



## Appeal Decision

Site visit made on 9 January 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23<sup>rd</sup> February 2023

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Appeal Ref: APP/E2340/W/22/3306363

Land to the North East of St Thomas' Church, Wheatley Lane Road, Barrowford BB9 6RJ

Grid Reference Easting 385553, Grid Reference Northing 439494

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Ben Wilkinson, Beck Homes Limited, against the decision of Pendle Borough Council.
  - The application Ref 22/0197/FUL, dated 22 March 2022, was refused by notice dated 28 July 2022.
  - The development proposed was originally described as residential development. Erection of 79 dwellings and estate infrastructure, including construction of new access from Wheatley Lane Road plus ancillary open space and landscaped areas.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of residential development of 79 dwellings and estate infrastructure, including construction of new access from Wheatley Lane Road plus ancillary open space and landscaped areas at Land to the North East of St Thomas' Church, Wheatley Lane Road, Barrowford BB9 6RJ (Grid Reference Easting 385553, Grid Reference Northing 439494) in accordance with the terms of the application Ref 22/0197/FUL, dated 22 March 2022, subject to the attached schedule of conditions.

### Applications for costs

2. An application for costs was made by the appellant against the Council. This application is attached as a separate Decision.

### Preliminary Matters

3. I have taken the appeal site address in the heading and formal decision above **from the Council's decision notice**, and added the postcode and grid references from the application form, as this is a more accurate reflection of the site location. The description of development in the formal decision above has been taken **from the Council's** decision notice and the appeal form. This is because it is a more accurate reflection of the development for which permission is sought than that given on the application form.

### Main Issues

4. The main issues are the effect of the proposed development on:

- the character and appearance of the area, including whether it would preserve or enhance the character or appearance of the Barrowford Conservation Area (CA); and
- Highway safety.

## Reasons

### *Character and appearance*

5. The appeal site comprises agricultural land with trees adjacent to the boundary. **The land slopes down towards the site's frontage.** It is located within the open countryside, adjacent to the settlement boundary of Barrowford. There are no public rights of way through the site, and it has not been identified as an important local views and vistas within the Barrowford Neighbourhood Plan final 2019 – 2030 (2019) (NP).
6. Towards the west of the site is St Thomas' Church, a primary school and a relatively new housing estate and towards the south are residential properties. Towards the north and east is a private access drive leading to dwellings, and dwellings on Lupton Drive. Towards the north-west is open land. Thus, although the site is located outside the settlement boundary, it has a strong visual connection with the settlement and associated built development.
7. Buildings within the locality vary in design, age, character, scale and materials. The agricultural land beyond the appeal site is not a prominent feature or widely visible when viewed from Wheatley Lane Road or Church Street due to land level differences and existing mature trees. Therefore, when viewed from the site frontage, the site has little connection with the open countryside towards the north-west.
8. The southern part of the site is located within the CA. The CA is defined by the special interest relating to its linear plan form, which follows the early routes, and turnpike road that developed along Pendle Water and its origins as a farming settlement, which later diversified into textile production. The special character of this part of the CA is defined by the stone boundary wall, with a row of trees behind it, and Oaklands Lodge. The CA includes buildings of a variety of architectural styles and periods. The appeal site once formed part of the parkland associated with Oaklands Estate. The appeal site, including the stone boundary wall, positively contribute to the CA.
9. Nearby, the setting of the CA includes Lupton Drive and Lonsdale Gardens which contain more modern housing development. These have impacted the boundary wall and the setting of this part of the CA.
10. The development of the site would result in the loss of an undeveloped, open parcel of land with a semi-rural character. A Landscape and Visual Appraisal was submitted with the application. This concludes that the landscape and visual effects that may result from the proposed development would be short term and very much localised to the site and its immediate vicinity. Furthermore, the development proposals would not generate any significant levels of adverse landscape effect upon the existing landscape resource or any significant adverse visual effects upon the key visual receptors.
11. The proposed dwellings would be set back from the **site's** frontage behind a landscaped area of public open space which would provide an attractive street

