

Briercliffe

Town and Country Planning Act 1990 (as amended)

Address: Land Between Hill Farm and Copucobana, Halifax Road, Briercliffe, Burnley, Lancashire, BB10 3QS

Proposal: Application for permission in principle for construction of one dwelling

1. Reason for Committee

1.1. This application is to be determined by the Development Control Committee as three or more material planning objections have been received and the recommendation is of approval.

2. Site Description

2.1. The application site relates to part of an agricultural field located to the south of Halifax Road, Briercliffe, between Hill Farm to the east and the dwelling known as Copucobana to the west. It comprises an area of rough grazing land, which generally falls from east to west, with some trees along the frontage. The trees are protected by a group Tree Preservation Order¹. There is an existing field access with Halifax Road to the north of the site.

Photograph 1. The application site from Google Street View with Copucobana to the right side and Hill Farm to the left side.

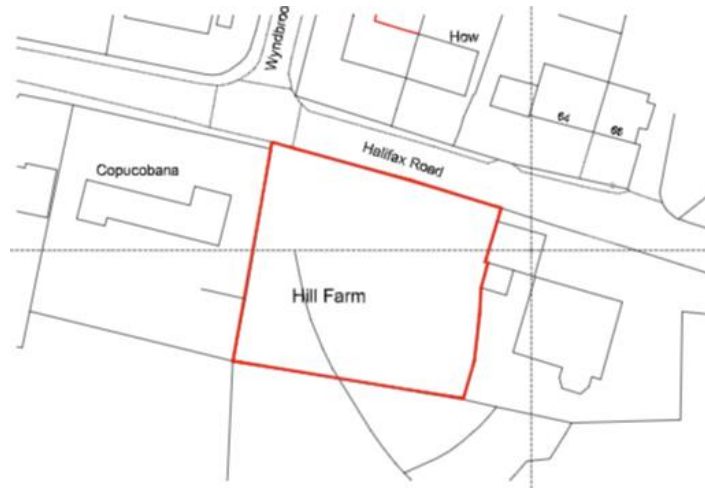


3. Proposal

¹ Tree Preservation Order Y B132(T), Halifax Road, Briercliffe, Burnley, 1984

- 3.1. The application seeks permission in principle for the construction of one dwelling.

Plan 1. An extract from the submitted location plan



4. Procedural Matter

- 4.1. The Planning Practice Guidance (PPG)² advises that the permission in principle consent route is an alternative way of obtaining planning permission for housing-led development. The route has two-stages: the first (or permission in principle) stage establishes whether a site is suitable in-principle and the second (or technical details consent) stage is when the detailed development proposals are assessed. This application relates to the first of these two stages.
- 4.2. The PPG³ confirms that the scope of matters for permission in principle is limited to location, land use and the amount of development. All other matters are considered as part of a subsequent technical details consent stage. This application should be determined on this basis.

5. Relevant Planning History

- 5.1. The Local Planning Authority (LPA) refused permission in principle for three dwellings on the application site by decision notice dated 26 February 2020 due

² Paragraph: 001 Reference ID: 58-001-20180615 Revision date: 15 06 2018 of the PPG: Permission in principle

³ Paragraph: 012 Reference ID: 58-012-20180615 Revision date: 15 06 2018 of the PPG: Permission in principle

to the proposal being of an inappropriate scale in a small village location⁴. The decision was appealed but dismissed⁵. However, the LPA subsequently granted permission in principle for one dwelling by decision notice dated 20 January 2021⁶. Whilst a technical details consent application has not been approved or submitted, the permission in principle remains extant until 20 January 2024.

- 5.2. Consistency in decision making is a well-established principle in planning law and a previous decision is capable of being a material consideration, in part to ensure that like cases are decided in a like manner⁷. Indeed, the PPG⁸ states that local planning authorities are at a risk of an award of costs at appeal if they fail to grant a further planning permission for a scheme that is the subject of an extant permission where there has been no material change in circumstances. The weight that should be afforded to the extant permission shall be considered within the conclusion and planning balance section at the end of this report.

