

PLANNING COMMITTEE UPDATE SHEET

COMMITTEE DATE: 1st December 2021

APPLICATION NO.	TEAM LEADER	ITEM NO.	PAGE NOS.
20/00907/FULMAJ	Lyndsey Hayes	2	65-102

Additional Consultation Response:

Since the publication of the main committee report United Utilities have written to the Council to clarify their objections as follows:

- Reiterated content of their previous letter dated 30th September that once finalised the modelling exercise will be provided to the developer direct for its consideration; and that the current network model for the site predicts a level of flooding at this site from the existing public combined sewer, which is a significant flood volume.
- The site suffers from flooding from the combined sewer which crosses the site.
- Whilst the current proposals are for a foul only connection, as it is a combined sewer, the impact of surface water is a significant factor in the existing flood risk
- The NPPF is clear that development should take account of all forms of flood risk including from overwhelmed sewers and drainage systems, and that development should be directed away from areas of highest risk and not increase flood risk elsewhere.
- The proposed sewer diversion increases flood risk.
- At the current time UU would refuse the developer's application for the sewer diversion as a result of the increase in flood risk, and therefore consider the proposed layout would not be deliverable
- There is a residual flood risk and a high risk that parts of the development site, including the new properties would flood, and that flood risk would increase elsewhere.

Based on these matters, UU consider it is premature to take the application to Planning Committee on 1st December 2021 with a recommendation for approval. The development proposals would be at risk of flooding and lead to increased flood risk elsewhere. The development would not be in accordance with the NPPF.

Officer's Response: In light of the UU response confirming their concerns relate to foul and surface water flooding, officers have reconsidered the Barratt Homes Ltd v Welsh Water high court case which is referred to at paragraph 9.28 of the main committee report.

The Judge in this case concluded that the absolute right to connect to a public system by an individual or developer at a connection point of their choosing is allowed by the Water Industry Act 1991. Accordingly the burden of dealing with the consequences of additional discharge fall on the undertaker (in this case UU) to address by way of making necessary investments in the infrastructure.

Notwithstanding the Local Plan and NPPF requirement to consider flood risk issues, this case law highlights that a developer should not be prejudiced per se from developing their site if the issue relates to overcapacity of an existing public drainage system. Therefore members are advised that officers consider that there are no grounds to refuse the application on this basis. Whilst it is acknowledged that UU have yet to complete their site modelling, they have already told officers the

current network model predicts a level of flooding. Even if this modelling were to show severe flooding would occur, as there are no grounds to refuse the application on the basis, there is nothing in any submission by UU to date that would provide a reason to defer the application until the modelling work is completed.

This case law suggests that a reasonable planning intervention may be the imposition of a Grampian condition preventing the development from coming forward until such investment has been made. For a Grampian condition to meet the relevant tests, there has to be “some prospect” of the works being carried out within a sufficient timescale. No evidence or information has been provided from UU as to when they anticipate making such investment. Furthermore the judgement contains a view that where the undertaker has had warning of a development and ought reasonably to have foreseen a likely connection to the public system (for example, if it is included in the local plan), but fails to act, then a deferment of connection is unlikely to be defensible. This is an allocated site which UU were aware of through the Local Plan process (and raised no capacity issue at that point). In the circumstances of this case it is not considered that this issue meets the requisite tests to impose a Grampian condition.

Finally, UU have a right to refuse any developer’s request for a sewer diversion. If that were to be the case meaning the applicant is left with a planning permission they cannot implement, then a new planning application would be needed. However, as this decision by UU is controlled by other legislation / procedures outside of the planning system, this is not a reason to refuse to grant planning permission.

In summary, the recommendation to grant planning permission remains, as does the recommended list of drainage conditions.

Additional / Amended Plans received:

Since the publication of the Committee agenda, a topographical survey has been received, and comparison with the proposed levels shows that the finished floor levels would be set 35cm higher on average than the surrounding land levels. Furthermore, amended plans have been received to correctly label the plot numbers on the floor and elevation plans for the maisonettes; update the precise location of boundary treatments to tally with previously revised plot locations and show mammal void sizes correctly; and update plans for the cycle stores for the maisonettes to include paving material details. A plan of the maisonette bin store has also been received.

Officer’s Response: The proposed levels and finished floor levels are considered to be visually acceptable. As the other amendments are minor there is no need to update the assessment in the committee report. Conditions will need updating accordingly.

Update to Recommendation (amendments in bold and italics):

Following publication of the committee report the recommendation needs to be updated to include green infrastructure which had been omitted from the original recommendation.

The recommendation now reads as follows:

12.1 Grant full planning permission subject to conditions and a section 106 agreement to secure financial contributions towards health care, education, sustainable transport, ***green infrastructure***, and on-site affordable housing

(30%). That the Head of Planning Services be authorised to issue the decision following the satisfactory completion of the S106 agreement.