- frontage. The majority of the mature trees along the site frontage would be retained. The proposed landscape area would be situated within the CA and would help to integrate the new dwellings with the more traditional character of the CA.
12. Similar to dwellings located on Lupton Drive, the dwellings would follow the topography of the area. The design of dwellings to the front of the site take into account features of nearby buildings, and include mullioned windows, stone roof coping and stone detailing. The frontage properties would follow a traditional form and proposed materials include natural stone and slate. Boundary planting, once established, would filter views of the development.
  13. The proposed materials (including artificial stone and grey roofing slates) and design of the dwellings (including those not located to the front of the site) would not be out of character with other dwellings in the locality which vary in design, character and appearance. A planning condition could be attached to ensure samples of the materials and finishes of the external walls, roofs, windows and doors to be used in the construction of the external surfaces of the dwellings are approved to ensure that they are acceptable.
  14. The proposed development would appear as a natural continuation of the nearby residential development towards the north and east. It would be well related to the settlement pattern given the nearby built development. When considering the existing built development, the proposed landscaped area, materials, design, planting as well as the set back nature of the proposed dwellings, the proposed development would be in keeping with the character of the area. The density and layout of the development would be sympathetic to the local area.
  15. The Council highlight that approximately a 65m section of the stone wall would be reduced in height to 1m and removed, and in part rebuilt as a repositioned retaining wall. The alterations to the existing stone boundary wall and loss of agricultural land would cause harm to the CA, and its setting. This is because they are elements which positively contribute to the CA and form part of the special character of this part of the CA. Nonetheless, it is difficult to see how the site could be developed without impacting the boundary wall whilst also providing a new access which is acceptable in terms of highway safety requirements.
  16. Paragraph 199 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the **asset's conservation (and the more important the asset, the greater the weight should be)**. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Framework paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Where there is less than substantial harm, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
  17. Even though the wall would in part be reduced in height and sections removed for access, it would still provide effective visual continuity in views along the road. In the main, the section of the wall where the access is proposed is

plainer than other parts of the wall. The altered wall would be generally in **keeping with the historic wall's form**. Nearby modern housing development also forms part of the setting of the CA, and I understand that a substantial portion of the wall was removed to accommodate the entrance to Lupton Drive. For these reasons, the harm arising would be localised and less than substantial, nevertheless it is of considerable importance and weight.

18. The development would result in social benefits from the provision of housing in an accessible location. It would contribute to the housing needs of the Borough, and its five year housing supply, and would contribute positively towards the overarching Government's agenda of boosting housing supply.
19. The information before me indicates that the Council has a five year supply of housing land. However, having regard to paragraph 74 of the Framework and local planning policy, the required five year supply represents a minimum and not a maximum number. As set out in **the Council's Five Year Housing Land Supply Statement (2022)**, **the Council's** housing land supply has significantly reduced since the planning application was determined.
20. In any event, the proposed development would also result in economic benefits. The development would result in employment and economic activity from the construction period and an increase in subsequent local household expenditure through residents supporting the local economy.
21. Applying the balancing exercise, I find that the less than substantial harm to the heritage asset is clearly outweighed by identified public benefits set out above. I am therefore satisfied that there would be clear and convincing justification for the harm that would result to the significance of the designated heritage asset.
22. For these reasons, the design of the proposed development would be in keeping with the character and appearance of the area, but the proposed development would cause less than substantial harm to the CA. However, I have found that the identified public benefits of the proposed development would clearly outweigh the harm. Consequently, the proposal would comply with the overarching aims of Policies ENV1, ENV2 and LIV5 of the Local Plan for Pendle: Core Strategy 2011-2030 (2015) (LP) and Policy BNDP 01 of the NP. These seek, amongst other matters, to promote good design and ensure that housing development proposals are appropriate to the surrounding local context and protect and enhance designated heritage assets in accordance with the Framework.
23. The proposal would also comply with the overarching aims of **the Council's** Conservation Area Design and Development Guidance Supplementary Planning Document (2008) which states proposals for new development should always seek to preserve or enhance the character of the conservation area and should be developed taking into consideration the context of the conservation area and the buildings within it. In addition, the scheme would comply with chapters 12 and 16 of the Framework which promotes good design and seeks to ensure developments are sympathetic to local character, and conserve and enhance the historic environment and balance public benefits against any harms identified.

