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## Appeal Decision

Inquiry held 6-9 July 2020

Unaccompanied site visits carried out on 2 and 10 July 2020

**by Mrs J A Vyse DipTP DipPBM MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27<sup>th</sup> July 2020**

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**Appeal Ref: APP/N4205/W/20/3247035**

**Land at Bowlands Hey, Westhoughton, Bolton**

- 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 Mathew Shipman of Bellway Homes Limited (Manchester Division) against the decision of Bolton Council.
  - The application No 06410/19, dated 28 June 2019, was refused by a notice dated 11 February 2020.
  - The development proposed comprises the erection of 167 dwellings, roads, footways, landscaping, walls, fencing and public open space.
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### Decision

1. For the reasons that follow the appeal is allowed and planning permission is granted for the erection of 167 dwellings, roads, footways, landscaping, walls, fencing and public open space on land at Bowlands Hey, Westhoughton, Bolton, in accordance with the terms of the application, No 06410/19, dated 28 June 2019, subject to the conditions set out in the attached schedule.

### Preliminary and Background Matters

2. The original planning application form referred to the erection of 174 dwellings. However, the description was amended whilst the application was with the Council, prior to determination. It is the revised description that is set out in the header above.
3. A previous application for development of the appeal site with 174 dwellings was refused by the Council in July 2018 with the subsequent appeal being dismissed.<sup>1</sup> That was followed by a re-submission for development of a slightly smaller area of land with 167 dwellings, which sought to address the concerns of the Inspector. It is that application which is the subject of this current appeal.
4. The appeal was accompanied by revised soft landscape drawings. The amendments are very minor, relating to the alignment of hedges. The Council confirmed that the revisions had no material implications for others who may have an interest in the outcome of the appeal. I have no reason to disagree and have determined the appeal on that basis.
5. A general Statement of Common Ground (SoCG1) was agreed between the Council and the appellant, with an addendum submitted relating to housing

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<sup>1</sup> APP/N4205/W/18/3207361 Dismissed 9 April 2019

land supply (SoCG2). A separate Landscape Statement of Common Ground was also submitted (SoCG3).

6. In addition, the appeal was accompanied by a draft planning obligation in the form of a deed of agreement between the main parties pursuant to the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended). It sets out a range of obligations, covenants and undertakings subject to the usual contingencies. The provisions secured are a material consideration and are dealt with later in this decision. With my agreement, a completed version was submitted shortly after the close of the Inquiry.<sup>2</sup>

### **Main Issue**

7. The 7.92 hectare appeal site comprises open, gently undulating grassland as part of a tract of undeveloped land adjacent to, but outwith, the western settlement boundary for Westhoughton as currently defined by the development plan, which includes the Bolton Core Strategy 2011 and the Bolton Allocations Plan 2014. The Allocations Plan shows the appeal site as Other Protected Open Land (OPOL) with policy CG6AP being permissive only of specified categories of development within such areas. As set out in SoCG1, it is a matter of agreement that the development proposed does not fall within any of the specified categories and is therefore contrary to that policy. It is also agreed that there would be conflict with Core Strategy policies OA3(3) and OA3(6) which seek, respectively, to concentrate sites for new housing in the town centre and other sites within the urban area, and to ensure that Protected Open Land around Westhoughton remains undeveloped. Although not referenced in the reason for refusal, there would be conflict too with Strategic Objective 15 of the Core Strategy (SO15) which also seeks to focus new housing in the existing urban area.
8. Whilst the development plan remains as the starting point for planning decisions, SoCG2 confirms that, for the purposes of this appeal, the Council can only demonstrate a housing land supply of between 3–3.6 years. As a consequence, policies CG6AP, OA3(3) and OA3(6) are to be considered as out of date with reference to paragraph 11(d) and associated Footnote 7 of the National Planning Policy Framework (the Framework). SO15 can also to be considered as out of date for the same reason.
9. In light of the forgoing and having regard to the previous Appeal Decision for development of this site, the main issue in this case was agreed as relating to the effect of the development proposed on the character and appearance of the area, with specific reference to landscape impact.

### **Reasons for the Decision**

10. The site lies within Natural England's National Landscape Character Area 56: Lancashire Coal Measures (NCA56) whilst at a regional scale, the Greater Manchester Landscape Character and Sensitivity Assessment (August 2018) categorises the landscape here as Urban Fringe Farmland. At a district scale, the Landscape Character Appraisal for Bolton 2001 (LCA) identifies it as lying within the Agricultural Coal Measures Landscape Character Type (LCT).

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<sup>2</sup> Listed as Inquiry Document 12 below (ID12)

11. This is a settled, urbanised landscape with a scattered settlement pattern. Together, the landscape assessments identify the wider area as low grade pastureland with signs of physical deterioration in quality especially towards the east, with areas that are strongly influenced by the visual presence of the adjoining urban edge and with development, including golf courses, detracting from its rural qualities. The LCA confirms that there is some potential for change within the character area, with the Greater Manchester document confirming an overall medium landscape sensitivity to 2-3 storey housing development. It also sets out that areas on the immediate urban edge are typically of lower sensitivity due to the strong influence that development already has on the rural qualities of the area. That medium sensitivity categorisation is reflected both in findings of the Inspector who dealt with the earlier Appeal and in the evidence before me.
12. The site is bounded by hedgerows and hedgerow trees, post and wire fencing and, along the eastern boundary, by the well vegetated corridor of Pennington Brook. Public footpaths run along the Westhoughton side of the Brook, along Old Lane which cuts through the site, and along Dobb Brow Road on the other side of which is Westhoughton Golf Course and open fields, beyond which is the railway line. Adjoining the site immediately to the north, also outwith the settlement boundary, work has commenced on the construction of 129 dwellings allowed at appeal (referred to in the evidence as Phase 1).<sup>3</sup> To the east is an established residential area within the settlement boundary, accessed via The Fairways and School Street (which runs into Old Lane) with the cemetery associated with St Bartholomew's Church adjoining the northeastern corner of the site. Open fields lie to the south, crossed by a further public footpath which links Pennington Brook to Dobb Brow Road. The nearest buildings to the south are some 150 metres away on Dobb Brow Road. These residential properties include a number of infill plots, some of which are still under construction.
13. The site clearly has some connectivity with the visible expanding settlement edge here and thus is not a remote and undeveloped landscape. Neither does it does it form part of a high quality, distinctive or protected mosaic of landscape features. It is not the subject of any national landscape, historic environment, ecological or open space designations, and the scheme would not result in the loss of identified important views or vistas. Whilst the site is clearly valued by local people, that value being heightened by the current lockdown restrictions, with the current openness of the site adding positively to the experience of walkers using the paths around it, most people place value on the countryside on their doorstep. There is no suggestion in this regard that this is a 'valued landscape' for the purposes of paragraph 170 of the Framework.
14. All in all I have no reason to disagree with the findings of the previous Inspector that:

