

Electoral Division affected: Ribble Valley North East
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**Ribble Valley Borough: application number. LCC/2019/0066**  
**Retrospective application to regularise the importation of soils for use in ground stabilisation and landscaping works associated with the consented residential development. Land off Old Road, Chatburn**

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**Executive Summary**

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

**Recommendation – Summary**

That subject to the signing of a section 106 agreement relating to the management of the mitigation land, planning permission be **granted** subject to conditions controlling creation and management of the mitigation area and details of boundary treatment.

**Applicant's Proposal**

The application seeks retrospective permission for the retention of approximately 3,500m<sup>3</sup> of inert soil materials that have been tipped on the eastern and southern boundaries of a housing development. The soils were imported to address changes in levels across the proposed housing site resulting from former shallow mineral working operations and have been used to provide flat development platforms across the site and to provide support to the rear gardens of the properties. The soils were imported between October 2016 and March 2018.

The application is accompanied by proposals to create an ecological mitigation area on an adjacent area of land measuring 900m<sup>2</sup>.

**Description and Location of Site**

The application site (area of 0.5 hectares) is located off Chatburn Old Road, a lane that extends in a westerly direction from the centre of Chatburn village, 3 km east of Clitheroe.

The application site extends around the eastern and southern sides of a housing development of 9 units, some of which have now been completed and are occupied. Directly to the east of the site are other dwellings located off Chatburn Old Road whilst to the south of the site is a small agricultural field which slopes down towards the rear of the houses on Crow Trees Brow, Chatburn. To the west is a strip of land being used as a construction compound by the housing developer beyond which is Lanehead Quarry, associated with the Ribblesdale cement works.

The application site is currently an area of recently restored land which slopes down from the rear boundary of the recently constructed properties to meet the former land levels.

## **Background**

History: The site has a complex planning history. Outline planning permission was first granted on appeal in 2013 for the construction of ten detached dwellings on land off Chatburn Old Road. A full planning permission was then granted by the Borough Council in 2015 for the erection of ten detached dwellings. A number of other permissions have also been granted by the Borough Council for amendments to the main permission.

In September 2018 the County Council refused a planning application ref LCC/2018/0087 for the retention of imported inert waste materials that had been tipped around the eastern and southern boundaries of the housing development.

## **Planning Policy**

National Planning Policy Framework : Paragraphs 7 – 11, 54 -56, 127, 174 and 175 are relevant with regard to the presumption in favour of sustainable development, the use of planning conditions and obligations, design of development and biodiversity.

Ribble Valley Borough Local Plan

Policy DMG1 – General Considerations

Policy DME2 – Landscape and townscape protection

Policy DME – Site and species protection and conservation

Joint Lancashire Minerals and Waste Local Plan (JLMWLP)

Policy DM2 – Development Management

## **Consultations**

Ribble Valley Borough Council: No objection. The Borough Council requests that a condition be imposed requiring the applicant to implement the habitat creation scheme and to ensure its ongoing management.

Chatburn Parish Council: No observations received.

LCC Ecology Service: The extent of the proposed mitigation area appears to be acceptable. However, it is important to ensure that the proposed area will not be shaded by the adjacent woodland or by the hedgerows that are proposed around the mitigation field as this will improve the chance of successful habitat management. The applicant should also demonstrate that the substrate in the mitigation field is suitable for the establishment of calcareous grassland. The means of management of the mitigation area should be established and the management works be required for a period of 25 years.

LCC Lead Local Flood Authority: No comments to make.

Representations – The application has been advertised by press and site notice, and neighbouring residents informed by individual letter. Eight representations have been received objecting to the proposals for the following reasons:

- The housing development has destroyed the wildlife value of this site and the mitigation land that is being offered is simply to allow the remainder of the site to be built upon.
- The tipped material should be removed to allow the natural grassland to recover and the County Council should take a hard line against developers who deliberately disregard planning laws and destroy habitat.
- The houses have all been piled and do not require the support of the tipped material. The tipped material is required so the applicant can build upon it.
- The new proposal does not provide adequate mitigation for the habitat that has been lost. The enforcement notice that has been served against the tipped material should be pursued.
- The developer has not complied with a number of the conditions attached to the planning permission for the houses.
- What guarantee is there to ensure that the site would be managed for an appropriate period and who would enforce its management.
- The proposed mitigation area is dark, damp and shaded by trees on the adjacent site. The proposed grassland species would not survive in those conditions and an open, sunny site is best for the establishment of calcareous grassland.
- The original decision of the committee should be upheld and the developer be required to remove the tipped materials and restore the grassland to its original condition.

## **Advice**

The planning application relates to the retention of inert soil materials which have been tipped around the eastern and southern sides of a housing development.