### *Highway safety*

24. The Highway Authority raised no objection to the proposal in principle subject to conditions inclusive of the bus stop infrastructure improvements, pedestrian enhancements and contribution to the local public transport service. I address planning obligations in the following section. I have been informed that the Pasture Lane planning application has been withdrawn.
25. The appeal site is situated within walking distance of Barrowford centre. There is no footway adjacent to the frontage of the appeal site (only on the opposite side of the carriageway). The most direct route to access some services and facilities in Barrowford centre, towards the north (for example to access Booths or the village pubs) is via Church Street. The proposed development would undoubtedly increase the number of users (including vehicles) using Church Street.
26. I observed on my site visit that the footway on Church Street is narrow (reflecting its historic origins), and predominantly on one side of the road. There is insufficient room for pedestrians to pass one another without stepping onto the carriageway. There is on-street parking on Church Street and due to parked cars, the carriageway is in parts restricted to one vehicle width. As a result of the narrow width of the footway, there could be times where pedestrians would need to walk round parked vehicles on the carriageway. The primary school is nearby, and local residents have highlighted that they regularly see parents and children walking on the carriageway.
27. The Highway **Authority's** consultation response acknowledged that there are deficiencies on Church Street for pedestrians with sub-standard width footways. The width of the footway could be a barrier to some users being able to walk into Barrowford centre via Church Street, for example for people using pushchairs or wheelchairs. Nonetheless, Church Street is already used by pedestrians. I observed on my site visit that it is not a busy road, it is subject to a 30mph speed limit and vehicles travelled at a speed appropriate for the road conditions (and parked vehicles). However, I am mindful that my site visit was only a snapshot in time.
28. On my site visit I walked through the former St Thomas Church and graveyard, towards the south-east of the appeal site, to Barrowford centre. This provides an alternative route than along Church Street. However, for some users, and during hours of darkness, it would be unsuitable due to a lack of lighting and uneven terrain (including steps).
29. It is also possible to access Barrowford centre via Higher Causeway. This road has a 20mph speed limit and has wide footways on both sides of the road, as well as street lighting.
30. The planning application was accompanied by a transport statement and a supplementary highways statement has been submitted with the appeal. These set out that the traffic generated by the proposed development can be accommodated on the local highway network, accident data and the additional number of pedestrian movements along Church Street generated by the development would be very low.
31. For these reasons and considering the scale of the development and likely traffic and pedestrian movements, I do not consider that the proposed

development would significantly increase the number of users (including pedestrians and vehicles) using Church Street to an extent that would result in an unacceptable impact on highway safety. There are a number of routes which could reasonably be used to access services and facilities in Barrowford centre. There is no robust evidence before me to take an alternative view of the Highway Authority and demonstrate that the proposal would have an unacceptable impact on highway safety, including a pedestrian safety risk.

32. The proposed development would therefore have an acceptable effect on highway safety. Consequently, it would comply with the overarching aims of Policy ENV4 of the LP and Policy BNDP 03 of the NP. These state, amongst other matters, that proposals for new development should have regard to the potential impacts they may cause to the highways network and development which results in traffic impacts which are detrimental to highway safety will be resisted. It would also comply with chapter 9 of the Framework which states 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 would be severe.

