



Appeal Decision

Site visit made on 4 August 2025

by **D M Young JP BSc (Hons) MA MRTPI MIHE**

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Appeal Ref: APP/E2340/W/25/3366885

Land East of Colne Road, Earby, BB18 6XZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Dalesview Developments Ltd against the decision of Pendle Borough Council.
 - The application Ref is 24/0094/FUL.
 - The development proposed is the erection of 39 dwellings.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 39 dwellings at Land East of Colne Road, Earby, BB18 6XZ in accordance with the terms of the application, Ref 24/0094/FUL, subject to the following conditions in the attached schedule.

Applications for costs

2. An application for costs was made by the Appellant against Pendle Borough Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are firstly, the effect of the development on the character and appearance of the area and, secondly, whether the development would lead to an increase in flooding elsewhere.

Reasons

Character and appearance

4. The application site comprises two agricultural fields to the east of Colne Road between Park Side and Brookfield Way. The land is classed as countryside for planning purposes but is adjacent to the settlement boundaries of Earby to the north and Sough to the south. The land is divided into two parcels with a hedgerow running between, the southern part of the site falls within the Kelbrook and Sough Neighbourhood Plan area. There can be little doubt that the appeal site contributes to the pleasant rural setting to the east of Earby Road and provides an area of separation between Earby and Sough.
5. The site is not however a designated or 'valued' landscape in the terms set out in the National Planning Policy Framework (NPPF). There is also no special protection for the gap between Earby and Sough in the development plan and Policies SDP2 and LIV1 of the Pendle Local Plan Part 1: Core Strategy, (PLP)

allow for the development of sites outside but close to a settlement boundary. There are no listed buildings or conservation areas in the immediate area.

6. The original application for 70 dwellings was accompanied by a Landscape and Visual Appraisal¹. This concluded that the development would harmonise with existing residential development to the north and south and due to the proposed screening along the eastern site boundary would not harm the Gargrave Drumlin Field character area.
7. The central allegation in the Council's first reason for refusal is that the development would result in the coalescence of Earby and Sough. However, even a cursory examination of the plans reveals that would not be the case. The dwellings would be located within the northern portion of the appeal site and therefore notwithstanding there is some development on the opposite side of Colne Road, the buffer would be retained albeit reduced in size.
8. There is no dispute that the design of the houses themselves would be acceptable and take design cues from the existing development to the north and south. I also observed that the appeal site is low-lying and not visible over a wider area. Nonetheless the erection of 39 dwellings on an open arable field would inevitably have a significant visual effect, albeit localised, in views from Colne Road. Linked to this there would be a perception of coalescence as one travels between the settlements.
9. In my view, the degree of harm would be moderate rather than significant. Nonetheless, and as with any development on a greenfield site, there would be a degree of conflict with PLP Policies ENV1, ENV2 and LIV5 and Policy KS DEV 1 of the Kelbrook and Sough Neighbourhood Development Plan (NDP) insofar as they seek to preserve the character and appearance of the area and make a positive contribution to local identity.

Flood Risk

10. The application was accompanied by a detailed Flood Risk Assessment (FRA) and Drainage Strategy Report. These documents were supplemented at the appeal stage by a Non-Technical Summary of Flood Risk.
11. The decision to refuse planning permission on flood risk grounds was taken contrary to the advice of the Council's specialist consultees. The Environment Agency, Lead Local Flood Authority, Yorkshire Water and the Earby and Salterforth Internal Drainage Board all advised the Council that the proposed development would be acceptable and would not increase flood risk elsewhere. The Committee Report summarised the position at page 9 where it is stated:

"The site is within flood zones 2 (medium risk) and 3 (high risk), no dwellings are proposed in the flood zone 3 area in the north-eastern corner of the site, however, most of the dwellings would be within the flood zone 2 area. A flood risk assessment (FRA) has been submitted with the application, and it has been acceptably demonstrated that with mitigation in the form of levels² and a compensatory area of water storage in the southern area of the land, the proposed development would not result in and - unacceptable risk from on-site flooding or

¹ The appeal site (S219) was also identified as being suitable for 110 dwellings in the Council's 2014 SHLAA.

² A Design Flood Level of 133.85m AOD. This was based on the 1% Annual Exceedance Probability (AEP) + 20% climate change (CC) was agreed with the Environment Agency

increase the risk of off-site flooding. The proposed development is therefore acceptable in terms of drainage and flood risk in accordance with Policy ENV7.”