*'Locally, there are significant areas of suburban expansion around Westhoughton and housing estates make up a large part of the outer extent. Major roads and rail lines dissect [sic] the surrounding landscape. These detract from the quality of the urban fringe on the west side of the town.'*

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<sup>3</sup> APP/N4205/W/17/3167848 Allowed 21 August 2017

*Within this area the site forms part of a broadly triangular area of OPOL, bounded by predominantly modern housing and by the route of railway lines.'*

15. As set out in the Landscape and Visual Impact Assessment, the combination of intervening vegetation, built form and topographical changes mean that the area from which the proposed development would be visible is effectively restricted to a relatively small, localised Zone of Theoretical Visibility (ZTV) around the site. Within the ZTV, Pennington Brook comprises a clear, defensible boundary which would be breached by the proposals, with the previous Inspector noting that trees and vegetation along the Brook limit visibility of the edge of built development on slightly higher land to the east of the site, giving strength to the settlement boundary in this area. However, she also found that the development proposed would create a new outer edge to the settlement and that the Brook could become a positive wildlife habitat corridor within development, providing screening between existing and new housing.
16. Her criticisms of the scheme were not related to the breaching of the Brook corridor *per se*. Rather, she was of the view that the planting margin along Dobb Brow Road was insufficient to allow the creation of natural strong defensible boundaries as recommended in the LCA, and that the intimate rural character of Old Lane which passes through the appeal site, would be overwhelmed between two residential street scenes heavily dominated by access and parking. In addition, she found that dwellings on the southern boundary would appear forward of the main body of development, again with little room for planting around this edge. She concluded that the development as a whole would introduce uncharacteristic elements at those edges, with a major adverse effect on the relationship between the settlement and the surrounding urban fringe.
17. Unlike the previous scheme, the current proposal is heavily landscape led, particularly around the edges. The landscaping now proposed includes some 255 heavy standard ornamental street trees and other native trees, compared to 190 previously. The previous scheme contained no native woodland, compared to the current proposal for some 878 whip or feathered whip trees in the boundary buffers. An additional 200 metres of existing and former hedgerow alignment is also retained, with some 580 metres of new native hedgerow planting, compared with 80 metres previously.
18. Reflecting that landscape-led approach, the western (Dobb Row Road) edge now comprises a substantial landscape boundary approximately 8-12 metres in depth, comprising reinstated hedgerow with scattered native hedgerow trees along the edge of the public footpath, and with native woodland/shrub planting behind to create age diversity and height structure. The width of the landscaping here reflects that of the Pennington Brook boundary on the current edge of the settlement, with similar characteristics and would, in my view, create a natural robust defensible boundary here, offering a characteristic and soft transition between the development edge and the wider countryside.
19. Development would be set back further from Old Lane than was previously the case, behind planting depths ranging between 2.4-16.5 metres. The grass verges and remaining late C18th hedgerows would be retained and

enhanced with new hedgerow creation, hedgerow tree planting, and a native shrub layer behind to help increase the sense of separation between the lane and the built form. The planting flanking the lane would screen views and soften the development edges here, safeguarding the vegetated character of the lane and offering visual containment, with the development being seen as a continuation of the Westhoughton settlement pattern.

20. Development would be offset from Pennington Brook by a minimum of 8 metres as part of the Green Infrastructure scheme for the site. It would be designed and managed to enhance the terrestrial and bankside habitat for wildlife, with additional woodland edge and scattered planting using native species providing screening between the existing and proposed housing.
21. The southern site boundary would be re-defined, including re-instatement of the late C18th hedgerow enclosure. Submitted details also show native linear woodland planting along this boundary comprising taller feathered trees combined with whip planting at a greater density, including pioneer species, creating a soft edge to the development. The existing pond within the southwestern corner of the site would be retained and enhanced as an ecological habitat with a greater diversity of planting introduced, to be incorporated into an area of open space on the development edge.
22. The development parcels within the appeal scheme now reflect the historic field pattern, retaining and strengthening the remaining gappy hedgerows as part of a network of Green Infrastructure. A central area of open space extending to some 1,400 square metres is shown (previously to have been provided within the Pennington Brook corridor) including a Local Equipped Area for Play. In addition, the finished floor levels of plots 155 and 156, between Pennington Brook and Old Lane, have been reduced by some 0.75 metres which, combined with the increased setback from the Lane, results in the dwellings sitting lower in the landscape than was previously the case.
23. Quite clearly, the appeal scheme would result in the loss of open fields on the edge of the settlement, with a consequential change to the character and appearance of the site itself through the introduction of 167 dwellings and associated works. There would be some harm on this basis. The question is whether that brings the development into conflict with the relevant policies in terms of landscape impact.
24. Whilst the Council sought to argue that the impact should be categorised as high adverse, it is of relevance that housing is already a characteristic element of the landscape here and the impacts would be very localised, limited largely to within the site boundaries and from the adjacent public footpaths. Moreover, whilst noting that the scheme would result in the loss of open fields and that residential development on open fields will inevitably have high impacts upon the site itself, the previous Inspector confirmed that there is a need to be careful not to over-inflate such effects. To that end, she attached limited weight to arguments about the loss of open fields in this case, as do I. Indeed, those impacts would also be generally typical of the effects of new residential on any greenfield site on the edge of a settlement - I am mindful in this regard, as acknowledged by the Council in both the previous and current appeals, that development of OPOL is likely to be required to help maintain the Authority's five year housing land supply.