#### Other Matters

##### *Planning obligations*

33. East Lancashire NHS Trust state that they request a contribution for the development under a s106 agreement. Similarly, the Highway Authority require a contribution to improve local bus service 66 via a planning contribution. The County Council have also requested a contribution towards the provision of 9 secondary school places. A s106 has been submitted with the appeal which relates to secondary school places.
34. The Committee Report states that they recommend the committee should not require a contribution to the NHS. This is because the evidence is not sufficiently robust to confirm that the funding is directly related to the development, and is fairly and reasonably related in scale and kind to the **development, and this view is supported by Counsel's opinion.**
35. **The appellant's** highways consultant state that the Case Officer stated the following at the Planning Committee "we do not feel that in accordance with regulation 122 of CIL regulations that the contribution requested for the bus service of £600,000 is justified because it is not fairly and reasonably related in scale to the development and is not necessary to make it acceptable". The Council has not disputed this.
36. Based on the information presented, I am not persuaded that the contributions to the NHS and to improve the bus service meet the tests set out in CIL Regulation 122 and paragraph 57 of the Framework. These contributions have not been robustly justified, and considering the submitted evidence the contributions are not necessary to make the development acceptable in planning terms or fairly and reasonably related in scale and kind to the development.
37. Based on the evidence before me, I am satisfied that the signed legal agreement, submitted with the appeal (relating to secondary school places)

meets the relevant tests<sup>1</sup>. Consequently, I agree with the Council's **position** in relation to the planning obligations.

*Objection comments*

38. In addition to matters relating to the main issues, I have considered in detail the objection comments which relate to an extensive range of matters. These include: drainage, increased flooding (including photographs), trees (including those subject to a TPO), hedgerows, site address, highway safety (including wider area, gritters, increase in traffic, school nearby, cumulative impacts and parking), cumulative impact of developments, **undermine Council's** spatial strategy, unbalanced mix of housing (including no bungalows), affordable housing, withdrawn local plan, appeal decision, wildlife (including bats, **deer's**, owls, foxes, hedgehogs and Curlew), ecosystems, habitats, biodiversity, ecology as well as increased air, light and noise pollution.
39. In addition: Green Belt, lack of renewable energy considerations and designing for climate change, absence of local employment, implications on public services and amenities (including doctors and dentists), schools oversubscribed, sinkholes, issues with proposed walkways, living conditions (including privacy, loss of light, overshadowing and relating to footpath), affect the setting, character and amenity of Oaklands Lodge, Higher Causeway Farm and Barn, noise and disturbance during construction period, planning obligations, brownfield sites more suitable and contrary to local and national planning policy.
40. The Flood Risk Assessment and Drainage Strategy submitted with the application adequately demonstrates that, subject to appropriate planning conditions, the development can be acceptably drained and would not result in an increase in the risk of flooding.
41. Having considered the findings of the Council (including consultation responses), and subject to appropriate planning conditions, there is no robust evidence before me to demonstrate that the proposed development would not be acceptable in terms of trees, hedgerows, highway safety, affordable housing, climate change, employment, sinkholes, proposed walkways as well as air, light and noise pollution or that cumulative impacts of developments would result in unacceptable harm.
42. Local residents have highlighted that the site fronts onto Church Street. On my site visit I observed that there is a street sign for Church Street on the boundary wall adjacent to St Thomas' Church access. However, the appellant has provided evidence, **including an extract from Lancashire County Council's** highway adoption plan which shows that the road fronting the appeal site as Wheatley Land Road. The location of the appeal site is clear from the information submitted (including the public consultation leaflet).
43. My attention has been drawn to the **Borough's strategic housing site at Trough Laithe**. Although I recognise that this scheme would deliver a large number of  **dwellings, the Council's** reasons for refusal do not relate to the principle of housing development at the appeal site. Having regard to the scale of development proposed and the information presented, I am satisfied that the proposed development would not represent a degree of expansion which is

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<sup>1</sup> Set out in Regulation 122(2) of the CIL Regulations 2010 and Paragraph 57 of the Framework

disproportionate to the role of the settlement and would not undermine the **Council's spatial strategy**.

