00029/FUL) is relocated to a position where an access with a gradient of less than 1:20 is possible to the towpath.

2.6 There is a 6m 'no-build zone', which includes a 3m 'exclusion zone', adjacent to the towpath. A mature hedge punctuated by trees marks the edge of the towpath.

### **3.0 Site History**

3.1 The most relevant planning applications are those outlined below:

<b>Application Number</b>	<b>Proposal</b>	<b>Decision</b>
10/00830/OUT	Outline application for the erection of up to 77 dwellings and creation of new access onto Coastal Road	Resolution to approve subject to a s106 – subsequently withdrawn
13/00029/FUL	Full application for erection of 37 dwelling houses with associated new access and landscaping	Allowed on appeal
15/00058/VCN	Erection of 37 dwelling houses with associated new access and landscaping (pursuant to the variation of condition 2 on planning permission 13/00029/FUL to amend house types on plots 12, 13, 14, 15, 16, 17, 18, 35, 36 and 37)	Approved
15/01278/FUL	Erection of 30 dwellings with associated access and landscaping	Approved

### **4.0 Consultation Responses**

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

Consultee	Response
County Highways	No highway objections to the amendments
Parish Council	No adverse comment to the amendments
Canal & Rivers Trust	No comments to make to the amendments
County Education Authority	Seek a contribution of £94,321.71 towards 7 primary school places
Lead Local Flood Authority	Consultation does not expire until 15 October 2016. A verbal update will be provided if comments are received within the consultation period.

## **5.0 Neighbour Representations**

- 5.1 1 letter of objection has been received from a neighbouring resident adjoining the application site. The reasons for opposition are as follows:
- Overlooking from the new development into rear garden/bedroom resulting in a loss of privacy
  - Overdevelopment of the site – the dwellings are too close together

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

- 6.1 National Planning Policy Framework  
 Paragraphs **7, 12, 14, 17** - Sustainable Development and Core Principles  
 Paragraph **49** and **50** - Delivery a wide choice of high quality homes  
 Paragraphs **56, 57, 58, 60, 61** and **64** – Design
- 6.2 Lancaster Local Plan saved policies  
**H5** Housing Development Sites  
**E4** Open Countryside
- Lancaster Core Strategy  
**SC1** Sustainable Development  
**SC3** Rural Communities  
**SC4** Meeting the District's Housing Requirements  
**SC5** Achieving Quality in Design
- 6.3 Lancaster Development Management DPD  
**DM20** Enhancing Accessibility and Transport linkages  
**DM22** Vehicle Parking provision  
**DM27** The Protection and Enhancement of Biodiversity  
**DM28** Development and Landscape Impact  
**DM29** Protection of Trees, Hedgerows and Woodland  
**DM35** Key Design Principles  
**DM39** Surface Water Runoff and Drainage  
**DM40** Protecting Water Resources  
**DM41** Affordable Housing  
**DM42** Managing Rural Housing Growth  
 Appendix B Car Parking Standards
- 6.4 Other planning policy/guidance documents
- Meeting Housing Needs Supplementary Planning Document (SPD)
  - National Planning Practice Guidance (NPPG)
  - Householder Design Guide Planning Advisory Note (PAN)