25. The scheme would retain and enhance existing landscape features such as the historic hedgerows, the Brook and its associated corridor and the pond, with a housing layout based on the historic field pattern. More importantly, the substantial landscaped and tree buffer areas on the western and southern edges of the site, where it adjoins the open countryside, would be sufficient to ensure a clear distinction between the urban fringe and the rural areas, creating natural strong defensible boundaries, responding to the relevant objectives and recommendations set out in the Greater Manchester Landscape Character and Sensitivity Assessment and the LCA.
26. When considered in the round, and with the wording of the main issue in mind, I am satisfied that the development currently proposed has had regard to and is respectful of the overall character of the area, conserving and enhancing some elements. I find no conflict therefore, with Core Strategy policy CG3, the relevant parts of which (parts 2 and 8) together seek to conserve and enhance local distinctiveness, with development required to have regard to the overall landscape of the area and with landscaping to be compatible with the landscape type as identified. I find no material conflict either with policy OA3(8) in that regard has clearly been had to the character of the wider open landscape. Moreover, I am of the view that the development would accord with paragraphs 127 and 170 of the Framework, which require, among other things, that schemes are visually attractive, are sympathetic to local character (including the surrounding built environment and landscape setting) establish or maintain a strong sense of place and recognise the intrinsic character and beauty of the countryside.

## **Other Matters**

### *Highways*

27. It was clear from the representations of interested parties that there is a significant degree of apprehension over any increase in traffic numbers in the locality, both in terms of construction traffic and development traffic. However, that apprehension is not supported by technical evidence that would convincingly rebut the appellant's traffic modelling, which data is endorsed by the highway authority and is not challenged by the Council. The evidence demonstrates that the development scheme would have a very limited impact on the operational capacity and/or safety of the highway network, which impacts could not be classed as 'severe' in Framework paragraph 109 terms. Nevertheless, a number of highways improvements are secured via the planning obligation to address the increase in traffic movements.
28. Old Lane, which crosses the appeal site, provides vehicular access to Westhoughton Golf Club and is also a public footpath (WES064). The Golf Club raised concerns in relation to reduced forward visibility when driving along Old Lane and the narrow width of the road, requesting provision of a passing place. However, the Lane is not relied on to provide vehicular access to any part of the appeal site and there would be no increase in vehicular traffic along the Lane as a consequence of the development proposed. In any event, I am advised that the required forward visibility of 31 metres as set out in Manual for Streets (based on a speed of some 25 mph)<sup>4</sup> can be

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<sup>4</sup> Due to the restricted width of Old Lane, and the presence of modest speed humps, the appellant confirms that observed speeds are low, typically below 20mph. I saw that to be the case during my site visits.

achieved within the existing corridor of Old Lane which would not be affected by the development scheme. Whilst an additional passing place is shown on the submitted plans, it is not a requirement of the development scheme.

### *Heritage Assets*

29. The northeastern corner of the appeal site lies adjacent to Westhoughton Town Centre Conservation Area which contains several listed buildings. The Conservation Area forms a small enclave at the edge of the wider settlement, its focus being the junction of Market Street, Wigan Road, Church Street and School Street. St Bartholomew's churchyard and the adjacent cemetery occupy roughly half of the Area, the cemetery extending up to the well treed boundary with the appeal site.
30. The heritage significance of the Conservation Area derives mainly from the organic junction layout and the buildings and spaces within it. It is generally inward looking, with the Appraisal identifying only two views (when the trees are not in leaf) out of the Conservation Area, across open countryside to the north and northwest of the cemetery. I am satisfied, in this regard, that its immediate setting, including the appeal site, makes little if any contribution to its heritage significance, or to an ability to appreciate that significance and there would be no harm in this regard.
31. The nearest listed buildings are the grade II listed Church and Westhoughton Church of England School, also grade II. The special interest of these buildings derives from their architecture, history and also their group value. Given the nature of those buildings, it seems to me that they derive significance from their immediate, rather than extended setting. In any event, intervening buildings, the cemetery and mature vegetation significantly restrict intervisibility with the appeal site and the development proposed. There would be no harm in this regard, to the setting or significance of the listed buildings and neither would the development scheme impact on the ability of the public to interpret their significance.

### **Planning Obligations**

32. The completed S106 Agreement includes a number of obligations that would be engaged were the appeal to succeed. The Community Infrastructure Levy (CIL) Regulations 2010 and paragraph 56 of the Framework set a number of tests for planning obligations: they must be necessary to make the development acceptable in planning terms; be directly related to the development; and be fairly and reasonably related in scale and kind to the development.
33. Open Space: the obligation secures the laying out of all the open space in accordance with a scheme to be submitted to and agreed with the Council, and to then transfer it to a management company required to maintain the space in accordance with an agreed management scheme. The obligations in this regard are supported by Core Strategy policy IPC1 and by the Council's 'Infrastructure and Planning Contributions' SPD (July 2016).
34. Affordable Housing: some 35% of the dwellings proposed (equating to 58 of the 167 dwellings) are secured as affordable housing units. A total of 43 units would be secured for Affordable Rent, with 15 secured for Intermediate

Housing. The provision is supported by Core Strategy policies SC1 and IPC1, together with the Council's 'Affordable Housing' SPD (February 2013).