44. I note the comments regarding the local plan that was withdrawn. As the plan has been withdrawn there is no prospect of it being adopted. There is little evidence before me regarding the appeal decision at Foster Road<sup>2</sup>. Nonetheless, **the Council's** housing land supply position has altered since that appeal was determined and the site location and characteristics of the site cannot be directly compared.
45. An ecology survey was submitted with the application. Subject to the recommendations set out in the ecology survey, and an ecological enhancement plan, which can be controlled by condition, the proposed development would acceptably preserve / enhance the biodiversity of the site.
46. The appeal site is not situated within the Green Belt, as suggested by some local residents. There is also no substantive evidence to demonstrate that the proposed development would have an unacceptable impact on public services and amenities to justify withholding planning permission.
47. Given the distance between the proposed dwellings, proposed paths, and existing dwellings, I am satisfied that the development would not have an unacceptable effect on the living conditions of existing nearby occupiers. Similarly, given the distance between the proposed development and existing dwellings as well as intervening highway, trees and proposed planting, I am satisfied that the scheme would have a neutral impact on nearby non-designated heritage assets and buildings identified as making a special contribution to the character and appearance of the CA.
48. Any noise and disturbance to neighbouring residents during construction is inevitable but would be temporary and does not amount to a reason to withhold planning permission. A condition relating to a construction method statement could also be secured by condition, relating to timing of construction activities. In relation to other alternative sites, my role is to determine the appeal based on the planning merits and impacts of the proposed development before me.
49. The Council did not refuse the planning application on the concerns raised. Subject to appropriate planning conditions, there is no credible evidence before me that would lead me to an alternative conclusion to the Council on the other matters raised, or that could justify the dismissal of the appeal on these grounds.

#### Conditions

50. **I have assessed the Council's** suggested conditions, and those suggested in consultation responses, in light of guidance found in the Planning Practice Guidance and where necessary the wording has been amended for clarity and precision. The appellant and Council were given the opportunity to comment on the altered conditions, and the appellant has confirmed that they agree to the conditions.
51. It is necessary to attach a condition specifying the approved plans as this provides certainty. Conditions relating to materials and window opening set

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<sup>2</sup> APP/E2340/W/21/3287075



backs are necessary in the interest of visual amenity of the area, as well as the character and appearance of the CA.

52. An ecology condition is necessary to ensure the ecology of the site is enhanced and protected species are not harmed by the development. A construction method statement condition is necessary to protect residential amenity, highway safety and to ensure that flood risk is not increased elsewhere.
53. Conditions relating to a Travel Plan statement, bicycle store and electric vehicle charging points are necessary to reduce the number of car journeys and deliver sustainable transport objectives. A condition relating to the estate street phasing and completion plan is necessary to ensure that the phasing and completion of estate streets serving the development are completed. Conditions relating to visibility splays, the estate roads, pedestrian links, driveways and parking areas are necessary to ensure adequate inter-visibility between highway users at the street junction or site access, in the interests of highway safety.
54. In order to avoid unnecessary maintenance liability prior to adopting the highway network, a condition relating to a culvert CCTV survey is necessary. To ensure that the final details of the highway scheme/works are acceptable before work commences on site, a condition relating to the site access and off-site highway works are necessary.
55. A condition relating to hard and soft landscape works is necessary to ensure that the development is adequately landscaped so as to integrate with its surroundings and highway safety. This condition also requires details relating to vehicle parking layouts, as the Council highlighted in the Committee Report that three parking spaces are required for dwellings of four or more bedrooms. I understand that a car parking plan was submitted shortly before the committee meeting, but it is not wholly clear whether highways and the planning officer considered that this plan was acceptable.
56. Conditions relating to contamination are necessary in order to protect the health of the occupants of the new development and in order to prevent contamination of controlled waters and the environment. Conditions relating to the flood risk assessment and sustainable drainage are necessary to ensure flood risk is not increased elsewhere, that the development would not be subject to unacceptable risk of flooding and that satisfactory sustainable drainage facilities are provided to serve the site.
57. Lancashire fire and rescue service refers to conditions relating to Building Regulations. There is no clear evidence before me that these are required under local planning policy or that provides clear justification for the conditions. I am satisfied that their implementation would be secured through Building Regulations.
58. The Policy and Resources Committee report sets out a list of notes for the appellant to be aware of in relation to informatives included within consultation responses.

## Conclusion

59. I realise that this decision will come as a disappointment to those who objected against the proposed development. However, taking everything into account, there is no compelling reason to withhold planning permission in this case.

Consequently, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal succeeds.

