



## Appeal Decision

Hearing held on 8 February and 23 April 2024

Site visit made on 8 February 2024

**by Anne Jordan BA (Hons) MRTPI**

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

**Decision date: 10 May 2024**

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### **Appeal Ref: APP/D2320/W/23/3329702**

#### **Land at Babylon Lane, Heath Charnock, Adlington, Chorley, PR6 9NP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Adlington Land Limited against Chorley Borough Council.
  - The application Ref is 23/00510/OUTMAJ.
  - The development proposed is outline planning application for the proposed development of 40 dwellings, with associated new access, replacement of brass band building and associated parking, landscaping reserved, on land at Babylon Lane, Adlington, Chorley.
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### **Decision**

1. The appeal is dismissed and planning permission is refused.

### **Applications for costs**

2. An application for costs against the Council was made by the appellant in advance of the hearing. This is the subject of a separate decision.

### **Preliminary Matters**

3. The appeal relates to a failure of the Council to determine the application within the prescribed period. Following the submission of the appeal the Council's planning committee resolved that had the application been determined they would have resolved to refuse the application and outlined their concerns. I have taken this report into account in determining the appeal. I have also had regard to the concerns expressed by local residents.
4. The hearing took place on the 8th of February 2024. Before the decision was issued I was advised that notification letters informing residents of the hearing had not been delivered to 125 local residents. Following further notification, I subsequently ran a second hearing session on the 23rd of April 2024 to allow local residents who were not advised of the first hearing the chance to speak and to allow the appellant the chance to respond to their concerns. These views, along with the written responses and the views of residents expressed at the 8th of February hearing session have been taken into account in reaching my decision.
5. The application that is the subject of this appeal follows a previous application for full permission which proposes the same form of development on site. The applications are largely the same other than in relation to landscaping which is a reserved matter for the appeal proposal. This application has not been determined by the Council and as it is not the subject of this appeal is not

before me. Nevertheless, insofar as some statutory undertakers did not respond to consultation requests from the Council in relation to the second application I consider it reasonable for the Council to rely on previous responses to the first application in reaching a view on the likely position of these consultees on the subsequent scheme.

6. A completed legal agreement has been submitted with the appeal and this contains a number of obligations. I have taken this into account in reaching my decision.
7. The development plan for the area is made up of the Central Lancashire Core Strategy 2012 and the Adopted Chorley Local Plan (2012-2026). The parties agreed at the hearing that the emerging local plan was at a very early stage and so carried no more than very limited weight.
8. The parties also agreed that the Council could not currently identify a 4-year supply of housing land.
9. Since the submission of this application, the Government published a revised National Planning Policy Framework (the Framework) on 20 December 2023. The parties have had the opportunity to comment on this within their submissions at appeal.

### **Main Issues**

10. Accordingly, the main issues for the appeal are:

- Whether the proposal makes effective provision for drainage for the development and whether it would exacerbate flood risk off-site;
- Whether the proposal would preserve the special interest of the Grade II listed building known as Greenhalgh Farmhouse.
- The effects of the proposal on the character and appearance of the area;
- The effects of the proposal in relation to highway safety;

### **Reasons**

#### *Drainage*

11. The Framework seeks to ensure that development is steered away from areas at risk of flooding. It sets out that where flood risk is identified within a site, from any source, then the Sequential Test should be applied. The Sequential Test should identify whether such development could be carried out in an area at lower risk of flooding. Only when other sites are not available, is the proposal subject to a further Exception Test to demonstrate that the sustainability benefits of the development would outweigh flood risk and that the site is safe from flooding for its lifetime. The Framework and Planning Practice Guidance (PPG) are also clear that development should not lead to an increase in flood risk elsewhere.
12. Consistent with the findings of the SFRA (Strategic Flood Risk Assessment) the Flood Risk Assessment (FRA)<sup>1</sup> submitted by the appellants identifies a small part of the site as lying within medium and high risk of surface water flooding. The Framework and PPG are clear that the guidance relates to flooding from all

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<sup>1</sup> Gondolin Land and Water GON.0147.0096