## **7.0 Comment and Analysis**

- 7.1 An application can be made under section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied – basically amendments that are more than non-material but such that the amendments would not result in a substantially different development to that approved. In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application (paragraph 031, NPPG).
- 7.2 In this case, the main issues relate to housing, design and amenity considerations associated with the revised house types proposed by this section 73 application. The principle of developing the application site for residential purposes and the loss of the open greenfield has already been established and accepted by this Council and the Planning Inspectorate. This is a reflection of the fact the site forms part of a wider housing allocation under saved policy H5 of the Lancaster District Local Plan.
- 7.3 The principle of the redevelopment of the site for residential purposes was accepted by the Council subject to conditions considered necessary to make the development acceptable. The layout, scale, access, landscaping and appearance of the development on the application site has previously been accepted. This section 73 application does not seek to vary the approved layout or the scale and appearance of the majority of the development. The only changes relate to plots 5 to 8 located at the southern end of the site adjacent to the public footpath linking Coastal Road to the canal at Hatlex Swivel Bridge. These plots are 4 of the 12 affordable housing units to be provided on site. The proposed changes are a direct response to the requirements of the Registered Provider (Great Places).
- 7.4 The substitution of the two 1-bed apartments (Eamont house type) with two 1-bed dwelling houses (Caldew house type) does not raise any fundamental issues. In fact, it provides a more conventional living arrangement that is consistent with the adjoining properties, whilst still contributing to the under supply of 1-bedroom units in the District. The building envelope is marginally smaller than the building envelope originally approved. The fenestration to the front elevation (facing the canal) is improved and consistent with the front elevations of other properties on site incorporating suitably proportioned front porches. The side elevations are relatively simple with openings within the centres of the gables. Plot 5 benefits from French doors leading directly into their private amenity space. Plot 6 has been designed without French doors as it faces directly into the parking court and is proposed with a simple window opening. The amenity space for Plot 6 is located to the front of the property and divorced by hardstanding and access to the garden serving plot 5. Whilst this is not an ideal situation it remains no different to the layout previously approved.
- 7.5 The applicant seeks to substitute the Rothay house type on plots 7 and 8 with a Lowther house type, which is a 3-bedroom dwelling house. Amending the scheme to replace two 2-bed units with two 3-bed units do not raise any fundamental concerns. In design terms the units are larger than the Rothay house types, but only around 1m wider, to provide a larger family-sized kitchen/dining room and a small third bedroom at first floor level. This marginal increase in size does not affect the overall design of the development, the amenity of neighbouring residents or the provision of a suitably sized garden. The fenestration is consistent with the approved dwellings within this section of the site (the affordable housing units) other than the position of the front porches on the front elevations. However, some variation adds to the overall character and appearance of the development so this is not considered an inappropriate detail.
- 7.6 The provision of car parking remains no different to that previously approved. Plots 7 and 8 (now 3-bed units) still benefit from 2 parking spaces which is compliant with the Council's car parking standards set out in appendix B of the DM DPD, which are set as maximum standards. There are no concerns in this regard, with County Highways raising no objections to the proposed amendments.
- 7.7 Finally, in terms of housing needs, the amendments have come about following negotiations with the developers preferred Registered Provider – Great Places – who have taken the affordable housing units on phase 1. The provision of 3-bed dwelling houses within the affordable housing mix

is acceptable and is supported by the Council's Strategic Housing Officer. This provides a better mix of affordable housing units to that previously approved which excluded 3-bedroom units.

7.8 There has been an objection to the proposal on the grounds that the development affects the residential amenity of existing neighbouring residential property. The layout remains no different to that previously approved. The relationship between the approved development and existing residential property surrounding the site has been accepted by this Council and remains compliant with the recommended design standards set out in DM35 of the DM DPD. The proposed amendments do not change this situation.

7.9 In terms of other considerations, the proposals do not seek to alter the connections between the site and the existing built environment, including the connection to the canal. The proposal does not change the landscaping of the site nor does it implicate any ecological mitigation put forward and agreed under the earlier consent. The access also remains as approved. Having assessed the amendments and concluded they are acceptable in planning terms, it seems an appropriate juncture to review the conditions previously imposed.