*L Wilson*

INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: M3299-PA-01-V6, 22-105-P01, 22-105-P03, 22-105-P04, 22-105-P05, 22-105-P06, 22-105-P07, 22-105-P08, 22-105-P09, 22-105-P10, 22-105-P11, 22-105-P12, 22-105-P13, 22-105-P14, 22-105-P15, 22-105-P16, 22-105-P17, 22-105-P18, 22-105-P19, 22-105-P20, 22-105-P21, 22-105-P22, 22-105-P23, 22-105-P24, 22-105-P25, 22-105-P26, 22-105-P27, 22-105-P28, 22-105-P29, 22-105-P30, 22-105-P31, 22-105-P32, 22-105-P33, 22-105-P34, 22-105-P35, 22-105-P36, 22-105-P37, 22-105-P38, 22-105-P39, 22-105-P40, 22-105-P41, 22-105-P42, 22-105-P43, 22-105-P44, 22-105-P45, 22-105-P46, 22-105-P47, 22-105-P48, 22-105-P49, 22-105-P50, 22-105-P51, 22-105-P52, 22-105-P53, 22-105-P54, 22-105-P55, 22-105-P56, 22-105-P57, 22-105-P58, 22-105-P59, 22-105-P60, 22-105-P61, 22-105-P62, 22-105-P63, 22-105-P64 Rev A, 22-105-P65, 31208-SUT-ZZ-XX-DR-C-615-0001 Rev P03, Planning Layout Parking Rev B.
- 3) No development shall commence, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - a) the parking of vehicles of site operatives and visitors;
  - b) loading and unloading of plant and materials;
  - c) storage of plant and materials used in constructing the development;
  - d) the erection and maintenance of security;
  - e) wheel washing facilities;
  - f) measures to control the emission of dust and dirt during construction;
  - g) measures to control construction site noise and vibration;
  - h) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - i) delivery, demolition and construction working hours;
  - j) routing of delivery vehicles to/from site and temporary traffic management measures;
  - k) a Construction Surface Water Management Plan (CSWMP), detailing how surface water and stormwater will be managed on the site during construction, including demolition and site clearance operations. The CSWMP shall include measures for taken to ensure surface water flows are retained on-site during the construction phase and to prevent siltation and pollutants from the site into any receiving groundwater and/or surface waters.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 4) No development shall commence 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

servicing 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.

- 5) No development shall commence until a scheme for the site access has been submitted to and approved in writing by the local planning authority and constructed to base course prior to any delivery vehicle movements being commenced.
  
- 6) No development shall commence until details of both hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. These details shall include:
  - a) indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development;
  - b) planting plans;
  - c) written specifications (including cultivation and other operations associated with plant and grass establishment);
  - d) schedules of plants noting species, plant supply sizes and proposed numbers/ densities;
  - e) boundary treatment[s];
  - f) vehicle parking layouts;
  - g) hard surfacing materials;
  - h) an implementation programme (including phasing of work where relevant);
  - i) a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 7) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of **Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11)** (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on

the site, whether or not it originates on the site. The assessment shall include:

- a) a survey of the extent, scale and nature of contamination;
  - b) the potential risks to:
    - human health;
    - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
    - adjoining land;
    - ground waters and surface waters;
    - ecological systems; and
    - archaeological sites and ancient monuments.
- 8) No development shall take place where (following the risk assessment approved by condition 7) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out, and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority, before the development is occupied.
- 9) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 10) No above ground works shall take place until samples of the materials and finishes of the external walls, roofs, windows and doors to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
- 11) The following package of measures shall be implemented, through a S278 Agreement under the Highways Act 1980, in accordance with details to be submitted to and approved in writing by the local planning authority prior to the occupation of the first dwelling:
- a) dropped kerb/tactile paving on Wheatley Lane Road/ Church Street to connect internal footway links to wider network;
  - b) Two bus stops on Wheatley Lane Road at bus stops 2500LAA07261;

