

Development Control Committee

Meeting to be held on 12th September 2018

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| Electoral Division affected: Ribble Valley North East |
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Ribble Valley Borough: Application Number. LCC/2017/0087

Retrospective application for the importation of soil materials for use in ground stabilisation and landscaping works associated with a consented residential development.

Land off Chatburn Old Road, Chatburn.

Contact for further information:

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Executive Summary

Application - Retrospective application for the importation of soil materials for use in ground stabilisation and landscaping works associated with a consented residential development. Land off Chatburn Old Road, Chatburn.

Recommendation - Summary

That planning permission be **refused** for the following reason:

The development results in a loss of unimproved calcareous grassland which is a Habitat of Principal Importance for conservation in England (Section 41 Natural Environment and Rural Communities (NERC) Act 2006). The application does not provide for the adequate mitigation for the loss of such habitat and is therefore contrary to paragraph 175 of the National Planning Policy Framework, Policy EN4 of the Ribble Valley Local Plan and Policy DM2 of the Lancashire Minerals and Waste Local Plan.

Applicant's Proposal

The applicant seeks retrospective planning permission for the importation of 8000m³ of soil materials over an area of approximately 0.3ha located on land off Chatburn Old Road, Chatburn. The land immediately adjacent to the site proposed in this application was granted full planning permission in June 2015 for the construction of ten dwellings. (permission 3/2014/0618). The applicant has confirmed that the construction works for the dwellings are nearing completion and the material had to be imported to the site due to the general fall in land levels from a west to east direction from where the dwellings have been built. The soil materials have been deposited on the eastern and southern sides of the planning permission boundary for the dwellings.

Description and Location of Site

The site is situated in open countryside located off Chatburn Old Road approximately 200m west of Chatburn village centre. In terms of surroundings, to the west of the site lies Lanehead Quarry, to the east are residential properties on Chatburn Old Road and to the south are the residential properties that front onto Crow Trees Brow. A public right of way runs to the south and west of the development site, connecting Crow Trees Brow to Chatburn Old Road. The whole site is located within a Flood Zone 1 area. Prior to the land being developed for housing, the site and surrounding field consisted of an area of grazing land including unimproved calcareous grassland. The planning application area extends around the eastern and southern sides of the recently constructed residential properties.

Background

Planning permission was refused in February 2012 by Ribble Valley Borough Council for an outline planning application for residential development (ten dwellings) (3/2011/0025). This decision was then over turned on appeal in April 2013 (APP/T2350/A12/21768280).

Full planning permission was granted in June 2015 by Ribble Valley Borough Council for the erection of 10 dwellings (ref 3/2014/0618).

A number of subsequent applications have since been granted by Ribble Valley Borough Council for minor changes to the overall scheme. However none of these are deemed to be material to this application.

An application for Permission in Principle for development of up to 9 residential units is currently under consideration by the Borough Council in relation to land to the south of the existing housing development including the site of the current application. (ref 3/2018/0582)

Planning Policy

National Planning Policy Framework (2018)

Paragraphs 7 - 14, 170 - 173, 174 - 177 and 203 - 206 are relevant with regards to the presumption in favour of sustainable development, conserving and enhancing the natural environment, habitats and biodiversity and facilitating the sustainable use of minerals.

National Planning Policy for Waste

Paragraph 7 is relevant with regards to the determination of planning applications.

Joint Lancashire Minerals and Waste Development Framework Core Strategy

Policy CS8 - Identifying Capacity for Managing Waste.

Policy CS9 - Achieving Sustainable Waste Management

Joint Lancashire Minerals and Waste Local Plan

Policy DM2 Development Management

Ribble Valley Core Strategy

Policy DS2 - Sustainable Development

Policy DMG1 - General Considerations

Policy DME1 - Protecting Trees and Woodlands

Policy DMB1 - Supporting Business Growth and the Local Economy

Policy DME3 - Site and Species Protection and Conservation

Policy EN2 - Landscape

Policy EN4 - Biodiversity and Geodiversity

Consultations

Ribble Valley Borough Council - A condition should be added requiring the applicant to submit a landscape management and habitat creation scheme to restore the calcareous grassland previously existing at the site.

Chatburn Parish Council - No observations received.

Public Rights of Way - No observations received.

County Ecology Service - The applicant should be required to submit a detailed method statement demonstrating how the former calcareous grassland will be reinstated. A larger area of priority habitat should be reinstated compared to that lost. If this is agreed then a long term habitat management plan should also be secured.