- sources and stress that other forms of flooding should be treated consistently with river flooding in assessing vulnerability. The decision whether or not to apply the test and whether the development complies with it lies with the decision maker and not with statutory consultees.
13. The proposal has not been subject to a Sequential Test. The appellants have not supplied one, and the Council have not challenged the findings in the submitted FRA. This concludes that notwithstanding a small part of the site being identified as subject to medium risk from surface water flooding, on-site risk from surface water flooding on site is low and when taken together with other sources of flooding is negligible. This conclusion is based on 2 factors, the first being the extent of the site affected which relates to an area of topographical depression in the south-east corner, part of which is culverted. The FRA also identifies that there is no upgradient natural flood catchment posing flood risk to the site.
  14. The second reason for the FRAs conclusions is the assumption that flood risk within the site can be mitigated<sup>2</sup> through works to the culvert and the implementation of SuDs. However, by taking into account works that would potentially mitigate the risk of flooding the assessment has confused the Sequential and Exception Tests set out in the Framework and expanded in the PPG.
  15. The aim of the Sequential Test is to first steer development away from areas at risk of flooding. The PPG is clear that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the Sequential Test still needs to be satisfied. It goes on to say that avoiding flood risk through the Sequential Test is the most effective way of addressing flood risk because it places the least reliance on measures to mitigate flood risk.
  16. The conclusions in the FRA take into account the benefits of mitigation works and therefore flood risk after development in reaching the conclusion that risk from surface water flooding is currently low. This is not consistent with guidance in the Framework or PPG and this limits the weight I place on the conclusions within it. Although the extent of the area shown to be at risk of flooding is relatively small, I am nonetheless of the view that a Sequential Test should have been carried out in this case.
  17. Local residents are concerned that development on the site will exacerbate existing flooding in the area. The flood risk area identified relates to a small area along the south-eastern portion of the site. There are no historical records of flooding on the site, however evidence from residents show that localised surface water flooding does occur.
  18. I was provided at the hearing with video footage of significant surface water flows running along the line of the culvert on the south-east of the site with parts of Babylon Lane, Greenhalgh Lane and the southern section of the appeal site under water. Although Babylon Lane lies outside the site, Greenhalgh Lane lies within it. Although this footage did not indicate the duration of this event, the evidence is consistent with the surface water flood mapping in the Strategic Flood Risk Assessment (SFRA) which shows the line of the culvert being at risk of surface water flooding. The site slopes from the north and north-west to

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<sup>2</sup> Gondolin FRA section 3.1.4

form a channel along the south-eastern boundary of the site. Due to the gradient, the boggy nature of the site and the underlying impermeable layer, surface flows leave the site quickly along the south-eastern boundary, exceeding the capacity of the land drain within the site to accommodate them.

19. The Lead Local Flood Authority also confirm that the site is subject to surface water flooding. The Agency's latest flood maps show that surface water flooding is identified along Babylon Lane and Greenhalgh Lane and part of this arises from run-off from the site. Although the flooding may relate to only a relatively small area of the site, and I have no firm evidence of the depth or duration of these flooding events, or the extent to which longstanding issues relating to the capacity of the combined sewer contribute to the problem, I have no reason to doubt the evidence of local residents who spoke of the effects of the flooding on local homes and the distress that this causes.
20. In drawing up a drainage scheme for the development the FRAs<sup>3</sup> have identified that infiltration will not be appropriate for the site and that attenuation can only effectively be achieved through oversized pipes and sub-surface tanking although the appellant's flood consultant has also identified that some attenuation through the provision of surface attenuation may be possible to supplement this. The appellant has argued that, post-development, limiting surface water run-off from the site to greenfield run-off rates has the potential to provide off-site benefits as it will reduce peak flows which contribute to the existing flooding identified above and that this will provide wider sustainability benefits. How this would be achieved would be secured by condition and could include works to the culvert within the site to open it up, widen it and realign it.
21. In this regard, it could be argued that the development would be capable of passing the Exception Test, although the extent of any off-site benefits in relation to flood risk have not been quantified and so it is not possible to determine how far, if at all, they might impact upon the frequency, duration or intensity of flooding for adjoining residents. In relation to risk to future residents the Council and appellants agree that the new dwellings would be located away from the area identified as being at risk. Nevertheless, even if it can be demonstrated that the site can be made safe for its lifetime, the Framework is clear that the Sequential Test still needs to be carried out and satisfied.
22. The FRA refers to the comments of the Environment Agency in relation to the SFRA and selection of sites for inclusion in the emerging local plan. These do not appear to me to support the development of the site, and in any case, the emerging plan is agreed between the parties to be at an early stage and to carry limited weight. Furthermore, none of the comments obviate the need to carry out a Sequential Test in relation to a planning application if the site is not identified in an adopted Plan and is identified as being at risk from flooding, as the SFRA indicates.
23. The LLFA have not objected to the proposal, subject to conditions relating to the provision of appropriate Sustainable Drainage Systems (SuDs) that would ensure flood flows from the site would not exceed greenfield run-off rates. In this regard, the LLFA are satisfied that a condition would ensure that the