- c) Kerb realignment at Hill Top/ Church Street junction to assist pedestrians; and
  - d) Introduction of associated traffic regulation orders.
- 12) Within 3 months of the development hereby permitted commencing, engineering, drainage, street lighting and constructional details to adoptable standards (Lancashire County Council specification) of the internal estate roads shall be submitted to and approved in writing by the local planning authority. The development shall, thereafter, be constructed in accordance with the approved details.
- 13) No dwelling hereby permitted shall be occupied until visibility splays 2.4 metres back from the centre line of the access and extending 40m to the east side and 44m to the west side on the nearside carriageway edge in both directions have been provided at all accesses/junctions, as shown on the approved plans. Nothing shall be erected, retained, planted and / or allowed to grow at or above a height of 0.9 metres above the nearside carriageway level which would obstruct the visibility splay. The visibility splays shall be maintained free of obstruction at all times thereafter for the lifetime of the development.
- 14) No dwelling hereby permitted shall be occupied until details of the arrangements for future management and maintenance of the estate road within the development have been submitted to and approved in writing by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details.
- 15) The internal estate roads and pedestrian links to the eastern and western corners of the site joining Wheatley Lane Road/ Church Street shall be constructed in accordance with the approved engineering details and to at least base course level prior to first occupation of any dwelling.
- 16) No dwelling shall be occupied until the driveways and parking areas have been drained and surfaced in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and that area shall thereafter be kept available at all times for the parking of vehicles.
- 17) Prior to first occupation, each dwelling shall have access to a secure bicycle store at a ratio of 1 cycle space per bedroom. That space shall thereafter be kept available for the parking of bicycles.
- 18) Prior to first occupation, each dwelling shall be fitted with an electric vehicle charging point. Charge points must have a minimum power rating output of 7kW and be fitted with a universal socket that can charge all types of current electric vehicles.
- 19) No dwelling hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning

authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- include a timetable for its implementation; and,
- provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

- 20) The window openings of the dwellings hereby permitted shall be set back from the external face of the wall. The depth of reveal shall be at least 70mm.
- 21) The development hereby permitted shall be carried out in accordance with the recommendations of the submitted Preliminary Ecological Appraisal (dated October 2020). Prior to the occupation of the first dwelling, a scheme of ecological enhancement shall have been submitted to and approved in writing by the local planning authority and the development shall thereafter be carried out in accordance with the approved scheme.
- 22) The approved Travel Plan (dated March 2022) shall be implemented, monitored and reviewed in accordance with Travel Plan Targets which shall be submitted to and approved in writing by the local planning authority in accordance with the timing set out in the submitted Travel Plan.
- 23) The development hereby permitted shall be carried out in accordance with the submitted Flood Risk Assessment and Drainage Strategy (dated March 2022, reference LRD31208 Revision B, prepared by Sutcliffe). The measures shall be implemented prior to occupation of the development and in accordance with the timing / phasing arrangements embodied within the scheme.
- 24) A CCTV survey of any culvert which crosses below the proposed highway and existing highway along the site frontage (Wheatley Lane Road/ Church Street) shall be undertaken within 6 months of the completion of the development. Any identified defects resulting from the survey shall be rectified within 6 months of the survey.



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## Costs Decision

Site visit made on 9 January 2023

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23<sup>rd</sup> February 2023

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Costs application in relation to Appeal Ref: APP/E2340/W/22/3306363  
Land to the North East of St Thomas' Church, Wheatley Lane Road,  
Barrowford BB9 6RJ

Grid Reference Easting 385553, Grid Reference Northing 439494

- 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 Mr Ben Wilkinson, Beck Homes Limited, for a full award of costs against Pendle Borough Council.
  - The appeal was against the refusal to grant planning permission for a Residential Development. Erection of 79 dwellings and estate infrastructure, including construction of new access from Wheatley Lane Road plus ancillary open space and landscaped areas.
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### Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