6. Consultation

- 6.1. Briercliffe Parish Council – No response received.
- 6.2. Burnley Borough Council (BBC) Local Plans & Policy – No response received.
- 6.3. BBC Trees – No response received.
- 6.4. Greater Manchester Ecology Unit (GMEU) – 28 November 2023: “*GMEU previously commented on application PIP/2020/0032 at the same location, which was for up to 3 dwellings. Out comments remain unchanged for this application which is for 1 dwelling.*”
- 6.5. Lancashire County Council (LCC) Highways – 15 November 2023: “... *no objections to the principle of the planning application for a single dwelling at this location* [subject to various requirements as part of any future detailed planning application relating to parking and turning provision, electric vehicle charging

⁴ PIP/2020/0032

⁵ APP/Z2315/W/20/3248937

⁶ PIP/2020/0581

⁷ *North Wiltshire DC v SSE & Clover* [1992] JPL, 955, (1993) 65 P&CR 137

⁸ Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014 of the PPG: Appeals

points, cycle storage, construction management, speed survey and visibility splays, footway and street lighting].”

- 6.6. United Utilities – 9 November 2023: Recommend the drainage plans are considered in accordance with the drainage hierarchy and provide advice on their assets, infrastructure and property.

7. Publicity

- 7.1. There have been six representations of objection received between the 4 November 2023 and 14 November 2023, including one from Ward Councillor (Cllr) Gordon Lishman. Cllr Lishman stated on the 10 November 2023:

“I wish to formally object to this application on the grounds that the land in question is not suitable for housing development because of the water on and under the land in question and because of the traffic problems in that area of Halifax Road.”

- 7.2. The public representations raise the following issues:

- The proposal does not represent a sustainable pattern of development;
- The proposal should be directed towards brownfield land;
- The application site is not an infill site and would lead to coalescence;
- Whether the application site is a sustainable location with regard to the accessibility of facilities and services;
- Impact on flood risk and drainage;
- Impact on highway safety and transport;
- Impact on biodiversity and ecology, including trees and protected species;
- Impact on the character and appearance of the area;
- The proposal would not support the transition to a low carbon future; and
- The application site was historically a lime quarry.

8. Planning Law and Policy Background

- 8.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) (PCPA 2004) requires that where regard is to be had to the development plan for the purpose of any determination to be made under the

planning acts the determination must be made in accordance with the development plan unless material considerations indicate otherwise.

8.2. The development plan for the Burnley Borough comprises 'Burnley's Local Plan: July 2018' (adopted 31 July 2018) ('the Local Plan'). In this case, the most relevant policies of the Local Plan are:

- Policy SP1: Achieving Sustainable Development
- Policy SP3: Employment Land Requirement 2012-2032
- Policy SP4: Development Strategy
- Policy SP5: Development Quality and Sustainability
- Policy SP6: Green Infrastructure
- Policy HS3: Housing Density and Mix
- Policy HS4: Housing Development
- Policy NE1: Biodiversity and Ecological Networks
- Policy NE3: Landscape Character
- Policy NE4: Trees, Hedgerows and Woodland
- Policy IC1: Sustainable Travel
- Policy IC4: Infrastructure and Planning Contributions

8.3. The National Planning Policy Framework (NPPF) (updated 5 September 2023) sets out the Government's planning policies for England and how these should be applied. It is a material consideration in planning decisions. In this case, the most relevant sections of the NPPF are:

- Section 2. Achieving sustainable development
- Section 3. Decision-making
- Section 5. Delivering a sufficient supply of homes
- Section 8. Promoting healthy and safe communities
- Section 9. Promoting sustainable transport
- Section 11. Making effective use of land
- Section 12. Achieving well-designed places
- Section 14. Meeting the challenge of climate change, flooding and coastal change
- Section 15. Conserving and enhancing the natural environment

9. Assessment

Whether the application site is suitable for residential development with regard to its location, the proposed land use and the amount of development

