Rossendalealive
BOROUGH COUNCIL

ITEM NO. B2

Application Number:	**2013/0461**	**Application Type:**	Full
Proposal:	Allotments, with associated communal allotment building, hard standing for 7 cars, site access improvement, pond, fencing & landscaping	**Location:**	Land west of Burnley Road A682 at Loveclough & to immediate south-west of the municipal recreation ground
Report of:	Planning Unit Manager	**Status:**	For publication
Report to:	Development Control Committee	**Date:**	10 December 2013
Applicant:	Mr D Nugent, Limey Valley Allotment Association	**Determination Expiry Date:**	9 January 2014
Agent:			

Contact Officer:	**Stephen Stray**	**Telephone:**	**01706-252420**
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REASON FOR REPORTING	
Outside Officer Scheme of Delegation	
Member Call-In Name of Member: Reason for Call-In:	
3 or more objections received	
Other (please state):	**Major / Council Land**

HUMAN RIGHTS
The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights:-

Article 8
The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1
The right of peaceful enjoyment of possessions and protection of property.

1. RECOMMENDATION

That Committee grant Permission for the reasons set out in Section 10.

2. SITE

This application relates to a site of approximately 1.9 hectares in area which lies within council ownership, and is located 50m-60m to the west of Burnley Road (A682), taking access from the track on its southern boundary that joins the main road at a point just offset from the junction with Goodshaw Avenue North.

The track is in private ownership from its junction with Burnley Road down to the access point into the field for the proposed development where upon the track adjoining the field also falls into Council ownership. The track is a public right of way and gives access to a privately owned garage colony before reaching the field to which the application relates. It is some years since the field was last used, for grazing and as a hay meadow.

A stone wall fronts the main road and over it the field to which the application relates can be little seen due to the fall of the land and the intervening field. The council-owned recreation ground on the north side is more open to view from the main road.

Whilst the residential properties to the east side of the main road are within the Urban Boundary, land to the west of Burnley Road (including the application site) is designated as Countryside. The open land here forms part of a distinctive gap in built-development between No.974 and No.1162 Burnley Road, the way in which it falls away from the main road ensuring that there are open views across it to the hills rising to the west.

Approximately 350m to the north-west, at a lower level than the application site, is the modern Penny Lodge Lane housing development at the foot of Commercial Street; permitted in 2002 in the Countryside as a re-development of a previously-developed former mill site. To the south-east, at a lower level than the application site, is Goodshaw Fold, which is a Conservation Area.

3. RELEVANT PLANNING HISTORY

2013/0124 Creation of allotment building, with hard standing for 7 cars & fencing
Withdrawn

2013/0256 Construction of 15 detached dwellings with a new access from Burnley Road. Access and infrastructure works to resident's allotments and infrastructure and facilities including growing houses and a community education building for a community allotment and garden scheme
Proposed by a different applicant. Refused at the Committee meeting on 8 October for the following reason :

> The scheme would result in the development of an un-allocated Greenfield site within the Countryside for housing. The Applicant has not advanced the case to outweigh the harms arising from the proposal in terms of inappropriate development within the Countryside, lack of Affordable Housing and the contribution to accord with the Council's adopted Open Space & Play Equipment Contributions SPD (2008), and detriment to the essentially open and rural character of the area. The development is considered contrary to Sections 3, 6, 7, 8, 10, and 11 of the National Planning Policy Framework, and Policies 1, 2, 3, 4, 18, 22, 23 and 34 of the Council's adopted Core Strategy DPD (2011).

4. PROPOSAL

Permission is sought for allotments with an associated communal allotment building with storage, composting toilet together with hardstanding for 7 cars, fencing, landscaping, site access improvement and creation of pond.

The proposals indicate that the allotments and associated structures would be located in a rectangular area 47m x 36m which will contain subdivided plots and associated sheds and greenhouses and the communal allotment building (of approx 4m x 7m) and another timber building to accommodate a composting toilet. In between the plots are tracks and paths to be surfaced with bark chippings over a stone base.