The housing development and surrounding land occupies land at the western end of Chatburn Old Road. The site had been subject to shallow mineral working activities

giving the site an undulating appearance with a number of small cliff faces and old quarried areas. The planning application for the development of the site that was approved by the Borough Council in 2015 contained a plan which detailed the regrading operations that would take place across the housing site in order to infill the old excavations and produce the platforms suitable for the housing development. However, the permitted regrading works were confined to the red line area of the housing development and did not extend to the surrounding land.

The housing development commenced in 2015. Approximately 5000m<sup>3</sup> of inert soil materials were imported to the housing site itself to infill depressions and create the development platforms. An additional 3500m<sup>3</sup> of inert wastes were deposited outside of the eastern and southern edges of the housing site. The applicant maintains that these soils were deposited to stabilise the surrounding land and remove any hazards arising from the remnant cliff faces and changes in levels on the rear boundaries of the houses.

As the deposit of the materials on the surrounding land was not authorised by the planning permission for the housing development, the developer applied to the County Council for retrospective permission to retain the tipped materials. The application was considered by the Development Control Committee at its meeting on 12<sup>th</sup> September 2018 when it resolved to refuse planning permission 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.*

Following refusal of the planning application, the County Council served an Enforcement Notice on the developer to remove the tipped material and reinstate the land to its original condition. The developer has appealed the Enforcement Notice but has also submitted a further planning application to retain the tipped material and provide an area of land that would be used to mitigate the ecological impacts that have resulted from the tipping operations thus attempting to overcome the reasons for refusal of the previous application.

The main issue relates to the ecological impacts of the tipping operations, the scope of the applicants proposed mitigation and whether it would properly address the impacts of the development.

When the developer made the original outline planning application to the Borough Council it contained an ecological survey of the proposed housing site and adjacent land. Whilst the site did not contain any designated ecological sites, the survey identified that the site contained substantial areas of unimproved and semi improved calcareous grassland which had developed on the areas of the former shallow quarrying operations in particular.

Paragraph 174 of the National Planning Policy Framework states that 'plans should promote the conservation, restoration and enhancement of priority habitats ... and

pursue opportunities for securing measurable net gains for biodiversity'. Policy DME3 of the Ribble Valley Core Strategy requires that development that is likely to adversely affect priority habitats will not be granted planning permission. Exceptions will only be made where it can be demonstrated that the benefits of a development at a site outweigh local and wider impacts and that planning conditions or agreements will be used to secure protection or in the case of the exceptional development, to mitigate any harm .

Lowland calcareous grassland is identified as a priority habitat due to the wide range of plant species and invertebrate species that such grassland normally supports and therefore its loss should therefore only be permitted in exceptional circumstances where justified by the benefits of a development.

In this case, the applicant has maintained that the importation and tipping of the soils was necessary to allow the safe and proper construction of the consented housing development. Due to the height difference between the development levels approved in the residential planning application and those found on the land to the east and south of the development, the developer argues that some works were required to afford the correct degree of stability and safety to the new dwellings and their occupiers. The use of a retaining wall to the rear of the properties was considered but due to the likely heights of such a structure, it was discounted in favour of the land being regraded using imported soil materials.

These tipping works have destroyed the habitat that was previously found on these areas of the site and it would not be possible to recreate these habitats on the surface of the tipped material due to the particular ground conditions required for calcareous grassland. As with the previous application for the retention of the tipped material, this proposal is contrary to Policy DME3 of the Ribble Valley Core Strategy unless the applicant can demonstrate that mitigation is sufficient to address the impacts.

To address the requirements of the policy, the applicant is proposing to dedicate an area to the south west of the housing development as an area of replacement calcareous grassland. This area was formerly part of a wider agricultural pasture but has been heavily disturbed due to the housing development in particular due to the requirement to bury an overhead power cable. These works have required the stripping of the topsoil exposing the underlying limestone. The developer has put forward a scheme of restoration works detailing how this area would be restored to a calcareous grassland habitat to offset the losses arising from the tipping of soils.

Whilst only 300m<sup>2</sup> of unimproved calcareous grassland was lost there were also additional areas of semi improved grassland that were affected by the tipping and which also had ecological value. The size of the proposed mitigation land at 900 m<sup>2</sup> is considered acceptable in terms of mitigating for the total loss of ecological value.

The applicant has submitted detailed proposals for the creation of the mitigation area including the preparation of the surface, works to ensure the correct soil fertility, seeding and management. The County Council's Ecologist considers that the proposed measures are satisfactory subject to the site being maintained for a period of not less than 25 years in accordance with a management plan to cover matters such as control of weeds and a cutting / grazing regime to be followed to ensure the proper

development of a diverse range of plant species. Subject to the habitat creation works being the subject of a planning condition and the signing of a section 106 agreement relating to secure a management period of not less than 25 years, the proposal is considered to be acceptable.