- 9.1. Policy CC4 of the Local Plan states that proposals on unallocated sites, or which do not comprise minor development or changes of use, should be located within flood zone 1 (relating to rivers and sea) unless the sequential test as set out in the NPPF and PPG⁹ has been satisfied.
- 9.2. However, the NPPF has since been revised to clarify that the sequential test should be applied to all sources of flooding (including surface water). Paragraph 162 of the NPPF states the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source.
- 9.3. There is some conflict between the NPPF and the PPG as the former refers to directing development to areas with the lowest risk of flooding and the latter alludes to low risk. Nonetheless, there is case law¹⁰ unrelated to flood risk that states that the PPG should be treated with caution as it is not consulted on, changes without forewarning and has no system for checking inconsistencies or tensions. As such, it is to be read as guidance and not policy. Moreover, the Environment Agency have informally advised that they consider that the sequential test applies but that it is for the LPA to decide whether to do so.
- 9.4. Paragraph 219 of the NPPF sets out the weight that should be afforded to development plan policies. In essence, due weight should be given to policies, according to their degree of consistency with the NPPF; the closer the policies in the plan to the NPPF, the greater the weight that may be given (notably, it does not state that policies must be consistent with the PPG). Consequently, officers consider that reduced weight should be afforded to Policy CC4 of the Local Plan insofar as it relates to the applicability of the sequential test to sites at risk of flooding from sources other than rivers and sea.
- 9.5. The application site relates to unallocated land located within flood zone 1 on the Environment Agency Flood Map for Planning, which means that it is at low risk of flooding from rivers and sea. However, it is subject to extents of low risk of surface water flooding whereas other areas are identified as being at very low risk. This is corroborated by the Strategic Flood Risk Assessment¹¹, which found that a small part of the potential land south of and adjacent to Halifax

⁹ PPG: Flood risk and coastal change

¹⁰ *Solo Retail Limited v Torridge DC* [2019] EWHC 489 (Admin)

¹¹ Burnley Borough Council – Burnley Strategic Flood Risk Assessment Level 1: March 2017

Road housing allocation was subject to low risk of surface water flooding. Therefore, the application site is not an area with the lowest risk of surface water flooding and the sequential test is applicable.

Plan 2. An extract from the Environment Agency Flood Map for Planning



- 9.6. The submitted application was not accompanied by a site-specific flood risk assessment containing evidence to demonstrate how the requirements of the sequential test have been met. Consequently, whilst the proposal technically accords with Policy CC4 of the Local Plan, it conflicts with Paragraph 162 of the NPPF, which seeks to steer new development to areas with the lowest risk of flooding from any source. This matter shall be returned to within the conclusion and planning balance section at the end of this report.
- 9.7. The application site is located within the development boundary of Lane Bottom, which is identified as a small village within the settlement hierarchy of Policy SP4 of the Local Plan and where development of an appropriate scale will be supported where it satisfies the overarching criteria within the policy and other relevant development plan policies.
- 9.8. Paragraph 4.4.14 of the Local Plan confirms that the development boundaries are not intended to be settlement boundaries but are a planning tool to indicate where infill development of an appropriate type and scale may be acceptable.
- 9.9. The proposal would involve the provision of one dwelling within a predominantly residential area where detached dwellings prevail immediately west of the application site. There would be a notable visual impact, including the loss of grazing land. However, given the site is bound by built form on both sides and is within the development boundary, it is considered that there would not be a

significant adverse impact on the character and appearance of the area, including landscape character. Therefore, the proposal accords with Policy SP4 of the Local Plan, which sets out the development strategy.