35. Education Contribution: the Agreement secures the payment of £506,925.36 towards the provision of a new secondary school within five miles of the application site or, in the alternative, improvement and/or expansion of secondary schools in the Borough. The contribution is supported by policies A1(4) and IPC1 of the Core Strategy, the Council's 'Infrastructure and Planning Contributions' SPD (July 2016) and paragraph 94 of the Framework.
36. Highways Contribution: the Agreement secures the payment of £28,536.20 as a contribution towards extending the right turn lane on Cricketers Way, revalidation of the SCOOT<sup>5</sup> system under which the signalised junctions in this locality operate providing further capacity benefits in terms of minimising queues and delays at the signalised junctions here, and associated Traffic Regulation Order Works. The contribution is supported by policies P5, S1(2) and IPC1 of the Core Strategy and paragraph 108b of the Framework.
37. All the contributions and obligations referred to are consistent with the relevant planning policies, objectives and guidance. They are directly related to the development scheme and are fairly and reasonably related in scale and kind to it, mitigating potential harmful effects on the environment and community services. I am content, therefore, that the obligations comply with the requirements of the Regulations and the Framework

### **Benefits of the Scheme**

38. The provision of 167 new dwellings at a time of pressing housing need, 58 of which are secured as affordable homes, on a site that is conveniently and sustainably located in terms of accessibility to local services and facilities, are considerations that carry substantial weight.
39. Economic benefits associated with a development of this size are also significant, including construction jobs and associated supply businesses. There would also be social and economic benefits in terms of future occupiers sustaining local services and facilities, contributing to the local economy.
40. Whilst the infrastructure that would be secured is aimed at future residents, including open space and the play area together with the highways improvements referred to above, those measures would clearly have the potential for use by others and can be considered as a benefit attracting modest weight.
41. The appeal scheme provides biodiversity enhancements, including improvements to the Brook corridor and the pond, substantial areas of native planting and reinstatement of hedgerows. Together I afford those appreciable weight.

### **Planning Balance and Overall Conclusion**

42. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires

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<sup>5</sup> Split Cycle and Offset Optimisation Technique An adaptive traffic control system that co-ordinates adjacent signals using live data.



that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Such a consideration of importance is the presumption in favour of sustainable development set out in paragraph 11 of the Framework, which makes clear that where the policies most important for the determination of a proposal are out-of-date, permission should be granted unless other policies of the Framework dictate otherwise or, where the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

43. As noted at the outset, location of the appeal site brings the development into conflict with policy CG6AP of the Allocations Plan, policies OA3(3) and OA3(6) of the Core Strategy, plus SO15. However, the agreed housing land supply position means that whilst those policies are the starting point for consideration of this appeal, they are out of date, reducing the weight that can be given to conflict with them in the overall planning balance. In this instance, the circumstances mean that the so called tilted balance is engaged.
44. In coming to a view on the appeal scheme, I have had regard to the findings of the Inspector who dealt with the earlier appeal relating to development of the appeal site. She found a major adverse landscape and visual impact, with the development failing to safeguard positive characteristics of the local landscape and the relationship between the landscape and the built up-edge the settlement.
45. In its present form, the appeal site continues to make a positive contribution to the area of OPOL within which it lies, largely as a consequence of its openness, as opposed to any particular defining features. As before, the development proposed would encroach into this part of the countryside. However, it was the detail of the development scheme that my colleague found was unacceptable rather than the principle of development *per se*. Indeed, as set out in SoCG2, it is a matter of agreement between the parties in this appeal that there is no evidence that the development would be harmful to the overall objectives of the development plan in terms of the distribution of development, its effect on regeneration, or other priorities.
46. The scheme now before me is landscape-led, which has informed the layout. As a consequence of the considerable and sensitive landscaping proposed, I find that the development would not appear wholly incongruous either in its setting or with the settlement pattern of Westhoughton, ensuring that there would be no significant harm to the character and appearance of the area, with specific reference to landscape impact.
47. Whilst the previous Appeal Decision is a material consideration, the scheme before me is materially different, with a correspondingly different impact on the landscape character of the area, sufficient for me to reach a different conclusion. I have determined the appeal on its own merits and, in the overall planning balance, find that the adverse impacts that I have identified are significantly and demonstrably outweighed by the benefits when assessed against the policies in the Framework taken as a whole. For the reasons set out above therefore, I conclude that the appeal should succeed.