12. Against the above background, it is difficult to understand how the Council, through its Planning Committee, came to the view it did. The Council’s Appeal Statement refers to photographs taken in December 2015 which was before the implementation of flood defence work in the area. While these photographs show standing water on parts of the site and Colne Road, the Appellant points out that they relate to areas outside the red-line boundary.
13. There is no suggestion from the Council that the aforementioned consultees were unaware of the historical flooding issues in the area. Despite that, the Council asserts that the FRA “*underestimates the volume of water that the land holds in [flood] events*”. Reference is then made to the interception of overland flow from adjacent land which the Council argues relies on the successful operation of off-site drainage systems, the maintenance of which has not been demonstrated in the FRA.
14. The above statements are however unsupported by technical evidence or objective analysis and directly conflict with the FRA which demonstrates through 3D modelling that the pre- and post-development flood storage capacity of the site would be unchanged. Accordingly, the development would not result in the displacement of flood water to the wider environment and would not result in increased flood levels to the wider environment. The maintenance of third-party drainage systems would be a matter covered by other regulatory processes, which NPPF paragraph 201 advises should be assumed to operate effectively.
15. I therefore conclude that the development would not result in an increase in off-site flood risk. Consequently, there would be no conflict with PLP Policy ENV7 or NPPF paragraph 181.

Other Matters

16. A wide range of concerns have been raised by local residents including loss of privacy and natural light, the effect on biodiversity and wildlife, the impact on local health services and highway safety. However, these were carefully considered in the Officer’s Report and there is nothing that would lead me to a different conclusion on these matters.

Conditions

17. I have considered the suggested planning conditions against the advice in the Planning Practice Guidance (PPG). I have also considered the comments made by the Appellant. In some instances, I have amended or omitted the conditions in the interests of brevity, to avoid repetition or to ensure compliance with the PPG.
18. To provide certainty, I have imposed conditions covering time limits and the approved plans and reports [Conditions 1-2]. Conditions relating to the design of plots 1-9, details of external materials, the maintenance and management of the public open space, a landscaping scheme and window openings are all necessary to ensure the satisfactory appearance of the development [3-6]. A condition relating to obscure glazing is necessary to safeguard the privacy of neighbouring residents in Brookfield Way [7]. A Construction Environmental Management Plan (CEMP) is necessary to ensure all aspects of the construction adhere to best practice and do

not adversely affect the amenity of local residents or local ecology/biodiversity [8]. I have however simplified and/or omitted some of the requirements which are not relevant.

19. Conditions relating to on and off-site highway works, and visibility splays are necessary in the interests of highway safety [9-11]. I have however deleted some requirements of condition 9 such as the provision of tactile paving at the existing crossings, a shared cycleway across the site frontage and the removal of grass verges to the north of the site. In all cases there is no evidence before me to suggest that these works are necessary to make the development acceptable. Cognisant of advice in Manual for Streets and Lancashire County Council's 'Creating Civilised Streets', visibility splays of 4.5 x 90m are clearly excessive given the speed of traffic and characteristics of Colne Road. I have therefore amended condition 11 accordingly. A parking condition is necessary to ensure that the development does not lead to obstructive parking on the estate roads [12].
20. Drainage and flood risk conditions are necessary to ensure satisfactory drainage and future maintenance of the site in the interests of flood prevention [13-16]. I have added an additional requirement to condition 13 [f] which requires the developer to submit and agree details of the management and maintenance of the surface water drainage scheme. Subject to this additional requirement, a separate condition covering these matters is unnecessary. A land contamination condition is necessary to ensure the land is suitable for a residential use [17].
21. The external materials are shown on the approved house type drawings. There is no suggestion from the Council that these materials are unacceptable. A separate condition is therefore unnecessary. As the site is flat, I do not consider it necessary to impose a condition relating to existing site levels. The height of each dwelling type is clearly shown on the plans for the various house types. Minimum floor levels are also specified in conditions 12 & 13b)v). I have omitted suggested 9 as the recommendations of the Ecological Impact Assessment are captured by condition 2 and/or condition 9c). I have omitted suggested conditions 11 (protective fencing) and 12 (construction method statement) as these requirements are again captured by the CEMP [condition 8].
22. Suggested condition 13 sought details of the retaining wall to Colne Road. The only proposed change to the wall appear to relate to the construction of the site access. Details of those works would be covered under s278/184/38 agreements under the Highways Act. I do not therefore consider this condition meets the test of necessity. Given that driven speeds along the estate roads are likely to be very low, I do not consider a restriction on the height of landscaping to be reasonably necessary. I also consider such a condition would place an unreasonable enforcement burden on the Council.
23. It is not clear to me why details of the future management and maintenance of the estate roads would need to be submitted and agreed by the Council. Should the developer wish the Council to adopt the roads this would be subject to a separate statutory process under s38 of the Highways Act. In the alternative, the management arrangements would be a private matter for the developer, and I am not clear why the Council would need to be involved in that process. I have omitted suggested condition 17 accordingly. Given future residents would have access to private areas to the front and rear of their dwelling I do not consider it necessary to impose a condition relating to cycle parking.