#### 7.10 Conditions

An effect of an application made under section 73 is the grant of a new planning permission, sitting alongside the original permission. The NPPG makes it clear that decisions for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As a consequence, a review of the conditions previously imposed and those discharged has been undertaken as part of the assessment of the proposal. There are now fewer conditions recommended as many of the details agreed under the earlier discharge of condition application can be incorporated into the recommended condition 1 (approved plans/details condition). This includes the original condition 6 (finished floor levels), condition 7 (canal link) and condition 8 (materials). A number of control-type conditions are repeated, such as drainage to be carried out in accordance with the approved drainage details, removal of PD rights, garaged use, hours of construction, tree protection and unforeseen contamination. The conditions recommended below are considered compliant with the condition 'tests' set out in paragraph 206 of the NPPF.

7.11 A section 73 application cannot extend the time limit within which a development must be started. This condition is no longer relevant as the permission has been implemented and development commenced.

### **8.0 Planning Obligations**

8.1 A s106 agreement sits alongside the original planning permission and secures the following:

- Provision of an Affordable Housing Scheme which provides 12 Affordable Housing Units of which 50% will be provided as Intermediate Affordable Housing and 50% as Social Rented Housing.
- Open Space Contribution £14,920.00 for young person's facilities and £9,276.00 for parks and gardens.

There is no requirement for a Deed of Variation in relation to this minor material amendments application (section 73 application) as the s106 includes provisions (within the definitions) to allow subsequent planning permissions pursuant to s73 of the Act in respect of the planning conditions to be made.

8.2 County Education has requested a contribution of £94,321.71 towards the provision of 7 primary school places. No such request was made at the time the original planning application was considered. Having regard to paragraph 031 of the NPPG, consideration of a section 73 application should focus on the conditions that are sought to be varied – it is not a complete re-consideration of the proposal. Given that the proposals relate to minor material amendments to 4 house types only, such as request would not be considered reasonable or proportionate to the changes sought. On this basis, the education request has not been pursued.

### **9.0 Conclusions**

9.1 The principle of residential development has been accepted on this site with the earlier permission already implemented. The amendments sought via this section 73 application seek to alter 4 out of the 30 house types. The above considerations highlight that the amendments would not affect more

fundamental issues such as highway/traffic and ecological implications. The changes do not affect the layout, parking provision, landscaping or the impact of the development on the residential amenity of surrounding property. The proposals result in minor material changes to the fenestration of the 4 plots in question with the detailing and use of materials consistent with the recently approved scheme and the development already underway (both phase 1 and phase 2). In addition the amendments will seek to provide a better mix of affordable housing on site, comprising a mix of 1, 2 and 3-bed units. Overall, the proposal remains a sustainable form of development that is considered compliant with local and national planning policy. On this basis, Members are advised to support the amendments along with the changes to the conditions to reflect details that have already been agreed under the previous consent.

### **Recommendation**

That Planning Permission **BE GRANTED** subject to the **VARIED** conditions as set out below to account for the proposed minor material amendments and details previously agreed by the earlier planning permission, together with the original S106 securing on-site affordable housing and an open space contribution:

1. Approved Plans/Details list (amended to remove include the revised house types and details agreed under the original conditions 6, 7 and 8).
2. Approved Construction Method Statement to be adhered to during construction
3. Approved Ecology Management Plan to be adhered and mitigation retained and managed at all times thereafter.
4. Approved Drainage scheme to be implemented
5. Approved Maintenance and Management of SuDS document to be adhered and maintained at all times thereafter.
6. Approved Landscaping Plan and Public Realm Management to be provided and retained/managed at all times thereafter.
7. Tree Protection during construction
8. Unforeseen Contamination
9. Hours of Construction
10. Removal of PD (Parts 1, 2 and 14)
11. Garage use condition

### **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:

Officers have made this recommendation in a positive and proactive way to foster the delivery of sustainable development, working proactively with the applicant to secure development that improves the economic, social and environmental conditions of the area. The recommendation has been taken having had regard to the impact of development, and in particular to the relevant policies contained in the Development Plan, as presented in full in the officer report, and to all relevant material planning considerations, including the National Planning Policy Framework, National Planning Practice Guidance and relevant Supplementary Planning Documents/ Guidance.

### **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**

None