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<sup>3</sup> Details include submissions made on the first FRA and drainage scheme Flood Risk Assessment ref BLA-ALP-ZZ-RP-C-3000-PO2 – Alan Johnson Partnership

development would be protected from the impacts of flooding and that off-site conditions would not be made worse. However, it is not the role of the LLFA to consider whether a proposal would pass the Sequential Test. Neither is it the role of United Utilities or the Environment Agency to apply these tests. Indeed, none of these consultees have made any comment on whether the proposal passes either test.

24. The Council commissioned an independent flood review by JBA. This concluded that flooding on-site could be mitigated by ensuring that the development did not lead to an increase in greenfield run-off rates and notes that the LLFA and United Utilities are content that this can be achieved by planning condition. In this regard it doesn't provide any additional advice or guidance.
25. The Council have expressed concerns that the mains sewer is not currently capable of accommodating extra foul water flows from the site and that additional loading on the combined sewer will exacerbate existing flooding issues in the area. However, I am more persuaded by the appellant's submissions which make clear that foul water discharges during a flood event would have an insignificant effect on flood flows. This matter does not, in the event, alter my views above.
26. The Framework is clear that when a site is identified as being at risk of flooding and it fails the Sequential Test, that development should be refused. Even if I were to be satisfied that the site could be developed safely and could bring quantifiable benefits in relation to flood risk off-site, these matters would not outweigh the harm that would arise from development in an area at risk of flooding. I also note the proposal would bring benefits by way of housing, biodiversity and improved accommodation for a community group, but I have no evidence that these benefits could not be accrued elsewhere on a site that was sequentially preferable and this limits the weight I attribute to them.
27. On the first matter I therefore conclude that the proposal would result in development in an area of flood risk which is not justified by wider sustainability benefits and so fails to comply with Policy 29 of the Central Lancashire Core Strategy 2012 which seeks to avoid inappropriate development in flood risk areas, or with national policy in the Framework which has similar aims.

### *Character and Appearance*

28. Babylon Lane and its vicinity comprise a range of house types that provide a varied and pleasant street scene. The traditional stone terraces that line Babylon Lane to the south of the site are particularly attractive and provide a strongly enclosed urban form that is typical of the local area. Further north, and to the south-east along Babylon Lane there are examples of a range of more modern housing types constructed in a range of artificial and natural materials. In visual terms some of these appear at odds with the prevailing street pattern in that they face away from or back onto the main road, and in places this is a detracting element in the street scene. Some recent construction has also taken place using poorer quality materials and this also appears visually intrusive.
29. I have considered whether the proposed style of dwellings would harm the existing character of the area. Given the prevalence of modern housing in the vicinity of the site the proposed layout would not in itself appear incongruous.

The proposed layout would be better related to the street scene than some existing development, with dwellings along Babylon Lane designed with elements that address the main highway. Furthermore, although I accept that the use of poor-quality artificial stone is a detracting element in parts of the existing street scene, an appropriately high-quality artificial stone could be secured by means of condition. I am therefore satisfied that the proposed development could be appropriately assimilated into the street scene and would not detract from the character of the area.

30. As such, I find no conflict with policy 17 of the CS and BNE1 of the LP which together, amongst other things, seek development that respects the character of the site and the local area. It would also not conflict with the Framework, which has similar aims.

#### *Heritage*

31. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Policy 16 of the CS and policy BNE 8 of the LP reflect the statutory duty in the Act. This duty is also reflected in the Framework which categorises any harm to the significance of a heritage asset as either 'substantial harm to or total loss of significance of an asset' or 'less than substantial harm to the significance of an asset'.
32. Greenhalgh Farmhouse is a 17th Century stone farmhouse located to the east of the development site. It is set back from Babylon Lane and has an adjoining barn. The significance of the asset lies in its status as a relatively well-preserved example of a vernacular building of its period. The building is no longer used in association with agriculture. The wider setting of the farmhouse includes a range of modern housing although the open fields of the appeal site remain open and agricultural in appearance. Given the proximity of the appeal site to the asset it appears likely that these will have formed part of the original holding and so represent a remaining link with the original function of the building. In this regard, the open and rural appearance of the appeal site contributes in part to the significance of the asset. As the rural character of the site would be lost as a result of the development this would harm the significance of the asset and would amount to less than substantial harm as set out in the Framework.
33. The Framework sets out that where less than substantial harm is identified this should be weighed against the public benefits of the scheme. The proposal would provide 40 dwellings, of which 13 would be affordable in a borough with an identified deficit of housing supply. These benefits on their own would be sufficient to outweigh the harm identified to the heritage asset. Accordingly, although the proposal would conflict with Policy 16 of the CS and BNE 8 of the LP which together seek to avoid harm to the significance of heritage assets through inappropriate development within their setting, I find no conflict with the Framework.