24. Conditions 8, 14, and 15 are 'pre-commencement' form conditions and require certain actions before the commencement of development. In all cases the conditions address matters that are of an importance or effect and need to be resolved before construction begins

Conclusions

25. I am required to determine this proposal in accordance with the Development Plan, unless material considerations indicate otherwise. The starting point is therefore the Development Plan. I have found conflict with Policies ENV1, ENV2, LIV5 and KS DEV 1. However, the weight which can be attributed to these conflicts is significantly reduced in this case given the Council is unable to demonstrate a 5-year supply of housing. This means the relevant policies, particularly current settlement boundaries, are to be considered out-of-date and the tilted balance in NPPF paragraph 11d) is engaged.
26. There is no suggestion from the Council that it will be able to meet its housing needs through the development of brownfield sites alone. Accordingly, a degree of landscape harm would be the inevitable consequence of any new development on greenfield land in the borough. This further reduces the weight I give to the identified policy conflicts.
27. As set out in the Committee Report the appeal scheme would result in a host of benefits. These include:
- The delivery of up to 39 new homes in a sustainable location with a policy compliant level of affordable housing in an authority which is not delivering nearly enough new houses³.
 - Policy compliant levels of publicly assessable open space and green infrastructure.
 - Economic benefits during the construction phase as well as additional Council Tax revenue per annum and 'first occupation expenditure'.
 - Biodiversity net-gain of over 10%⁴
28. Collectively the benefits, in particular the delivery of much needed housing, clearly outweigh the identified landscape harm and associated policy conflicts.
29. For the reasons given above the appeal should be allowed.

D M Young

INSPECTOR

SCHEDULE OF CONDITIONS

³ According to the Council's Appeal Statement, it can demonstrate 5-year housing supply of 2.8 years.

⁴ According to the Biodiversity Net Gain Report there will be increases of 18.15% for Habitat Units and 157.52% for Hedgerow Units.

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and reports: 3531-101 Rev 02, 3531-102 Rev 04, 3531-103 Rev 03, 3531-100 Rev 04, (House Type 1), 3531-105-00 (House Type 2), 3531-106-00 (House Type 2a), 3531-107-00 (House Type 2a-s), 3531-113-00 (house Type 2g), 3531-108-00 & 3531-109-00 (House Type 3), 3531-110-00, 3531-111-00, 3531-112-00 (House Type 3a), 3531-112-00 (Type 3a-Single Detached Garage), 3531-113-00 & 3531-114-00 (House Type 4), 3531-115-00 & 3531-116-00 (House Type 5), 3531-117-00 & 3531-118-00 (House Type 5a), 3531-120-00 (House Type 6), 3531-119-00 (Apartment Type 6), 3531-200-200 and the Ecological Impact Assessment February 2024.
- 3) Unless otherwise approved in writing by the Local Planning Authority the following plots shall be the following house types: Plot 1 – Type 2, Plots 2 to 5 – Type 1, Plots 6 to 9 – Type 6.
- 4) The window openings shall be set back from the external face of the wall. Unless otherwise agreed in writing by the Local Planning Authority the depth of reveal shall be at least 70mm.
- 5) A scheme for the management (including maintenance) of the public open space areas shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the first dwelling. The management arrangements shall be implemented in accordance with approved scheme before the first dwelling is occupied and the public open spaces shall thereafter be managed in accordance with the approved scheme.
- 6) No development above slab level shall commence unless and until a detailed landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following:
 - a) the exact location and species of all existing trees and other planting to be retained;
 - b) all proposals for new planting and turfing indicating the location, arrangement, species, sizes, specifications, numbers and planting densities;
 - c) an outline specification for ground preparation;
 - d) all proposed boundary treatments with supporting elevations and construction details;
 - e) all proposed hard landscape elements and pavings, including layout, materials and colours;

The approved scheme shall be implemented in its entirety within the first planting season following the commencement of the use of the development. Any tree or other planting that is lost, felled, removed, uprooted, dead, dying or diseased, or is substantially damaged within a period of five years thereafter shall be replaced with a specimen of similar species and size, during the first available planting season following the date of loss or damage.