Amendment to Conditions (amendments in bold and italics):

Condition 2: Plans

The development shall be carried out, except where modified by the conditions to this permission, in accordance with the Planning Application received by the Local Planning Authority on 28.09.2020 including the following plans/documents:

- Drawing No. A6 Garstang Rd / Proposed Site Layout Rev L received 15th November 2021
- Drawing No. A6 Garstang Rd / Plots 03&04 ***received 30th November 2021***
- Drawing No. A6 Garstang Rd / Plots 01&02 ***received 30th November 2021***
- Drawing No. A6 Garstang Rd / 3B5P HT, 3 BEDROOM 5 PERSON HOUSE TYPE FLOOR PLANS & ELEVATIONS received 29.09.2020
- ***Drawing No. A6 Garstang Rd / Plots 05-10 Rev A, PLOTS 05-10 FLOOR PLANS & ELEVATIONS received 29th November 2021***
- ***Drawing No. A6 Garstang Rd / Plots 21-22, PLOTS 21-22 FLOOR PLANS & ELEVATIONS received 30th November 2021***
- ***Drawing No. A6 Garstang Rd / Plots 25-30, PLOTS 25 – 30 FLOOR PLANS & ELEVATIONS received 29th November 2021***
- ***Drawing No. A6 Garstang Road / Plots 31-33, PLOTS 31-33 FLOOR PLANS & ELEVATIONS received 30th November 2021***
- Drawing No. A6 Garstang Rd / Plots 34-39, PLOTS 34 - 39 FLOOR PLANS & ELEVATIONS received 29.09.2020
- ***Drawing No. A6 Garstang Rd / Maisonette Cycle Store Rev A, MAISONETTE CYCLE STORES PLAN & ELEVATIONS received 29th November 2021***
- ***Drawing No. A6 Garstang Rd / Boundary Treatments Plan Rev J received 29th November 2021***
- ***Drawing No. A6 Garstang Rd / Boundary Treatments Rev B received 29th November 2021***
- Drawing No. A6 A6 Garstang Rd / Street Scene Elevations Rev C received 29th March 2021
- ***Drawing No. Garstang Rd / Maisonette Bin Store received 29th November 2021***

The development shall be retained hereafter in accordance with this detail.

Reason: For the avoidance of doubt and so that the Local Planning Authority shall be satisfied as to the details.

Condition 4: Boundary Treatments

The development shall take place in accordance with the submitted Drawing No.s ***A6 Garstang Rd / Boundary Treatments Plan Rev J and Drawing No. A6 Garstang Rd / Boundary Treatments Rev B received 29th November 2021.***

The approved boundary treatment to all individual dwellings and apartment blocks shall be completed before the associated dwelling is first occupied; the boundary treatments to either side of the site entrance alongside the area identified as Green Infrastructure (GI), and the boundary treatments to the areas identified as Public Open Space (POS) shall be installed prior to their first use. The approved details shall thereafter be maintained and retained.

Reason: In the interests of the appearance of the locality and the residential amenity of occupants / neighbours in accordance with Policy CDMP3 of the Adopted Wyre Borough Local Plan (WLP31).

Condition 14: Cycle and Waste Storage

Prior to first occupation of any part of the development hereby approved the secure cycle storage provision and waste storage areas shown on the approved plans No. A6 Garstang Rd / Proposed Site Layout Rev L, **and Drawing No. A6 Garstang Rd / Maisonette Cycle Store Rev A, MAISONETTE CYCLE STORES PLAN & ELEVATIONS and Drawing No. Garstang Rd / Maisonette Bin Store received 29th November 2021**, shall be provided and thereafter maintained and retained.

Reason: To enable access to and from the property by sustainable transport mode, in accordance with policy CDMP6 of the Wyre Local Plan (2011-31).

Condition 19: Ecology Mitigation

The development hereby approved shall be implemented in full accordance with the following submitted plans/ documents:

- Reptile Presence / Absence Survey by United Environmental Services Ltd, received 26th February 2021, including all the mitigation measures set out in that report.
- Drawing No. A6 Garstang Rd / Bird & Bat Box Plan **Revision B received 29th November 2021**

Reason: To ensure compliance with the Wildlife and Countryside Act 1981, Policy CDMP4 of the Wyre Local Plan (2011-31) and section 15 of the National Planning Policy Framework.

Condition 23: Noise Mitigation

The following noise mitigation measures as set out in the submitted Road and Rail Noise Assessment (version Revised 17th March 2021) by Martec Environmental Consultants Ltd shall be implemented prior to first occupation of the respective dwelling to which they relate:

- The glazing standard and vents to meet or better such acoustic performance specifications as set out in Tables 12, 13, 14 and 15 of the submitted assessment.
- Boundary treatments shall be to installed in accordance with the submitted acoustic fencing shown on Drawing Nos. A6 Garstang Rd / Boundary Treatments Plan Rev J, **and A6 Garstang Rd / Boundary Treatments Rev B received 29th November 2021**

These approved noise mitigation measures shall thereafter be retained and maintained.

Reason: To ensure there is no adverse effect on the health and quality of life of future occupants and to avoid an unacceptable impact on residential amenity by virtue of noise in accordance with Policy CDMP1 of the Wyre Local Plan (2011-31).

Condition 26: PD Removal Boundaries

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order):

(a) no fences, gates or walls other than those shown on approved Drawings No.s A6 Garstang Rd / Proposed Site Layout Rev L, No. A6 Garstang Rd / Boundary Treatments Plan Rev **J**, and **No. A6 Garstang Rd / Boundary Treatment Rev B received 29th November 2021**, shall be erected along the front or side boundaries of any dwellinghouse forward of the main front elevation or side elevation of that dwellinghouse; and

(b) no areas of soft landscaping to the front of properties shall be removed to make provision for additional car-parking without planning permission from the local planning authority first being obtained.

Reason: The estate is proposed with an open plan layout and a variety of individual walls/fences would seriously detract from the overall appearance of the development. The loss of front landscaping areas would also seriously detract from the overall streetscene which would become dominated by car parking. This would be contrary to Policy CDMP3 of the Wyre Borough Local Plan (WLP31) and the provisions section 12 of the NPPF.