- 9.10. Despite concerns from the representations of objection regarding highway safety, LCC Highways raise no objections in principle. The protected trees along the frontage could be retained through the technical details process and a dwelling set back sufficient distance to prevent any harm to future occupants.
- 9.11. The representations of objection raise concerns regarding the sustainability of the application site with regard to the accessibility of facilities and services. However, Lane Bottom is identified as a small village by Policy SP4 of the Local Plan, which are said to provide a basic range of services and have reasonable public and private transport links to larger settlements. Indeed, the settlement contains Hill Lane Baptist Church and associated Community Rooms, and Lane Bottom Playground. Moreover, there is a footway directly opposite the application site and if deemed necessary a footway to the front of site could be required at technical details stage. Therefore, the application site is a sustainable location with regard to the accessibility of facilities and services.
- 9.12. The representations of objection state that the proposal should be directed towards brownfield land. However, Paragraph 4.4.16 of the Local Plan states that Policy SP4 does not seek to prevent the development of greenfield land.
- 9.13. There has been a suggestion that the proposal would lead to coalescence, but the next nearest settlement is not within proximity of the application site.
- 9.14. The representations of objection also raise concerns about the impact on protected species. However, the GMEU did not raise any objection in principle last time around nor did they suggest any unacceptable impacts.
- 9.15. In conclusion, notwithstanding the conflict with Paragraph 162 of the NPPF, the application site is considered suitable for residential development with regard to the relevant considerations when reading the development plan.

Other matters

- 9.16. Notwithstanding the sequential test, there does not appear to be any evidence to suggest that a satisfactory drainage scheme could not be achieved, which may reduce flood risk on the application site and elsewhere. There is not any evidence to suggest that there are natural springs or an underground reservoir on the site. Likewise, there is not any evidence of former excavations or quarrying. The issue of sustainable design could be dealt with at technical details stage. Therefore, these other matters do not weigh against the proposal.

10. Conditions

10.1. The PPG¹² states that it is not possible for conditions to be attached to a grant of permission in principle and its terms may only include the site location, the type of development and amount of development. However, local planning authorities can inform applicants about what they expect to see at the technical details consent stage. Therefore, various informatives are recommended.

11. Conclusion and Planning Balance

11.1. Section 38(6) of the PCPA 2004 requires applications under the planning acts to be determined in accordance with the development plan unless material considerations indicate otherwise.

11.2. In conclusion, the application site is considered suitable for residential development with regard to its location, the proposed land use and the amount of development when reading the development plan. Therefore, unless material considerations indicate otherwise then the application should be approved.

11.3. On the one hand, Policy CC4 of the Local Plan is not wholly consistent with Paragraph 162 of the NPPF, which seeks to steer new development to areas with the lowest risk of flooding from any source. The proposal conflicts with the NPPF in this regard and this represents a material consideration that should attract significant weight against granting permission.

11.4. However, on the other hand, the application site benefits from an extant permission in principle for the same type and amount of development as proposed. Consistency in decision making is a well-established principle in planning law and the LPA would be at risk of costs should the application be refused. The extant permission represents a material consideration that should attract considerable weight in favour of granting permission.

11.5. Taking all the above matters together, the proposal technically accords with the development plan and, whilst it conflicts with Paragraph 162 of the NPPF, the application site benefits from an extant permission in principle, which attracts considerable weight in favour of granting permission. On balance, officers consider that there are not any material considerations of sufficient weight in this case to justify refusing the application. Therefore, it is recommended that permission in principle be approved subject to informatives.

¹² Paragraph: 020 Reference ID: 58-020-20180615 Revision date: 15 06 2018 of the PPG: Permission in principle

Informative(s):

1. Article 35 – Positive and Proactive Planning

The Local Planning Authority have worked positively and proactively with the applicant's agent by raising areas of concern relating to the flood risk sequential test with them and the Environment Agency. This has led to a recommendation of approval.

2. Technical Details Consent

Please note, an application for approval of technical details consent must be made not later than three years from the date of this permission.

Beyond the national information requirements, it is recommended that the following local information requirements will likely be applicable:

- i. Biodiversity Survey and Report;
- ii. Flood Risk Assessment;
- iii. Landscaping Scheme;
- iv. Parking and Access Arrangements;
- v. Refuse and Recycling Statement;
- vi. Tree Survey/Arboricultural Implications Assessment; and
- vii. Utilities Statement and Foul Sewage Assessment (including Surface Water).

It is also recommended that you respond to the consultation responses received on the application and previous approval reference PIP/2020/0581.

J Parkinson

Joshua Parkinson MRTPI

Principal Planner

28 November 2023