### Reasons

2. The application for an award of costs will be familiar to both parties. Consequently, I shall not repeat the submission in full within this decision. Government guidance on the award of costs is set out in the Planning Practice Guidance (PPG). Paragraph 030 of that guidance notes that a party may have costs awarded against them in relation to appeal proceedings if they have behaved unreasonably and that behaviour has led another party to incur unnecessary expense. Those two matters are pre-requisites for an award; if there has been no unreasonable behaviour or no wasted expense an award will not be justified.
3. The applicant seeks an award of costs on the basis that the Council has acted unreasonably through its unjustified opposition to the application which should have been allowed. They state that the Council had no substantive planning evidence to justify refusing or opposing the planning application for its three stated reasons which has frustrated the applicant's **ability to prepare an Appeal Statement**. In addition, **the Council's Planning Manager confirmed that the officers, together with statutory consultees, considered that the application accorded with adopted policies and that there were no material planning objections to the proposal.**
4. The applicant considers that the Council has: prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failed to produce evidence to substantiate each reason for



- refusal; made **vague, generalised or inaccurate assertions about the proposal's** impact which are unsubstantiated by any objective analysis; refused planning permission on a planning ground capable of being dealt with by condition and are not determining similar cases in a consistent manner. In doing so the Council has caused the applicant to incur unnecessary cost and delay.
5. The Council state that reasons for refusal by their nature must to some extent **be expanded upon in a Council's appeal statement, that is its purpose.** In addition, the Council is not bound by the advice of officers and councillors made a reasoned judgement. They highlight that the local highway authority did raise concerns and the application required an exercise of planning judgement.
  6. **The applicant sets out that the Council's response does not address any specific** claimed deficiencies in respect of the application or disagree with any of the detailed matters raised by the applicant either in the Costs Application or the Statement of Case. They state that the County Highways officer did not object to the application and there was no reason why permission should not be granted.
  7. Council Members are entitled to go against the professional advice of Officers as long as it is clearly demonstrated why the proposal is unacceptable and clear evidence is provided to substantiate that reasoning. In terms of the first reason for refusal, the applicant had submitted a Transport Statement with the planning application. The highway authority did acknowledge that Church Street has substandard footways. However, they did not object to the development. As highlighted in my decision, I acknowledge that the footway along Church Street is narrow, and the scheme would increase pedestrian and vehicular traffic on Church Street. Nonetheless, that does not justify the reason for refusal. The Council has not provided any clear evidence to justify this reason for refusal.
  8. Thus, in relation to this matter the Council has failed to produce evidence to substantiate the reason for refusal. The reason for refusal is vague and unsupported by any objective analysis. The Council has not robustly justified why elected Members came to a different conclusion to their Officers and the highway authority. As a result, this reason for refusal was unreasonable, and the applicant has incurred unnecessary costs associated with this reason for refusal in addressing this issue as part of the appeal.
  9. In terms of the second and third reasons for refusal, the planning officer had found that there would be minor harm to the visual amenity of the area and less than substantial harm to the Barrowford Conservation Area. The applicant's **heritage consultant also found that there would be less than** substantial harm resulting from the proposal. In contrast to the case officer, the committee found that the harm would not be outweighed by the benefits of the development. The application required an exercise of planning judgement. **Given the Council's housing supply position** at the time, I do not consider this to be a wholly unreasonable conclusion. In this respect, adequate evidence was submitted to show that the Council did not apply its judgement in an unreasonable manner.
  10. Given my findings in relation to the second and third reasons for refusal, I do not consider that the Council has prevented or delayed development which should clearly be permitted or refused planning permission on a ground capable

of being dealt with by a planning condition. There is also no substantive evidence to demonstrate that the Council is not determining similar cases in a consistent manner.

#### Conclusion

11. **The Council's reasons for refusal consisted of** three elements. I have found, based on the evidence presented, that the first reason for refusal was unreasonable, but not the second and third.
12. I therefore conclude that unreasonable behaviour, as described in the PPG, resulting in unnecessary or wasted expense has been demonstrated, and a partial award of costs, to cover the expense incurred by the applicant in contesting the first part of the Council's **reason for refusal, is justified.**

#### Costs Order

13. 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 Pendle Borough Council shall pay to Mr Ben Wilkinson, Beck Homes Limited, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to Pendle 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.

*L Wilson*

INSPECTOR