The submitted compensation proposals by the applicant are not appropriate as the proposed area is less than the loss of habitat. The earlier surveys submitted for the housing applications estimated the area of unimproved grassland (outside of the housing development) at 910m² and 636m², whilst the applicant has proposed an area of compensation of 355m².

Due to the lack of detail submitted by the applicant, the applicant does not appear to have provided an objective or robust assessment of impacts nor a proportionate or appropriate scheme of mitigation / compensation which demonstrates that losses would be compensated / offset and that the compensatory habitat would be secured in the longer-term. The proposals do not therefore appear to comply with the requirements of national or local planning policy or guidance.

LCC Lead Local Flood Authority - No objection.

Representations - The application has been advertised by press, site notice and neighbouring residents informed by individual letter. Two objections have been received from local residents raising concerns that the development has caused disruption to residential amenity with visual impacts, noise, dust, and traffic impacts from the HGV's carrying material to the site.

Advice

The applicant seeks retrospective planning permission for the importation and deposit of 8000m³ of soil materials, covering an area of approximately 0.3ha located on land off Old Road, Chatburn.

The applicant has planning permission for the construction of 10 detached dwellings on land immediately adjacent to the application site. Both the housing site and current application area have been subject to historical quarrying operations. The site natural falls steeply from west to east and works were undertaken through a cut and fill process to provide a stable and level development platform for the dwellings. These works resulted in a considerable fall from the new dwellings on the eastern edge of the site towards the existing dwellings on Chatburn Old Road with other changes of level on the southern side of the housing development.

To address these level differences, the applicant investigated the need to construct a retaining wall to support the gardens of the properties. However, the applicant considered that such a structure would not be viable and instead used additional soil materials to remedy the level difference and provide an even gradient between the boundary of the field and the rear of the new properties. Some of the topsoil stripped from the residential development site was reused for this purpose but further material had to be imported to allow the desired levels to be achieved.

As this material has been placed outside the red line boundary of the planning permission for the dwellings, a separate planning application has been submitted to Lancashire County Council to regularise the deposit of this material. Even though a planning application should have been submitted prior to the waste being imported into the site, Section 73A of the Town and Country Planning Act 1990 makes specific provision to allow an application to be made to regularise a development that has already been carried out. However, such an application must still be acceptable in relation to the policies of the NPPF and Development Plan.

Paragraph 170 of the NPPF states that planning decisions should contribute to and enhance the natural environment by protecting sites of biodiversity value, (in a manner commensurate with their statutory status) and should minimise impacts on and provide net gains for biodiversity. Paragraph 174 states that priority habitats should be conserved, restored and enhanced whilst paragraph 175 requires that if significant harm to biodiversity cannot be avoided or adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.

Policy EN4 of the Ribble Valley Core Strategy states that development proposals that adversely affect a site of recognised environmental or ecological importance will only be permitted where a developer can demonstrate that the negative effects of a proposed development can be mitigated or as last resort compensated.

The original outline planning application for the housing development included an ecological assessment which covered the proposed housing site and the surrounding land including the areas subject to the current application. This noted that the wider site had significant areas of semi and unimproved grassland some of which were associated with former mining activities on the site. Some of the grassland in the north east of the site was considered to be unimproved calcareous grassland which is a UK Biological Priority Habitat. Calcareous grassland can be an important habitat for insects and is characterized by vegetation dominated by grasses and herbs on shallow, well-drained chalk and limestone based soils. The

Ecological Survey recommended that the areas of unimproved calcareous grassland affected by the housing development were conserved and incorporated into the site layout and if this was not possible, any design proposals should incorporate the creation of an area of species rich grassland equal to or greater than the current area at the site. These interests were recognised by the Planning Inspector and were subsequently the subject of a condition attached to his decision.

The full application ref 3/2014/618 for the development of 10 dwellings included an ecological survey which again recognised that the site contained significant areas of semi and unimproved grassland including areas which would qualify as priority habitat. However, no ecological mitigation measures for the loss of the grassland were required within the planning permission that was granted by the Borough Council.

Although there is now no requirement to mitigate for the ecological impacts of the housing development itself, the land which has been subject to the importation of soils is located outside of the planning permission for the housing site. The ecological surveys that were previously undertaken indicated that the areas of semi and unimproved grassland were not restricted to the housing site and also existed in the areas subject to the current application.