- 7) Windows in the north facing side elevations of plots 1 and 39 and west facing side elevation of plot 29 shall at all times be glazed with obscure glazing to a minimum obscurity level of Pilkington Level 4 (or equivalent). The windows shall at all times be hung in such a way that prevents the effect of the obscure glazing being negated by opening.
- 8) Prior to the commencement of the development, a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. It will include details of:
 - a) A site walkover survey by a suitably qualified Ecologist and any updated surveys including mitigation;
 - b) Risk assessment of potentially damaging construction activities and identification of any licences required;
 - c) Details of measures necessary to protect biodiversity features;
 - d) Details of traffic routing, site layout and temporary access arrangements;
 - e) Delivery, demolition and construction working hours;
 - f) The erection and maintenance of security hoarding
 - g) Wheel washing facilities
 - h) Measures to control the emission of dust and dirt during construction
 - i) Measures to control noise and vibration during construction

Thereafter the development shall be carried out in accordance with the approved CEMP.

- 9) Within 3 months of commencement, a scheme for the site access, internal estate roads and off-site highway works shall be submitted to the Local Planning Authority. The works shall include the following and be implemented prior to the first occupation of any dwelling.
 - a) Upgrade of the southbound bus stop and a new northbound bus stop to quality bus stop standards on Colne Road.
 - b) Right turn lane at site access with running lanes 3.25-3.5m and right turn lane 3m wide with new central refuges to the north and south sides to protect the right turn lane.
 - c) Details of future management responsibilities where appropriate

The approved works shall be implemented in accordance with an agreed timetable.

- 10) Within 3 months of commencement construction details of the internal estate roads shall be submitted to and approved in writing by the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 there shall not at any time in connection with the development hereby permitted be erected or planted or allowed to remain upon the land hereinafter defined any building, wall, fence, hedge, tree, shrub or other device over 1m above road level. The visibility splay to

be the subject of this condition shall be that land in front of a line drawn from a point 2.4m measured along the centre line of the proposed road from the continuation of the nearer edge of the carriageway of Colne Road to points measured 43m to both sides of the proposed access along the nearer edge of the carriageway of Colne Road, from the centre line of the access, in accordance with a scheme to be agreed by the Local Planning Authority in conjunction with the Highway Authority.

- 12) Prior to the occupation of each dwelling the driveways and parking areas shall be constructed in a bound porous material and thereafter retained.
- 13) The development shall be carried out in accordance with the submitted Flood Risk Assessment ("Dalesview Developments Ltd – Land off Colne Road, Earby – Flood Risk Assessment & SuDS Audit – 158584/01 – February 2023", reference 158584/01, dated 25/10/2024, compiled by Fairhurst) and the following mitigation measures it details:
 - Finished floor levels are to be set at a minimum elevation of 134.45m AOD in the north of the site (1% AEP 20%CC 600mm freeboard);
 - No dwellings will be constructed in flood zone 3a/3b
 - Prior to first occupation, compensatory storage shall be provided as per drawing number 158584/7001 dated 06/02/2025.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

- 14) No development shall commence in any phase until a surface water drainage strategy for the site has been submitted to, and approved in writing by, the Local Planning Authority. The strategy shall be based upon the indicative surface water sustainable drainage strategy (25th October 2024 / 158584/02 – Issue 4 / Fairhurst). No surface water shall be allowed to discharge to the public foul sewer(s), directly or indirectly. The drainage strategy shall include the following details:
 - a) Sustainable drainage calculations for peak flow control and volume control for the:
 - i. 100% (1 in 1-year) annual exceedance probability event;
 - ii. 3.3% (1 in 30-year) annual exceedance probability event + 40% climate change allowance, with an allowance for urban creep;
 - iii. 1% (1 in 100-year) annual exceedance probability event + 45% climate change allowance, with an allowance for urban creepCalculations must be provided for the whole site, including all existing and proposed surface water drainage systems.
 - b) Final sustainable drainage plans appropriately labelled to include, as a minimum:
 - i. Site plan showing all permeable and impermeable areas that contribute to the drainage network either directly or indirectly, including surface water flows from outside the curtilage as necessary;