A wider track splits the site also proposed to be covered by wood chip over stone. This would allow for vehicular drop off. The track will be gated at either end and bounded by 2m high post and mesh panel fencing. To the south east corner of the rectangular area is a car park proposed to be surfaced with stone / dust to accommodate approximately 7 cars. Bounding the rectangular area is to be landscape screening, orchard planting and wild hedgerows, a pond, and wild flower meadow/picnic areas. Grass-paths are proposed in the area for recreational use.

1. POLICY CONTEXT

National

National Planning Policy Framework (2012)

Section 3 Supporting a Prosperous Rural Economy
Section 4 Promoting Sustainable Transport
Section 7 Requiring Good Design
Section 8 Promoting Healthy Communities
Section 10 Meeting the Challenges of Climate Change, Flooding, etc
Section 11 Conserving and Enhancing the Natural Environment

Development Plan

Rossendale Core Strategy DPD (2011)

AVP 4 Strategy of Rawtenstall, Crawshawbooth, Goodshaw and Loveclough
Policy 1 General Development Locations and Principles
Policy 7 Social Infrastructure
Policy 8 Transport
Policy 9 Accessibility
Policy 17 Rossendale's Green Infrastructure
Policy 18 Biodiversity and Landscape Conservation
Policy 19 Climate Change and Low & Zero Carbon Sources of Energy
Policy 23 Promoting High Quality Design & Spaces
Policy 24 Planning Application Requirements

Other Material Planning Considerations

None

2. CONSULTATION RESPONSES

RBC (Forward Planning)

Recommend approval

National Planning Policy Framework Section 3 promotes the retention and development of local services and community facilities.

Section 8 encourages the delivery of social, recreational and cultural facilities and services the community needs and which enhance the sustainability of communities and residential environments. Section 8 also promotes access to high quality open spaces and opportunities for sport and recreation which can make an important contribution to the health and well-being of communities.

It is considered that these proposals chime with the above aspirations set out in national guidance

The creation of allotments and related infrastructure providing it is undertaken sensitively would also be in accordance with the Core Strategy. In particular, the proposed use is considered to be compatible with countryside designation outside the urban boundary. Policy 7 Social Infrastructure supports social infrastructure improvements and new provision at suitable locations. Policy17 promotes the protection, enhancement and where appropriate the expansion of the Green Infrastructure network. Figure 24 and paragraph 268 of the Core Strategy supporting text identify allotments as items of green infrastructure that should be promoted and enhanced.

Policy AVP 4: Strategy for Rawtenstall, Crawshawbooth, Goodshaw and Loveclough states the following;

- new developments will be located in proximity to, and well linked to public transport and Green Infrastructure networks to maximise the useage of sustainable modes of transport;
- the natural environment will be protected and enhanced in line with policies 17 and 18. The river Irwell and Limey Water will also be protected from inappropriate developments and enhanced where possible,
- the Open land to the west of Burnley Road north of Crawshawbooth will be protected from development.

It is considered that the proposal enhances the development of green infrastructure and retains the land in open use. Careful consideration of the associated structures and parking will be required but the principle of the proposal aligns with the Core Strategy and should be supported.

RBC (Environmental Health)
No objection

RBC (Property Services)
No objection to the application subject to acceptable lease terms being agreed with the Association. There are still issues over access rights and development should not commence until these are resolved.

RBC Drainage
The submission is not altogether clear about the existing/proposed surface-water drainage arrangements. There is a watercourse within the site which runs along the southerly boundary of the recreation ground and carries water from a culvert which crosses under Burnley Road. During a recent dry weather inspection there was little flow in the watercourse but in periods of heavy rain this flow will increase considerably and could cause flooding if obstructed or significantly increased in volume from the development. I would advise that an acceptable surface water drainage plan should be a condition of the application together with a level survey of the site.

LCC (Highways)
No objection in principle but makes the following detailed comments.

The proposal sees the creation of 31 allotments / gardening plots as well as an area for community usage.