## Conditions

48. Possible conditions<sup>6</sup> were discussed in detail at the Inquiry on a without prejudice basis in the light of the related advice in both the Framework and the Government's Planning Practice Guidance. Three of the suggested conditions were deleted by agreement, on the basis that they did not meet the test of necessity (management of imported soils and soil forming materials, construction of access roads, footways and footpaths,<sup>7</sup> and improvements to public footpaths in the locality).
49. The condition numbers referred to in brackets below reflect those in the attached Schedule, their wording reflecting the related discussion at the Inquiry.
50. In addition to the standard condition on commencement of development (1), it is necessary to identify the plans to which the decision relates in order to provide certainty. (2) The shortened period for commencement in condition (1) was agreed given that part of the reason to allow the appeal is a response to an identified need to boost the supply of housing in the absence of a five year supply on a site that would not otherwise be considered as necessarily appropriate for development at this time.
51. Conditions 3-15 are necessarily worded as pre-commencement conditions, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measures which could be used.
52. As the development is to proceed in stages, a phasing plan is needed to ensure that key aspects of the scheme, including open space/planting, access, affordable housing, play space provision etc are delivered at an appropriate stage of development. (3)
53. In light of the findings and recommendations set out in the appellant's Phase 2 Site Investigation (November 2018) and Ground Gas Risk Appraisal (February 2020) conditions (4) and (5) are necessary in the interest of public safety and in order to remove any unacceptable risk to human health, buildings and the environment.
54. Conditions (6) and (7) securing the early implementation of the planting along the southern site boundary and protection of trees and hedgerows and the strategic landscape areas during the construction period, are necessary in the interest of visual amenity.
55. Conditions (8) (9) (10) (11) and (21) are necessary in the interest of biodiversity, in particular the safeguarding of protected and priority species and their habitats. Condition (8) is also imposed in the interest of visual amenity. Japanese Knotweed and Himalayan Balsam are present on the site. Condition (12) is imposed to eradicate these invasive species from the site and to prevent their spread.
56. The Greater Manchester Archaeological Advisory Service suggest that there is potential for prehistoric activity on the higher, better drained ground within the appeal site and recommend a programme of archaeological works. (13)

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<sup>6</sup> ID9 and ID13

<sup>7</sup> This relates to suggested condition No 20 which was a duplication, in essence, of an earlier condition.

57. Given the residential nature of the roads leading to the appeal site, it is necessary to ensure that work is carried out in accordance with an agreed Construction Management Plan in the interests of amenity and highway safety. With regard to the suggested control over construction vehicle routing, I am not persuaded that conditions can lawfully control the right of passage over public highways. However, there is no reason why a condition should not be imposed that requires a notice be displayed and maintained at the exits to the site advising drivers of preferred routes. I have amended the condition accordingly. Given the proximity of Pennington Brook and the on-site pond, I have also added a requirement to protect them from pollution during the construction process, as recommended at paragraph 5.5 of the appellant's Ecological Assessment. (14)
58. In order to avoid pollution and to prevent increased risk from flooding, it is necessary to ensure compliance with the recommendations in the appellant's Flood Risk Assessment and Drainage Strategy, including implementation of a scheme of sustainable drainage on the site, together with details for ongoing management which is essential to ensure that the scheme continues to perform as intended. (15)
59. A condition controlling external building materials is necessary in order to protect the character and appearance of the area, including the adjacent Conservation Area. (16) For the same reason but also in the interest of ensuring appropriate levels of privacy for future occupiers, it is necessary to secure details and materials for all boundary treatments. (17)
60. In the interest of reducing carbon emissions and encouraging energy efficiency, details of sustainable energy and carbon reduction measures are to be secured pursuant to Core Strategy policy GC2. (18)
61. The provision of public art on the site is secured to enhance visual amenity pursuant to the requirements of Core Strategy policy IPC1. (19)
62. It is necessary to ensure that adequate provision is made in perpetuity for vehicles to be parked/garaged clear of the highway in the interests of both visual amenity and highway safety. (20)
63. Conditions (22) and (23) relating to landscaping are necessary in the interest of visual amenity. In the joint interests of visual amenity and highway safety, it is necessary to ensure that the roads and driveways to and within each phase are provided and appropriately constructed and surfaced. (24)
64. Based on the findings set out in the appellant's Environmental Noise Study, it is necessary to ensure that the appropriate acoustic glazing/ventilation is provided and retained in order to provide acceptable living conditions for future occupiers in terms of the internal noise environment. (25)
65. A properly equipped play area within the site is required to meet the needs of future occupiers. A condition is imposed to that effect, also requiring it to be retained and maintained. (26)
66. A full Travel Plan is required in order to promote more sustainable travel choices in accordance with Core Strategy policy P5 and the Framework. (27)

67. Given the undulating topography of the site, details of finished floor levels are necessary in the interest of visual amenity and in order to protect the living conditions of future and adjoining occupiers in terms of privacy. (28).
68. Control over any external lighting is required in the interests of both visual amenity and to mitigate impact on and disturbance to wildlife. (29)
69. It is necessary to remove permitted development rights in relation to the erection of fences, walls or other means of enclosure in front of any dwelling fronting or side on to the new estate road, the formation of additional vehicular accesses and/or gates to the plots abutting Old Lane and extensions, alterations and outbuildings etc to particular plots in the interest of visual amenity and to protect the living conditions of adjoining occupiers in terms of outlook and privacy. (30)
70. Condition (31) relating to obscure glazing and opening lights is necessary to protect the living conditions of neighbouring occupiers in terms of privacy.

*Jennifer A Vyse*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Stephanie Hall, of Counsel

She called

Peter Coe BA, DipLA, CMLI	Landscape Architect with Salford City Council
Richard Purser	Director, RPC Planning
BA(Hons) BPI, MRTPI	

NB Monika Dubacka (planning officer) and Nicola Raby (senior lawyer with the Council) assisted in the discussion on the planning conditions and the planning obligation.