### *Highway Safety*

34. Residents have expressed concern in relation to the effect that additional traffic may have on highway safety in the area. The application is supported by a transport assessment (TA) submitted by the appellant. The Council have also commissioned an independent transport review<sup>4</sup> (ITR) to assess off-site highways impacts.
35. The development would be accessed by vehicles from 2 points off Babylon Lane. The first comprises the existing access of Whitebeam Close, the second is a private road through the site which is used to access Appenzell and Newlands and having regard to the advice of the County Highways Engineer I am satisfied that both can be provided with appropriate visibility splays.
36. I noted on site that due to the width of the road and the prevalence of on-street parking, cars travelling along the road were in parts effectively confined to a single carriageway and that this at times effectively impeded the free flow of traffic. Residents have expressed concerns that additional development will lead to a significant increase in traffic movements which will worsen this existing situation, to the detriment of pedestrian safety. The TA did not provide transport modelling data but based on the modelling undertaken for the ITR I am satisfied that the projections of around 26 two-way vehicle trips an hour during peak hours is soundly based. It is unlikely that this projected increase in vehicular movements would have any significant impact on existing traffic movements along Babylon Lane. I therefore share the view of the Local Highways Authority, and the ITR that traffic movements from the development would not be prejudicial to highway safety.
37. Pedestrian access from the site would be via a pedestrian entrance at the southern end of the site at the junction with Greenhalgh Lane and Babylon Lane where pedestrians going south would cross onto the footway either side of Babylon Lane. Those going north would be obliged to cross Babylon Lane onto the footway opposite as the site frontage does not have a footway. However, taking into account that pedestrians are less likely to be travelling north, given that services in the village are located to the south, I consider that this arrangement would be acceptable in this case. Residents have expressed concern in relation to pedestrian safety in the vicinity of the site with parked cars blocking footways. Nevertheless, it is not within the developer's gift to rectify this widespread problem in the area, and insofar as the scheme provides safe access to, from and through the site, I consider it to be acceptable.
38. Some residents have queried how the properties of Appenzell and Newlands will be accessed. The existing right of way through the site to these properties would remain and would not be impeded. I have also considered the highways impacts of the improved Band facility. The scheme provides on-site parking for the new facility whereas the existing facility has none. Therefore, even if the new facility caters to some extent for increased numbers, it is unlikely to significantly add to existing parking pressure in the area.
39. On the fourth matter I therefore conclude that the scheme would not lead to harm to the safety of pedestrians or other road users and consequently would not conflict with policy in the Framework which states that development should only be prevented or refused on highways grounds if there would be an

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<sup>4</sup> Review by WSP dated 21 June 2023

unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

### **Other Matters**

40. The site has been put forward for consideration as a development site in the emerging Central Lancashire Local Plan. The emerging plan is still at an early stage, having recently been through a call for sites exercise. I have not been advised on whether the site will be brought forward in a future version of the plan but in any case, given that the CLLP is at a very early stage, this matter does not to my mind, have any bearing on my considerations of the merits or otherwise of the scheme.
41. The site is allocated in the LP as Safeguarded Land under policy BNE3. The Council and appellant agree that the Council cannot demonstrate a four year supply of housing land and so relevant policies in the LP are out of date. This reduces the weight I attribute to conflict with policy BNE3 in any planning balance.
42. Local residents have raised a number of other concerns in relation to the proposal. The impact on local wildlife is also a concern for some. However, I note that the Great Manchester Ecology Unit consider that subject to appropriate conditions to mitigate the impact of the proposal on bats and nesting birds, the development would not be harmful to protected species or local ecology. The development would lead to a loss of a small number of trees. However, I am satisfied that a compensatory landscaping scheme could be employed as part of the development and secured by condition and so the loss would not on balance be harmful.
43. I note resident concerns relating to noise and air pollution, particularly during construction. However, I am satisfied that appropriately worded conditions could be used to control the impacts of noise, disturbance and pollution during construction and have no cogent evidence that the development would lead to a materially harmful increase in air pollution in the area during the lifetime of the development. I am also satisfied that the layout of the scheme provides sufficient separation to existing properties to ensure that their living conditions would not be materially harmed.
44. Some residents have expressed concerns in relation to the impact of the proposal on local infrastructure and services. Whilst I do not doubt that residents may experience difficulties in securing some services, particularly medical appointments, this issue is not restricted to the local area. In the absence of any objection or request for a contribution from local service providers this is not a matter which weighs against the proposal.
45. Some local residents have raised concerns about the accessibility of the site and the lack of public transport locally. Whilst I note the recent reduction in the local bus service I also note that the site lies adjacent to the built-up area, where a range of local services are available within a short distance of the site. Although most residents will be reliant on the private car to reach some services and facilities, the development is not in an inaccessible location. As such, this matter does not weigh against the proposal.
46. The scheme would provide open space and is accompanied by a planning obligation that as well as making provision for affordable housing makes



contributions towards the provision of allotments, a children and young people contribution, a parks and gardens contribution and a playing pitches contribution. These financial contributions are necessary to make acceptable the identified impacts of the development and to comply with relevant local policy. As such they are a neutral factor in the planning balance.

47. The site would provide 40 dwellings, 30% of which would be affordable. I note the comments of local residents in relation to the extent of housing that has been provided in the Borough in recent years. However, at present the Council cannot demonstrate a 4-year supply and the need for housing of all types is an acknowledged national issue. In the context of local and national housing need this is a benefit which must carry substantial weight.
48. The development would also provide a new band facility for the local brass band which would provide enhanced accommodation for a local community group. This is an identified benefit of the scheme which I was advised at the hearing is much needed. Notwithstanding the fact that there may be other available practice venues in the local area, this weighs in favour of the proposal.
49. It was confirmed at the hearing that the scheme could deliver biodiversity net gain. Although national policy in this regard does not yet require it, the appellant has committed to fund works and projects to be delivered by the Council off Site to conserve and improve biodiversity and this weighs in favour of the proposal.

### **Conclusion and Conditions**

50. Section 38(6) of the Planning & Compulsory Purchase Act 2004 states that applications should be determined in accordance with the provisions of the Development Plan unless other material considerations indicate otherwise. The Framework is clear that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Furthermore, even when the Plan is out of date it directs in paragraph 11(d)(i) that rather than applying a tilted balance, permission should not be granted in cases where the Framework provides a clear reason for refusing the development proposed. This includes, as set out in footnote 7, development in areas at risk of flooding.
51. I have set out above why I consider the scheme would result in inappropriate development in a flood risk area. In light of the clear conflict with local and national policy the benefits of the scheme to housing supply, and the other identified benefits, these do not justify determining the proposal otherwise than in accordance with the development plan taken as a whole.
52. Accordingly, for the reasons given above the appeal should be dismissed and planning permission refused.

*Anne Jordan*

INSPECTOR

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Mike Halsall	Principal Planning Officer – Chorley Council
Eleanor McCleary	Planning Assistant – Chorley Council
Alistair Bradley	Ward Councillor – Chorley Council
Kim Snape	Councillor – Chorley Council

### FOR THE APPELLANT:

Louise Leyland	PWA Planning
Paul Walton	PWA Planning
Stephen Donnan	Gondolin Land & Water

### INTERESTED PERSONS:

Graham Ashworth	Heath Charnock Parish Council
Tim Blackburn	Chair Anderton Parish Council
Audrey Yates	Local Resident
Lesley Holt	Local Resident
Mr Baron	Rivington and Adlington Brass Band
Patrica Cann	Local Resident
Susan Hilton	Local Resident
Leslie Daniels	Local Resident
Colin South	Local Resident

**APPEAL DOCUMENTS**

Doc 1 – Statement from Councillor Ashworth

Doc 2 Photographs of the site submitted by Councillor Bradley

Doc 3 Trics data used in the highways assessment

Doc 4 Representation from Adlington Brass Band

Doc 5 Details of suitable projects for Biodiversity Net Gain Expenditure required in the legal agreement

Doc 6 Additional Alternative Drainage Strategy