

26 May 2015

Dear Councillor

DEVELOPMENT CONTROL COMMITTEE - TUESDAY, 26TH MAY 2015

I am now able to enclose, for consideration at the above meeting of the Development Control Committee, the following report that provides an update of events that have taken place since the agenda was printed.

Agenda No Item

9 **Addendum (Pages 3 - 10)**

Report of the Director Public Protection, Streetscene and Community enclosed.

Yours sincerely



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| C O M M I T T E E R E P O R T | | |
|---|-------------------------------|---------------------------|
| REPORT OF | MEETING | DATE |
| Director Public Protection, Streetscene and Community | Development Control Committee | 26 th May 2015 |

| ADDENDUM |
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ITEM 4a-15/00141/FUL – Woods Fold Saw Mill, Dole Lane, Abbey Village

The application has been withdrawn from this committee.

ITEM 4b-15/00089/FULMAJ- Land North Of Units A1- A4 Buckshaw Link, Ordnance Road, Buckshaw Village

The recommendation remains as per the original report although delegated authority is sought to vary the wording of condition 7 in the event that the Council's Waste and Contaminated Land Officer is satisfied with the submitted information.

Cllr Mark Perks is unable to attend Committee however he has registered his general support for the application. He has made the following comments:

- I support the Aldi Store application as it will provide another alternative food store to provide residents of Buckshaw Village a choice and it will also provide employment in the village.
- I have some reservations on the location of a community centre in what will be dominantly an industrial/ units / employment section of the village near already existing warehousing. It will also not address the shortage of community facilities which will indeed arise when all the homes are built on Group 1 land currently being developed on the other side of Buckshaw Village.
- However having said that, I do feel investment into Buckshaw by the council is long overdue and there is a need to provide additional community facilities, which are needed, as local community groups have no alternative accommodation on the village as capacity is in short supply.

The original report has been amended as follows:

Aldi wish to start on site as soon as possible and as such have been working on providing the information set out within the original suggested conditions to ensure that any prior commencement conditions can be changed to compliance conditions. In this regard the following conditions have been amended:

Full details of the access roads have been provided and the Highway Engineer has confirmed that they are acceptable. As such condition 5 has been amended as follows:

5) The development shall be constructed in accordance with the approved access road details and made available for use prior to the first use of the foodstore.

Reason: This information is required in the interests of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway.

The proposed foodstore is required to achieve BREEAM Very Good and reduce carbon emissions in accordance with policy 27 of the Adopted Core Strategy and as secured by conditions 9-12.

In this regard a BREEM Pre-Assessment and Carbon Reduction Statement have been submitted in support of the proposals. Following consideration of these documents conditions 10 and 12 has been amended as follows:

10) Within 2 months of the commencement of the foodstore, a 'Design Stage' assessment and related certification which demonstrates accordance with the submitted BREEAM Pre-Assessment (dated April 2015) and confirms that the foodstore will achieve BREEAM Very Good shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out entirely in accordance with the approved assessment and certification.

Reason: The foodstore will be constructed to BREEAM 'Very Good' standards in the interests of minimising the environmental impact of the development. The Design Stage Assessment is required early on in the process to ensure the required standard is met

12) The foodstore hereby approved shall be constructed in accordance with the submitted Renewable Energy & Carbon Reduction Feasibility Report (dated April 2015) to ensure that the building reduces the carbon dioxide emissions of the development.

Reason: In the interests of minimising the environmental impact of the development.

Following further discussions with the agent for the application condition 25 has been slightly amended as follows:

25) The foodstore shall not open to the general public until the legal contract for the construction of the community centre has been entered into by all parties and evidence of that contract has been submitted to and approved in writing by the Local Planning Authority.

Reason: The erection of a foodstore on this site is contrary to Policy 10 of the Adopted Central Lancashire Core Strategy 2012 however the provision of a community centre on the site is considered to be a material consideration in favour of the proposed foodstore. As the provision of the community centre is a material consideration in respect of the provision of the foodstore a restriction on the opening is considered necessary to ensure the community centre can be delivered.

The only outstanding prior commencement condition in respect of the foodstore relates to land contamination, condition 7. The Council's Waste and Contaminated Land Officer has not had the opportunity to consider the additional submitted information but will be able to before the end of the week. As such delegated authority is requested from Members to vary the wording of condition 7 to a compliance condition in the event that the submission information is acceptable. This will enable Aldi to start on site as soon as the consent is issued.

The recommendation remains as per the original report**The original report has been amended as follows:**

As noted in paragraph 31 (page 109 of the Agenda) a viability assessment has been submitted in respect of the scheme and in particular the requirement for a 19% reduction on the dwelling emission rates. This has been reviewed by the Council's Property Services Section who have confirmed that the inclusion of the 19% reduction would render the scheme unviable. It is noted that the viability assessment includes a contribution to Public Open Space which is not required in respect of this site (paragraph 31 (page 108 of the Agenda) and as such it is considered that some type of improvement can be achieved whilst not impacting on viability.