### FOR THE APPELLANT:

David Manley, of Queen's Counsel

He called

Amjid Khan	Director, WYG Transport
MSc BSc CEng MICE MCIHT	
Jonathan Berry	Founding Partner, Tyler Grange Group Limited
BA (Hons), DipLA, CMLI, AIEMA, MArbor	
Simon Pemberton	Senior Director, Nathaniel Lichfield and Partners
MA(Hons) MRTPI PIEMA	

### INTERESTED PERSONS:

Alan Riley	Local resident
Denise Roscoe	Local resident

## INQUIRY DOCUMENTS

- ID 1 Council opening submissions
- ID 2 Landscaping plans for the previous appeal relating to the appeal site (APP/N4205/W/18/3207361)
- ID 3 Confirmed list of plans
- ID 4 Timetables for Wigan-Bolton bus services
- ID 5 Mr Khan written response to Ms Roscoe comments on bus services (updating Appendix 2 of the 2018 TA)
- ID 6 Office copy entry and Title Plan for land adjoining the appeal site to the south
- ID 7 Site visit itinerary (amended)
- ID 8 Policy PG10 Bolton UDP (December 1995)
- ID 9 Suggested conditions
- ID 10 Council Closings
- ID 11 Appellant Closings
- ID 12 Completed Planning Obligation
- ID 13 Amended wording for suggested condition 3 and attachment (Phase 2 Site Investigation Report (Ref: 06807-CUR-00-XX-RP-GE-001 Rev03) prepared by Curtins dated 19th November 2018)

**Schedule of Conditions**  
**APP/N4205/W/20/3247035**  
**Land at Bowland Hey, Westhoughton, Bolton**

**Commencement of development**

- 1) The development hereby permitted shall begin no later than two years from the date of this decision.

**Plans**

- 2) Unless required otherwise by the following conditions, development shall be carried out and retained thereafter in accordance with the following plans:

<b>Name</b>	<b>Drawing Number</b>
Proposed Planning Layout	BHM005 PLA1 rev. G dated 22.01.20
The Fairways Westhoughton Phase 2 - House type range dated November 2019 (received 05.02.20)	
Standard Retaining Walls 1500mm Max High Retaining Wall - 1.8m fence	6603-RW1500-1.8 dated Oct 16
Standard Retaining Walls 450mm Max High Retaining Wall - 1.8m fence	6603-RW450-1.8
Standard Retaining Walls 450mm Max High Retaining No fence	6603-RW450-0
Standard Retaining Walls 450mm Flag on Edge Retaining Wall Details	6603-RW450-FOE dated Nov 16
Standard Retaining Walls 600mm Max High Retaining Wall - 1.8m fence	6603-RW600-1.8 dated Oct 16
Standard Retaining Walls 750mm Max Height Retaining Wall with 1.8 m Fence	6603/RW750/1.8 dated Oct 16
Standard Retaining Walls 900mm Max High Retaining Wall - 1.8m fence	6603-RW900-1.8 dated Oct 16
Standard Retaining Walls 1200mm Max High Retaining Wall - 1.8m fence	6603-RW1200-1.8 dated Oct 16
Extent of Landscape Management Areas	12005/P19 dated January 2019
External Works Layout (1 of 3)	30301/8/1 rev. F dated 31.01.20
External Works Layout (2 of 3)	30301/8/2 rev. F dated 31.01.20
External Works Layout (3 of 3)	30301/8/3 rev. F dated 31.01.20
Biodiversity Habitat Plan	D7721.001C dated 04.02.2020
Soft Landscape Proposals	12005_P15 rev. D dated 04.06.20
Soft Landscape Proposals	12005_P16 rev. D dated 04.06.20
Soft Landscape Proposals	12005_P17 rev. D dated 04.06.20
Soft Landscape Proposals	12005_P18 rev. D dated 04.06.20

### **Pre-Commencement Conditions**

- 3) Prior to the commencement of development, a phasing plan shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved phasing plan.
- 4)
  - i) No development or stripping of soil shall take place unless and until a scheme of site-wide soil remediation measures in accordance with the recommendations set out in the Phase 2 Site Investigation Report (ref: 06807-CUR-00-XX-RP-GE-001 Rev03) prepared by Curtins dated 19th November 2018 has been submitted to and approved in writing by the local planning authority. Development shall be carried out in full accordance with the approved scheme.
  - ii) Any additional or unforeseen contamination encountered during development shall be notified to the local planning authority as soon as practicably possible and a remedial scheme to deal with this approved by the local planning authority.
  - iv) Upon completion of any approved remediation scheme(s), and prior to occupation of any relevant dwelling(s), a verification report shall be submitted to and approved in writing by the local planning authority that shall demonstrate that all remedial works undertaken on the relevant part of the site were completed in accordance with those matters agreed by the local planning authority, that the scheme(s) has/have been appropriately implemented and that the relevant part of the site is suitable for its intended end use.
- 5) Prior to the commencement of the construction of Plots 13 and 14 (as shown on Planning Layout BHM005 PLA01 Rev G) a scheme of gas protection measures for those plots in accordance with recommendations in the Detailed Ground Gas Appraisal (Ref: 6903BEL200205L) prepared by Coopers dated 5th February 2020 shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved measures which shall be retained thereafter.
- 6) No development shall commence on the construction of Plots 1 to 45 unless and until the trees, hedgerows and shrubs within the strategic landscape buffer on the southern site boundary have been planted in accordance with drawing Nos. 12005\_P15 rev. D and 12005\_P17 rev. D (including the planting outside the application boundary as defined on the approved Planning Layout drawing number BHM005 PLA1 rev. G dated 22.01.20).
- 7) No development or stripping of soil shall take place until:
  - a) a scheme for the protection of the strategic landscape areas, the area for the central landscaped space and LEAP, and trees and hedgerows within and/or overhanging the site which are to be retained, has been submitted to and agreed in writing with the local planning authority. The scheme shall include fencing of the affected areas in accordance with BS 5837:2012;
  - b) the approved fencing shall remain in situ in the agreed locations until that part of the development is completed, or unless otherwise agreed in writing with the local planning authority, with no work, including any changes in ground levels, the storage of materials, or placing of site cabins, within the fenced areas; and,