There are no identified parking standards for this type of usage so it is proposed that a level of 1 space per 3 plots should be adopted, meaning that a site such as this will require 10 spaces, when currently the proposal is to provide 7. Within the application reference is made to the majority of people using the site being local but this cannot be guaranteed in the future as there does not appear to be any restrictions on who can apply. It is recognised that there may be some pedestrian usage of the site but given the nature of using an allotment many journeys are likely to be by car to move tools / pick vegetables etc.

The proposal is for the parking area to be surfaced with stone but given that the site is located in the countryside other less visually intrusive surfacing could be considered. It should also be noted that there is potential for the site to be expanded in the future and this will entail the provision of further parking. The allotments are to be surrounded by an area of community woodlands and meadows which may well attract visitors but I believe that the parking levels of 1 space per 3 plots would be able to accommodate traffic associated with this.

The proposals for the widening of the access reflect the previous discussions with the Highway Authority and are welcome. Visibility at the access point is also acceptable.

LCC (Ecology)
Initially, objected to the submission as a detailed ecology study had not been submitted with the application. The applicant has subsequently submitted a detailed assessment by Pennine Ecological. As a result LCC ecology has revised its comments as follows:

The recommendations of the Pennine Ecological report appear largely appropriate and should be implemented as part of the approved scheme/ through planning condition.

However, my concern now in respect of badgers is not that the proposals would result in an offence/ impacts on any badger setts present, but that the potential presence of badgers may not be compatible with the proposed use of the land. Page 9 of the submitted ecology report refers to the proposed orchard, bulb planting areas, hedgerows, tree planting and allotments providing "*enhanced badger foraging habitat and food sources (e.g. Allotment soil will provide abundant earth worms)*." …Whilst construction activities might not impact upon badgers, badgers will be likely to impact upon the development. This potential conflict of interest is not addressed within the report.

Lancashire Badger Group
No objection subject to suitable ecological measures being put in place during construction works to address the potential presence of badgers in the locality.

3. NOTIFICATION RESPONSES

To accord with the General Development Procedure Order a press notice was published on 18/10/13 and site notices were posted on 10/10/13 and 38 letters were sent to neighbours on 10/10/13.

One objection has been received from an adjoining landowner - the applicant in respect of the scheme refused by Committee on 8 October 2013:

- It (the application form) states in certificate B that I was notified of this application on the 5 April 2013. That notice related to a previous application and bearing in mind that this one has changed I don't think this notice should stand.

- It was suggested (in email correspondence) that the Council has a legal right to use the lane and this has been transferred to the LVAA. First of all can you provide the written evidence from the title deeds to the land that supports this position. If the Council is claiming a prescriptive right of way, then on what basis is that as the Council has not used the land for any purpose. It is also asked for permission to improve the track, which has not been consented to and until this matter is resolved I don't think that the application should be allowed to proceed and it should not have been validated.

And then in subsequent correspondence, the same objector states:

- I am advised by LCC that the track is a footpath that is "open to members of the public on foot and is not for general vehicular use"… They refer to it as footpath nr 94.
- In planning terms, as I am sure you are aware, the applicant has to demonstrate that they have a clear right of vehicular access to the main highway, at Burnley Road in this instance, or the application is invalid. There are many instances where Councils' including Rossendale have refused to accept applications that cannot do this, some of which were mine.
- The Council has asked my client for permission to cross and improve the access for vehicles and such consent has not been granted can you provide clear evidence of the right of way vehicular access to the proposed allotment or the application can proceed.

4. ASSESSMENT

The main considerations of the application are:

1) Principle; 2) Visual Amenity; 3) Neighbour Amenity; 4) Drainage; 5) Ecology; & 6) Access/Parking.

Planning Principle

The site is located within an area of Countryside outside of the Urban Boundary of Loveclough.

The use of agricultural land for allotments is not a use that technically requires planning permission, however, it is considered that the associated works do require planning permission.

The proposal is supported by national and local planning policies and, in line with the comments of Forward Planning outlined earlier in this report, is therefore acceptable in principle.