At the recently approved affordable housing scheme in Croston (15/00039/FUL) similar issues were raised and a condition was attached in respect of addressing fuel poverty by reducing energy consumption via a fabric first approach. This achieves the equivalent of the former Code 4 house and will be secured by the following condition (to replace conditions 16, 17 and 18):

The development shall be carried out in accordance with the measures contained with the Energy Efficiency Statement submitted with the application, received 31st March 2105, to reduce the energy consumption of the dwellings hereby approved.
Reason: In the interest of minimising the environmental impact of the development and taking into account the circumstances put forward by the applicant.

ITEM 4d-14/00974/FUL – Land North Of The Walled Orchard, Berkeley Drive, Cuerden**The recommendation remains as per the original report**

An additional letter from the agent for the application has been received. This is reproduced in full at the end of the addendum.

The following consultee responses have been received:

Cuerden Parish Council have made the following additional comments:

- This is Green Belt land and an ecology study should be made;
- A hole in the restored wall (which was the subject of a Heritage Lottery grant) does not sound compatible for the public who enjoy this area of peace and tranquillity;
- The position of the nursery is not of the best. The area has tractors, trailers, chippers, tree felling equipment and general maintenance tools around. The yard is not very large so health and safety issues could be a problem.
- A traffic count has been done but only appears to be interested in the car park area for the Valley. There are other firms with their own car parks eg Wildlife Trust, Parkwood House, PJ Forktrucks and Carnells -that can be 60 -70 cars a day without maybe four journeys a day per child to the nursery making at least 100 journeys. All these vehicles have to use Shady Lane and Berkeley Drive.
- Shady Lane is now used as a cut through and although the Police agreed to 40mph much of the traffic exceeds this.

- Pedestrian visitors and cyclists to the Valley struggle enough with the traffic without any addition to it.

ITEM 4i - 15/00281/REM- 56 Wood Lane, Heskin, Chorley**The recommendation remains as per the original report**

1 no. further letter has been received from the occupiers of 31 The Warings who are long standing residents of The Warings which adjoins the application site and state that their position is supported by their neighbours at 33, 37, 42 and 44 The Warings.

The local residents are also supported by Cllr Whittaker in their request for a 3m high fence to be erected along the rear of the site boundary to ensure that the residents do not experience unacceptable levels of noise, disturbance and pollution from the comings and goings of the proposed car parking area. Concern is also expressed that the risk of crime will be higher once the site is opened up without a higher fence to provide effective security.

The applicant has been made aware of the request that has been made by the local residents and has provided a considered written response that sets out their rationale for the proposed boundary treatment indicated on the drawings.

They state that currently there is a small proportion of the rear boundary that has a 3m high acoustic fence that was erected following a request from the Council when the workshop of the previous occupier was in full operation.

The applicant does not accept that all residents abutting the rear boundary of the application site are requesting a higher fence and comment is made that one resident has recently erected a new 2m high fence at the rear of their garden and other residents may object to a 3m high fence.

Following the applicant's assessment of the options they feel that they should leave the existing boundary fences to each property as is; so the existing 3m fence would remain (this is screened to a large degree with tall conifers at the moment) as well as all the individual fences, as they cannot take down the new fence recently erected by one resident. It is the applicant's intention to erect a 2m high fence to the rear boundary to create uniformity for the development and have the same style of fence, again 2m high, to provide privacy and security to the rear gardens of the proposed properties.

The applicant considers that a 3m high fence to the rear boundary and a 2m high fence to the rear gardens of the proposed dwellings would restrict light to the gardens, give a non-uniform appearance and create a dark and oppressive access pathway to the rear gardens of the proposed properties. Whilst the 3m high fence between residential and commercial use properties seems logical; a 2m high fence between residential properties is more usual, more acceptable and in keeping with the use, whereas a 3m fence may well look out of place.

TREE PRESERVATION ORDER NO.13 (CROSTON) 2014

The trees in the draft Order have been renumbered on the plan since the provisional Order, as tree T2 has been removed. For clarity tree TP1 remains as originally labelled, tree T2 has been removed and tree T3 remains in the Order but has been renumbered T2.



ADDITIONAL INFORMATION FOR ITEM 4d:

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22/05/2015

Dear Sir/Madam

Planning Committee 26th May 2015 reference item 4D

14/00974/FUL Ward Clayton le Woods West and Cuerden

Proposal Change of use of land to forest nursery and siting of nursery building Location Land north of The Walled Orchard, Cuerden Valley Park

I write to you with attachments as agent for the above proposal. Unfortunately I cannot attend to speak in person, as I am in Norfolk on a prior work engagement.