- c) a minimum of 14 days written notice has been given to the local planning authority confirming the approved protective fencing has been erected.
- 8) Prior to the commencement of that part of the development served by the access from The Fairways, full details of the means of crossing Pennington Brook shall be submitted to and approved in writing by the local planning authority. The design shall incorporate either a dry passage zone for animals or a mammal ledge. The approved design shall be implemented in full prior to first occupation of any dwelling hereby permitted.
- 9) No works shall take place including soil stripping and vegetation clearance until a written scheme detailing Reasonable Avoidance Measures (RAMS) for reptiles and amphibians that will be adopted has been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out in accordance with the approved RAMs.
- 10) If development does not commence prior to 1 March 2021, an updated eDNA survey or traditional amphibian survey is to be undertaken and submitted to the Local Planning Authority before development commences. A report shall be submitted to and approved in writing by the local planning authority setting out any necessary mitigation measures and a timetable for implementation. Development shall thereafter be carried out in accordance with the approved details with an approved implementation timetable and retained thereafter.
- 11) Prior to the commencement of development in any phase, including groundworks, the applicant shall survey the site for evidence of badgers. An updated report shall be submitted to and approved in writing by the Local Planning Authority either confirming that no badgers were found or/and containing appropriate mitigation measures (if required) including a timetable for implementation. Where the approved report identifies mitigation measures these should be implemented in full in accordance with the requirements of the report and be retained thereafter.
- 12) Development shall not commence until a scheme for the eradication of Japanese Knotweed and Himalayan Balsam, including a timetable for implementation, has been submitted to and approved in writing by the local planning authority. The submitted scheme shall also include a specification and agreement to provide for Biosecurity measures for machines and soil storage to prevent the spread of invasive species. Should there be a delay of more than one year between the approval of the scheme and its implementation or the commencement of development, then a new site survey and, if necessary, further remedial measures shall be submitted for the further approval of the local planning authority. Development shall be carried out in accordance with the approved scheme.
- 13) Prior to commencement of development (including groundworks), an Archaeological Written Scheme of Investigation (WSI) shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full in accordance with the approved phasing programme. The WSI shall cover the following:
- i) A phased programme and methodology of site investigation and recording to include:
- nomination of a competent person or persons/organisation to undertake the works set out within the WSI;



- a targeted evaluation; and
  - an Open Area Excavation if required by the evaluation.
- ii) A programme of post-investigation assessment to include:
- analysis of the site investigation records and findings; and
  - production of a final report on the significance of the archaeological, historical and architectural interest represented.
- iii) Deposition of the final report with the Greater Manchester Historic Environment Record and dissemination of the results commensurate with their significance.
- iv) Provision for archive deposition of the report.
- 14) Notwithstanding any details submitted with the application, no development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Construction Method Statement shall be adhered to throughout the construction period for the development. The Statement shall provide for:
- i) site management arrangements including on-site storage of materials, plant and machinery; temporary offices, contractors compounds and other facilities; on-site parking and turning provision for site operatives, visitors and construction vehicles; and provision for the loading/unloading of plant and materials within the site;
  - ii) delivery and construction working hours;
  - iii) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing where appropriate;
  - iv) wheel washing facilities;
  - v) measures to control the emission of dust and dirt during construction;
  - vi) a construction waste management plan that identifies the main waste materials expected to be generated by the development during construction, including vegetation, together with measures for dealing with such materials so as to minimise waste and to maximise re-use and recycling;
  - vii) the erection and maintenance of signage at all vehicular exits from the construction site advising drivers of preferred approach and exit routes to the site;
  - viii) measures to avoid the risk of pollution from construction activities entering Pennington Brook and the on-site pond, including the control of site run-off, management of site waste, prevention/containment of any fuel and other spillages and emergency procedures for any pollution incidents; and
  - ix) a nominated developer/resident liaison representative with an address and contact telephone number to act as first point of contact for residents who have any problems or questions related to the ongoing development for the construction period.
- 15) No development shall take place, including works of site clearance and ground preparation until details of surface water drainage works have been submitted to and approved in writing by the local planning authority, including overland flood routes through the development for use in exceptional circumstances. Development shall be carried out in accordance with the approved details and timescales. The details to be submitted shall include the results of an assessment of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the

principles set out in the National Planning Policy Framework. Where a sustainable drainage system is to be provided, the submitted details shall:

- i. 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;
- ii. include a timetable for its implementation; and,
- iii. 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.

### **Conditions relating to commencement of works above ground level**

- 16) Notwithstanding any description of materials in the application, no above ground construction works shall take place within any phase unless and until samples or full details of materials to be used externally on the buildings within that phase have been submitted to and approved in writing by the Local Planning Authority. The details to be submitted shall include the type, colour and texture of the materials. Development shall be carried out in accordance with the approved samples/details.
- 17) Prior to the commencement of works above ground level within any phase, details (including elevation plans, brick or masonry/materials specification and colour scheme) of the treatment to all boundaries around and within that phase shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 18) No above ground construction works shall commence unless and until a scheme, including a timetable for implementation, has been submitted and approved in writing by the local planning authority demonstrating a minimum reduction of 10% of carbon emissions (to be calculated by reference to a baseline for the predicted carbon emissions of the development as defined in the Building Regulations Part L standards current at the time of commencement of development) through the use of decentralised, renewable and/or low carbon technologies. Development shall be carried out and maintained thereafter in accordance with the approved scheme.
- 19) Prior to first occupation of any dwelling, a scheme for the provision of public art, including a timescale for implementation, shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme which shall be retained thereafter.
- 20) Prior to the occupation of any dwelling in any phase, provision shall be made for the parking and/or garaging of motor vehicles adjacent to that dwelling house in accordance with drawing No BHM005 PLA1 rev. G and The Fairways Westhoughton Phase 2 - House type range document (November 2019). Those areas shall thereafter be kept available at all times for that purpose.

### **Conditions relating to First Occupation**

- 21) No dwelling shall be occupied unless and until the features set out on the drawing No D7721.001C (Biodiversity Habitat Plan) have been provided in accordance with the details shown thereon. Those features shall be retained thereafter.