The applicant has stated that the importation of materials was urgently needed to provide support to the houses and that he was informed by Health and Safety Executive and Ribble Valley Borough Council's Building Control Team to carry out the development. However, it is not apparent that the imported materials were engineered in any way to support the land. The need to import the materials appears to largely be due to the applicant wishing to avoid building a retaining wall at the end of the properties to support the gardens. Whilst this is understandable, it is regrettable that the applicant did not identify this issue at the time of the original application so that the ecological impacts of the whole development could be estimated and appropriately mitigated for.

Regardless of the motivations for the development, the materials that have been imported would not allow the regeneration of the same types of grassland habitats that previously existed on the land. The previous habitats have now been destroyed and therefore the only real option is for the applicant to propose a new area of land of suitable size and condition that can be used to compensate for the habitat losses arising from the development.

The ecological assessments submitted with the previous granted housing application estimated the area of unimproved grassland outside of the housing development at an area of 617m². Most of this unimproved grassland was located within the land now affected by the tipping operations. The tipping has also affected areas of semi improved calcareous grassland which are also of some ecological interest. To mitigate for the losses to the development, the applicant is proposing to retain an area of land located to the south of the application site. However, the area only measures 355m² and is therefore significantly smaller than the area lost to the development.

Moreover, the applicant's proposed mitigation land is within or immediately adjacent to an area of land that is currently the subject of an application to Ribble Valley Borough Council for permission in principle for the construction of nine properties. It

is therefore likely that the applicant's proposed mitigation land would be severely impacted by the presence of the existing and proposed housing developments which would limit its ecological potential. The proposals therefore fail to provide adequate mitigation as they are too small and are inappropriately located. The County Council has suggested that the mitigation land should be located on land within the applicant's control on the western part of the site adjacent to Lanehead Quarry where adequate area is available and where there are better linkages to existing habitats but the applicant has refused to consider this area.

The application therefore fails to provide adequate mitigation for the habitat losses that have been created by the development and therefore cannot meet the requirement set out in paragraph 175 of the National Planning Policy Framework and in policy DM2 of the Lancashire Minerals and Waste Local Plan.

Two objections have been received by local residents stating that the development has caused disruption to their residential amenity with impacts from noise, dust, visual and traffic impacts through the increase of HGV's on Old Road. It should be noted that the majority of the material has already been imported to the site and therefore the impacts raised by local residents have already taken place. Any soils that are needed to complete the development are relatively small in volume and would not cause significant additional impacts.

Due to the free draining nature of the underlying limestones and in the absence of any impermeable materials being proposed within this planning application, drainage impacts should be minimal. The LCC Lead Local Flood Authority were consulted and raised no objection to the proposed development.

In conclusion, the main issue concerns the ability to adequately mitigate for the impacts of the development. Whilst the motivations of the applicant for carrying out the development are understandable, this does not remove the need to provide adequate mitigation for the impacts as required by national and local planning policy. The applicant's mitigation proposals are inadequate in terms of area and ecological potential and do not provide adequate compensation for the ecological impacts of the development. Therefore it is recommended that planning permission be refused.

As the majority of the development has already been carried out, refusal of planning permission raises the question of how the unacceptable development is now addressed. The County Council has powers to serve an enforcement notice to remedy breaches of planning control where it is expedient to do so. Given the impacts of the development, it is considered that it would be expedient to take enforcement action. However, the main issue in this case is the absence of acceptable mitigation. Case law has established that enforcement notices have to be clear in terms of their requirements. It is considered that a notice requiring mitigation to be carried out would be too vague to satisfy the legal tests. Any such notice must therefore require the removal of the tipped material and the restoration of the original land surface to allow its regeneration to recover its previous habitat value.

Recommendation

That planning permission be **Refused** for the following reason:

The development results in a loss of unimproved calcareous grassland which is a Habitat of Principal Importance for conservation in England (Section 41 Natural Environment and Rural Communities (NERC) Act 2006). The application does not provide for the adequate mitigation for the loss of such habitat and is therefore contrary to paragraph 175 of the National Planning Policy Framework, Policy EN4 of the Ribble Valley Local Plan and Policy DM2 of the Lancashire Minerals and Waste Local Plan.

Local Government (Access to Information) Act 1985 List of Background Papers

N/A

Reason for Inclusion in Part II, if appropriate
N/A