- ii. Sustainable drainage system layout showing all pipe and structure references, dimensions and design levels; to include all existing and proposed surface water drainage systems up to and including the final outfall;
 - iii. Details of all sustainable drainage components, including landscape drawings showing topography and slope gradient as appropriate;
 - iv. Drainage plan showing flood water exceedance routes in accordance with Defra Technical Standards for Sustainable Drainage Systems;
 - v. Finished Floor Levels (FFL) in AOD with adjacent ground levels for all sides of each building and connecting cover levels to confirm minimum 150 mm+ difference for FFL; vi. Details of proposals to collect and mitigate surface water runoff from the development boundary;
 - vi. Measures taken to manage the quality of the surface water runoff to prevent pollution, protect groundwater and surface waters, and deliver suitably clean water to sustainable drainage components;
- c) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltration rates and groundwater levels in accordance with BRE 365.
- d) Evidence of an assessment of the existing on-site watercourse to be used, to confirm that these systems are in sufficient condition and have sufficient capacity to accept surface water runoff generated from the development.
- e) Evidence that a free-flowing outfall can be achieved. If this is not possible, evidence of a surcharged outfall applied to the sustainable drainage calculations will be required.
- f) Details of the future management and maintenance of the surface water drainage system.

The sustainable drainage strategy shall be implemented in accordance with the approved details.

- 15) No development shall commence until a Construction Surface Water Management Plan, detailing how surface water and stormwater will be managed on the site during construction, including demolition and site clearance operations, has been submitted to and approved in writing by the Local Planning Authority.

The details of the plan to be submitted for approval shall include method statements, scaled and dimensioned plans and drawings detailing surface water management proposals to include for each phase, as a minimum:

- a) Measures taken to ensure surface water flows are retained on-site during the construction phase(s), including temporary drainage systems, and, if surface water flows are to be discharged, they are done so at a restricted rate that must not exceed the equivalent greenfield runoff rate from the site.

- b) Measures taken to prevent siltation and pollutants from the site entering any receiving groundwater and/or surface waters, including watercourses, with reference to published guidance.

The plan shall be implemented and thereafter managed and maintained in accordance with the approved plan for the duration of construction.

- 16) The occupation of the development shall not be permitted until a site-specific verification report, pertaining to the surface water sustainable drainage system, and prepared by a suitably competent person, has been submitted to and approved in writing by the Local Planning Authority.

The verification report must, as a minimum, demonstrate that the surface water sustainable drainage system has been constructed in accordance with the approved drawing(s) (or detail any minor variations) and is fit for purpose. The report shall contain information and evidence, including photographs, of details and locations (including national grid references) of critical drainage infrastructure (including inlets, outlets, and control structures) and full as-built drawings. The scheme shall thereafter be maintained in perpetuity.

- 17) Prior to the commencement of development, the applicant shall have submitted to and have agreed in writing by the Local Planning Authority a method statement which sets out in detail the method, standards and timing for the investigation and subsequent remediation of any contamination which may be present on site. The method statement shall detail how:
 - a) an investigation and assessment to identify the types, nature and extent of land contamination affecting the application site together with the risks to receptors and potential for migration within and beyond the site will be carried out by an appropriately qualified geotechnical professional (in accordance with a methodology for investigations and assessments which shall comply with BS 10175:2001) will be carried out and the method of reporting this to the Local Planning Authority; and
 - b) a comprehensive remediation scheme which shall include an implementation timetable, details of future monitoring and a verification methodology (which shall include a sampling and analysis programme to confirm the adequacy of land decontamination) will be submitted to and approved in writing by the Local Planning Authority.

All agreed remediation measures shall thereafter be carried out in accordance with the approved implementation timetable under the supervision of a geotechnical professional and shall be completed in full accordance with the agreed measures and timings, unless otherwise agreed in writing by the Local Planning Authority.

In addition, prior to commencing construction of any building, the developer shall first submit to and obtain written approval from the Local Planning Authority a report to confirm that all the agreed remediation measures have been carried out fully in accordance with the agreed details, providing results of the verification programme of post-remediation sampling and monitoring and including future monitoring proposals for the site.