- 22) Prior to the occupation of any dwelling house in any phase, a landscape planting scheme shall be submitted to and approved in writing by the local planning authority. Other than planting along the southern boundary planted in accordance with condition 6 above, all remaining trees, hedgerows and shrubs shall be planted on the site in accordance with the approved plans (drawing Nos. 12005\_P15 rev. D, 12005\_P16 rev. D, 12005\_P17 rev. D and 12005\_P18 rev. D) and in accordance with the approved planting scheme.
- 23) Any trees and shrubs planted pursuant to conditions 6 and 22 above, that die or are removed within:
- any individual plot within the first five years from the completion of the last dwelling house, and/or
  - the landscape areas hatched green on the drawing No 12005/P19 (including the planting outside the application boundary as shown on drawing Nos 12005\_P15 rev. D and 12005\_P17 rev. D) die or are removed within 15 years from the completion of the last dwelling house,
- shall be replaced in the next available planting season with others of similar size and species.
- 24) No dwelling in any phase shall be occupied unless and until the roads and driveways serving and within that phase have been constructed in accordance with details that have previously been submitted to and approved in writing by the local planning authority. The details to be submitted shall include construction, surfacing and drainage. Development shall be carried out in accordance with the approved details.
- 25) No dwelling in any phase shall be occupied until the measures for that dwelling pursuant to the Glazing and Ventilation Strategy within the Red Acoustics Environmental Noise Study R1456-REP01-JW (dated 19 July 2019) have been implemented in full in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.
- 26) Prior to first occupation of any dwelling on the site, and notwithstanding any details submitted with the application, full details of the on-site Local Equipped Area for Play (LEAP) to be provided within the central landscaped space (adjacent to plots 128 and 139) as shown on the approved site plans, shall be submitted to and approved in writing by the local planning authority prior to any works commencing on the play area. The details to be submitted shall include:
- a timetable for implementation;
  - a detailed layout plan of the Toddler and Junior play area (key ages 0-12 years) providing at least seven pieces of fixed play equipment (to include swings, a slide and a combination play unit) covering the key activities for the age range;
  - full manufacturers specification for each item of equipment, which is to be of robust steel construction, safety tested and manufactured by a reputable supplier with appropriate and compliant safety surfacing underneath, and should be inclusive in its design;
  - details of bow top fencing around the LEAP at 1.2m high with self-closing pedestrian gates (avoiding finger and head traps and sharp edges) including RAL colours and maintenance access;

- hard surfacing within the fenced area to allow fully inclusive use both for users and carers, including wheelchairs and prams/buggies;
- details of hard surfaced paths across the open space to the gates into the play area;
- details of any signage, seats and litter bins;
- a detailed management and maintenance schedule for the facility.

Development shall be carried out in accordance with the approved details and the facility shall be retained thereafter in accordance with the management and maintenance arrangements as approved.

- 27) No dwelling shall be occupied until a Travel Plan, which shall include notification of the appointed Travel Plan Co-ordinator for the development, has been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include but is not confined to:
- a) the key actions and timescale as outlined within Section 5 and 6 of the Travel Plan dated June 2019 Issue 1 (Ref: A102260);
  - b) a timetable for implementation; and,
  - c) how the Action Plan and the Review Measures as proposed will be implemented throughout the lifetime of the development.

The approved Travel Plan shall be implemented in accordance with the implementation timetable.

#### **Levels**

- 28) The development, hereby permitted, shall be carried out in accordance with approved ground and finished floor levels and secured with retaining walls as shown on plan Nos 6603-RW1500-1.8, 6603-RW450-FOE, 6603-RW600-1.8, 6603/RW750/1.8, 6603-RW900-1.8, 6603-RW1200-1.8, 30301/1 rev. F, 30301/2 rev. F and 30301/3 rev. F) and retained thereafter.

#### **Lighting**

- 29) No external lighting within any phase of the development hereby permitted (other than residential curtilages relating to domestic properties) shall be installed other than in accordance with details that have previously been submitted to and approved in writing by the local planning authority.

#### **Removal of Permitted Development Rights**

- 30) Notwithstanding the provisions of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending or replacing that Order) and other than as expressly authorised by this permission:
- i. no fences, walls or other means of enclosure shall be erected between the front or side wall of any dwelling and the new estate road or private drive, which the curtilage of the of the dwelling fronts or abuts;
  - ii. no vehicular accesses and/or gates shall be installed onto Old Lane within any of the plots abutting Old Lane; and,
  - iii. no garages, extensions, decking/raised platforms, buildings, outbuildings, sheds or greenhouses shall be erected within the curtilage of approved dwellings at plots 69-78 (inclusive), 81-84 (inclusive), 88, 95, 146, 156, 163 and 164.

**Glazing**

31) The first floor bathroom, en-suite and landing windows in the side elevations of the Sawyer, Tailor, and Scrivener house types on plots:

- Sawyer on plots nos. 3, 4, 12, 18, 19, 23, 24, 25, 42, 43, 49, 59, 123, 129, 132, 135, 137 and 138;
- Tailor on plots nos. 32, 33, 60, 64, 65, 66, 67, 92, 117 and 152;
- Scrivener on plots nos. 1, 2, 21, 39, 56, 57, 115, 116, 142 and 141;

and in the rear elevation of the Bowyer house type hereby approved on plots:

- 22, 40, 50, 128, 131, 136 and 139;

all as shown on plan No BHM005 PLA1 rev. G and The Fairways Westhoughton Phase 2 - House type range house type range document (November 2019) shall either be non-opening, or provided with openings more than 1.7m above internal floor level, and shall be finished with obscure glazing to a level of 5 of the Pilkington Scale of obscuration (or equivalent). Once installed, the windows shall be retained as such.

-----END OF SCHEDULE-----