Visual Amenity

Extensive pre-discussions have taken place with the Applicant following initial concern at an urbanising layout submitted with Application 2013/0124, which was withdrawn by the applicant. The revised layout now proposed has taken on-board the advice of Officers and is considered to satisfactorily address this concern. In particular the scheme has been revised to minimise the land to be hard-surfaced to give access to the plots and to provide car parking.

The field itself is some 50m-60m away from the main road and the land slopes down from it. The topography of the area assists in minimising the visual impact of the proposal. Details have also been submitted in respect of the ancillary structures, ie green houses,

sheds and communal allotment building. It is considered that the individual structures - in terms of their siting, size, design & facing materials - are those that could be anticipated and are appropriate in conjunction with the use of the land for allotments.

The scheme is not considered to unacceptably erode the open nature of the countryside.

Neighbour Amenity

Due to the siting of the proposal some distance away from any nearby housing it will not lead to an unacceptable impact on neighbour amenity. Indeed, as the proposal includes community woodlands, pond and meadows, with an access path running through the site, it is considered to provide an improvement / resource for nearby residents and will not be of benefit just to allotment-holders.

It is acknowledged that there is likely to be a modest increase in vehicular movement at the junction point of the access track with Burnley Road, but it is not considered that this will impact unacceptably on the amenity of residential properties on the opposite side of the main road.

Drainage

The Council's Drainage Officer has highlighted that a minor watercourse runs through part of the site. They advise that the presence of this watercourse does not preclude the development in principle. However, they recommend a condition to ensure provision of an acceptable surface-water drainage plan and ground-levels. I concur with the advice and accordingly a condition is attached.

Ecology

In light of the latest comments from LCC Ecology, there is no longer an objection in principle to the proposal.

The submitted ecology report has identified that there is a low potential for great crested newts in the area but cannot discount their presence beyond reasonable doubt. Accordingly, it recommends a precautionary approach for the period March to October only in relation to any works. A condition is attached which addresses this point.

Likewise, in relation to birds, it identifies a need for precautions to avoid works adversely affecting nesting birds. A suitably worded condition is attached.

In relation to bats, there are no roosts identified upon the site and no lighting is proposed as part of the proposal.

Finally, in relation to Badgers, LCC Ecology is satisfied that the proposed scheme will not result in undue impact for badgers - the greater likelihood is that badgers will cause loss / damage to the crops. The applicant advises that they intend to use temporary netting of beds as an interim measure and will erect fencing around the plots to provide a longer term solution. Having regard to the above, it is considered appropriate that a condition is attached requiring details of intended boundary treatments to be submitted.

Access / Parking

LCC Highways has no objection in principle to the proposal subject to the detailed comments set out in the consultee comments of this report. It is considered that by the use of condition requiring details of the materials to be used for the access, the access and parking arrangements proposed are acceptable.

Whilst it is noted that the application proposes 7 spaces and LCC highways have requested 10 spaces, there are no highway standards in respect of the proposed use and the site is well situated in relation to a well-used public transport corridor. Accordingly, it is not considered that this deficiency in spaces is so significant as to justify refusal. In addition, there is clearly additional un-utilised land immediately adjoining the proposed car park to enable its extension without significant or unacceptable harm in visual amenity terms.

The current access track is a public footpath and has also been used occasionally by vehicles to access a garage colony in the ownership of the objector, together with the Council owned land the subject of this application and farmland beyond the Council owned land for a considerable number of years.

In response to the objector's questioning of ownership/rights to use the access track I would advise that a land title search has revealed the land either side of the track at the junction with Burnley Road (and which is required to accommodate intended passing places) is in the ownership of the Riley Brothers and is not in the ownership of the objector (though the objector may have a prescriptive right of access). The track for its length down to the Council owned land is in the same private ownership. The track as it abuts the Council-owned field within the application site is in Council ownership and beyond that it reverts back to the ownership of the Riley Brothers. The tenanted farm has prescriptive rights to use the full length of the existing track. Appropriate notice has been served on the relevant parties, and the applicant and local authority are currently in discussion with the Riley Brothers in order to seek a legal easement for access along the track and to undertake the track improvements required.