I write to clarify a number of points in the report, which in my professional opinion are factually incorrect in terms of the law, incorrect! If taken at face value they would give a false impression of development in a countryside location. Such as this within the designated Green Belt.

Much of these centres around the comparison between this application and that for the new visitor centre 14/00977/FUL, which was approved last year by officers under delegated powers. The two applications were submitted three days apart.

All development in the Green Belt is inappropriate unless it is specifically identified in paragraph 89 of the NPPF as of a type that is not. The types of development identified in paragraph 89 are caveated by the point that the development should not adversely affect openness.

Openness is the absence of development. The law on this matter is very clear in *Timmins v Gedling* 2014 as referring back to previous case law *Heath & Hampsted Society v London Borough of Camden* [2007] EWHC 977 as follows:

“ 72. In paragraph 22 the Judge explained that openness was a concept which related to the absence of building; it is land that is not built upon. Openness is hence epitomised by the

lack of buildings but not by buildings that are unobtrusive or camouflaged or screened in some way.”

Paragraph 19 of the committee report that you will be asked to vote upon, states that “The applicant has also expressed concern that there has been a degree of inconsistency between how this particular application has been assessed and application 14/00977/FUL, the Eco-friendly Visitor Centre for the Trust. As this building is to be used to provide facilities to enhance the visitor offer at Cuerden Valley Park it is considered to Be a facility for outdoor recreation, which is considered to be appropriate development Within the Green Belt, provided that such facilities do not impact on the openness of the Green Belt. The design of the building is such that it takes advantage of the topography of The site, being effectively set down into the landscape and set into the corner of the side Immediately adjacent to a large number of mature trees. Therefore, whilst the proposed Visitor centre may be larger in size than the proposed nursery, the building is not considered to be inappropriate development within the Green Belt and is designed in such a way as to minimise its impact on the openness of the Green Belt. The assessment of the two applications is therefore fundamentally different.”

This is entirely wrong in law, and if that appears somewhat blunt and critical then so be it. The law is the law! In the context of planning, Parliament lays down the law and the courts interpret it. *Timmins v Gedling and Heath and Hampstead* have interpreted the law and what is contained in paragraph 19 above is not what the law says.

Yes a facility for outdoor sport and recreation may be appropriate provided it does not affect openness. However, (and this is not spelt out in the officer’s report) the building that has been allowed is at its highest point 7 metres above ground level and at its lowest points (on a slope) 4 to 6 metres above ground level. It has a total floor area of 313m². Within it is a classroom of some 58m².

According to paragraph 19 of the officer’s report this building, which is as high as a house and bigger in floor area than two standard 4-bed houses together, is not inappropriate development because it does not affect openness. That is utterly wrong and misleading.

The application proposal is 2.4 metres in height and 115.2m² in floor area yet the officers say that adversely affects openness.

It is not as the last sentence of paragraph 19 of the officer’s report says that the assessment of the two applications is therefore fundamentally different, it is how the officers that is different have assessed them.

Visual amenity and appearance.

Paragraph 19 attempts to play down the size of the proposed visitor centre by talking about being set down in the landscape and hidden by trees. That is not the same as openness. Paragraph 77 of the judge's conclusions in *Timmins v Gedling* summarises the point up perfectly, as follows:

"When a planning authority is conducting this balancing exercise I can see no reason why visual impact cannot be taken into account. Since measures to reduce or mitigate visual impact are, as their name suggests, mitigating measures, they can only bear a modest weight in the scales. They reduce to some degree the harm caused by the adverse effect of the development and to this extent they can begin to redress the scales. But as measures in mitigation they can never completely remove the harm since a development that is wholly invisible to the eye remains, by definition, adverse to openness"

Encroachment

What the report does not address at all is the issue of encroachment. One of the purposes of Green Belt is to prevent encroachment (paragraph 80 of the NPPF) The approved development for the visitor centre and classroom, as well as being almost three times as big as the proposal you are being asked to refuse. is also to be situated on a green embankment . It therefore encroaches! In addition as the officer's report says some extra 27 more parking spaces are proposed – further encroachment. Yet there is no reference to this in the report or in the comparison! Why? Because it further diminishes the officer's arguments about the comparison between the two sites as the proposal before you does not encroach as it is an existing wood yard.

Conclusion.

Members will note that this application has been in for 6 months. Officers have been consistently against it, whilst trying to defend their decision to refuse the application for the visitor centre. They have been advised and provided with the case law on numerous occasions in relation to the fundamental differences between, inappropriate development and appropriate development, openness and visual amenity, and still the report is flawed.

I urge members to scrutinise this application with the utmost care.

Chris Weetman

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