A number of representations have been received stating that the applicant's mitigation land is unsuitable and that the County Council should pursue the enforcement action. The County Council's Ecologist considers that the site is sufficiently open to provide the correct conditions for the formation of calcareous grassland and the design of the mitigation area has been modified by removing some of the perimeter hedgerows and moving the site slightly to the north further from the trees. In relation to the enforcement action, there are a number of factors which should be considered:

- The developer has appealed the enforcement notice on ground a) (that planning permission should be granted for the development subject to the notice). An inspector may decide that the development is acceptable and that no mitigation is necessary.
- Even if the appeal were to be dismissed and the requirements of notice were complied with by removing the tipped materials, the habitats may have already been destroyed and their restoration may be difficult.
- The applicant has a permission in principle for further housing development on land to the south of the enforcement notice land. If the notice were complied with and calcareous grassland re-established, it would occupy a slope in the middle of a housing estate and would therefore be subject to a number of pressures which might reduce its habitat value. The mitigation land would be outside the housing land and subject to appropriate fencing to prevent access, would be less likely to be so affected.

In conclusion, it is regrettable that the importation and tipping of soils has resulted in damage to a priority habitat which under Policy DME3 would not normally be acceptable. However, the proposed mitigation land provides an opportunity to create a new grassland habitat which subject to appropriate management could replace the habitats that have been damaged. Subject to the signing of a section 106 agreement relating to the management of the land for a period of 25 years, the proposal is acceptable.

In view of the location, scale and impacts of the development, it is considered that no Convention Rights set out in the Human Rights Act 1998 would be affected.

## **Recommendation**

That subject to the signing of a section 106 agreement relating to the long term management of the mitigation land planning permission be **Granted** subject to the following conditions:

## **Working Programme**

1. The development shall be carried out, except where modified by the conditions to this permission, in accordance with the following documents:

a) The Planning Application received by the County Planning Authority on 20th November 2019 together with the accompanying document titled ' Calcareous Grassland Establishment and Management Plan'.

b) Submitted Plans and documents:

Drawing 0724-3-16 Proposed Site levels

Drawing 0724-3-17 Sections

Drawing 0724-3-14 Rev C

c) All schemes and programmes approved in accordance with this permission.

*Reason: For the avoidance of doubt, to enable the County Planning Authority to adequately control the development and to minimise the impact of the development on the amenities of the local area, and to conform with policies DM2 of the of the Lancashire Minerals and Waste Local Plan and policies DME of the Ribble Valley Borough Local Plan.*

2. The works to create the habitat mitigation area shall be undertaken in the land edged green on drawing 0724 - 3-14 Rev C within one year of the date of this planning permission. The habitat mitigation works shall be carried out in accordance with the proposals in sections 5.1 - 5.2.12 of the submitted Calcareous Grassland Establishment and Management Plan dated January 2020.

*Reason: In the interests of ecology and to conform with Policy DME of the Ribble Valley Borough Local Plan.*

3. Within three months of the date of this permission, a scheme and programme of works to secure the boundaries of the proposed mitigation area shall be submitted to the County Planning Authority for approval in writing. The scheme and programme shall contain details of:

a) Post and wire fencing around the perimeter of the site including details of gates to allow for maintenance access

b) Hedge planting on the western, northern and eastern boundaries of the mitigation land including details of sizes, species and types of plants, planting techniques, layout of planting and protection measures.

The fencing and hedgerow planting shall be undertaken in the first planting season following the date of this planning permission and shall thereafter be maintained for a period of five years including weed control, maintenance of protection measures and replacement of dead plants.

*Reason: To ensure that access to the mitigation site is controlled in the interests of ecological management and to conform with Policy DME of the Ribble Valley Local Plan and Policy DM2 of the Lancashire Minerals and Waste Local Plan.*

4. Following the completion of the habitat creation works required by condition 2 above, the site shall be managed for a period of five years in accordance with the proposals in sections 5.2.13 to 6.4.5 of the submitted Calcareous Grassland Establishment and Management Plan.

On each anniversary of the completion of the habitat creation works, a report shall be submitted for the approval of the County Planning Authority which describes the management works that have been undertaken over the previous year, the results of habitat monitoring and a schedule of the habitat management works that are to be undertaken over the forthcoming year.

The site shall be managed in accordance with each of the approved reports.

*Reason: To ensure the proper management of the site in the interests of ecology and to conform with Policy DME of the Ribble Valley Borough Local Plan.*

## **Definitions**

Planting Season: The period between 1 October in any one year and 31 March in the following year.

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

None

Reason for Inclusion in Part II, if appropriate

N/A