Whilst discussions are on-going this does not preclude the determination of the planning application.

9. SUMMARY REASON FOR APPROVAL

The application seeks permission for uses that are appropriate in principle in the Countryside and, subject to the conditions, the proposed development will not detract to an unacceptable extent from the essentially open and rural character of the area, neighbour amenity, biodiversity, flood risk or highway safety. The proposal has been considered with particular regard to the National Planning Policy Framework (2012), and Policies AVP4 / 1 / 7 / 8 / 9 / 17 / 18 / 19 / 23 / 24 of the Council's adopted Core Strategy DPD (2011).

10. RECOMMENDATION

That the application be approved subject to the conditions set out below.

CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
   Reason: Required by Section 51 of the Planning and Compulsory Purchase 2004 Act.

2. The development shall be carried out in accordance with the "Layout Plan" date stamped 10 Oct 2013 and the "Site Access Plan", unless otherwise required by the condition below or first agreed in writing by the Local Planning Authority.

   Reason: For the avoidance of doubt and to accord with Policies 1 and 24 of the Council's adopted Core Strategy DPD (2011).

3. Prior to commencement of development full details of a scheme for the mitigation of risk from flooding and for the provision for a surface-water drainage plan shall be submitted to the Local Planning Authority. Development shall not commence until the details have been approved in writing by the Local Planning Authority and the development shall be completed in accordance with the approved details.
   Reason: To reduce the danger from flooding, to accord with Policies 1 and 24 of the Council's adopted Core Strategy DPD (2011).

4. Before the development hereby permitted is first commenced full details of existing and proposed ground levels and proposed building slab levels (all relative to ground levels adjoining the site) shall have been submitted to and approved in writing by the Local Planning Authority, notwithstanding any such detail shown on previously submitted plan(s). The development shall only be carried out in conformity with the approved details.
   Reason : To reduce the danger from flooding and to protect the appearance of the locality, to accord with Policies 1 and 24 of the Council's adopted Core Strategy DPD (2011).

5. Prior to commencement of development a scheme of landscaping and boundary treatment shall be submitted to the Local Planning Authority to include details of: retaining walls/boundary walls/fences/gates/hard-surfaced external areas; measures for the protection of trees to be retained; trees to be retained and proposed planting. Any measures for the protection of trees to be retained forming part of the approved scheme shall be complied with for the duration of ground works / construction works associated with the development hereby approved. Any retaining walls/boundary walls/fences/gates/hard-surfaced external areas forming part of the approved scheme shall be completed prior to first occupation of the allotment plots, unless otherwise first agreed in writing by the Local Planning Authority. Any planting forming part of the approved scheme shall be carried out in the following planting season, and any trees or shrubs removed, dying or becoming seriously damaged or diseased within 5 years of planting shall be replaced by trees or shrubs of a similar size or species, unless otherwise first agreed in writing by the Local Planning Authority. No system of external illumination shall be provided without first obtaining approval in writing of the Local Planning Authority.
   Reason: To ensure that the development will be of satisfactory appearance and preserves/enhances biodiversity, in accordance with Policies 1 and 24 of the Council's Core Strategy DPD (November 2011).

6. Prior to first occupation of the allotment plots the parking area and improvements to the access track indicated on the approved drawings shall be constructed, drained and surfaced and these areas shall thereafter be kept freely available for use for the parking and manoeuvring of vehicles.
   Reason: In the interests of highway safety, in accordance with Policies 1 and 24 of the Council's Core Strategy DPD (November 2011).

7. That the findings and recommendations of the submitted 'Extended Phase 1 Habit Survey & Protected Species Survey/Assessment' by Pennine Ecological (Nov 2013) are used to inform the scheme of landscaping and boundary treatment required by condition 5 and adhered to in the implementation of the permission hereby permitted.
   Reason: To protect ecological interests in accordance with Policy 18 of the Council's adopted Core Strategy.