

**APPLICATION REPORT – FUL/347294/21
Planning Committee 6th July 2022**

Registration Date: 28th July 2021
Ward: Saddleworth West & Lees

Application Reference: FUL/347294/21
Type of Application: Full

Proposal: Construction of 40 residential properties with associated access, landscaping and ancillary works

Location: Land adjacent to Maltby Court, Lees

Case Officer: Stephen Gill
Applicant: Mr Mark Sexton
Agent: Mr Garry Griffiths

INTRODUCTION

The application is referred to Planning Committee for determination since it is a Major development proposing the erection of more than 20 dwellings.

RECOMMENDATION

It is recommended that the application is refused for the reasons set out in this report.

THE SITE

The site subject of the application is located within the village of Lees, approximately 2.5 miles east of Oldham Town Centre. The site is an irregular shaped parcel of land that is relatively flat with a gentle slope to the southwest. It measures approximately 1.37 hectares in size and is vacant and overgrown. Access is located to the west of Maltby Court, and the immediate surroundings are characterised by detached red brick housing to the east.

The site is located within the Open Protected Other Land 11 (OPOL 11 Land at Greenacres including Lees Cemetery and Mills recreation ground) designation, a Green Corridor and the Thornley Brook NSN, which is identified as natural/ semi-natural open space.

THE PROPOSAL

The application proposes the erection of 40 residential properties, with associated parking, access works, landscaping and ecology improvements.

RELEVANT PLANNING HISTORY

N/A

RELEVANT PLANNING POLICIES

The 'Development Plan' is the Joint Development Plan Document (Local Plan) which forms part of the Local Development Framework for Oldham. The site is allocated in the Proposals Map associated with this document as [text].

As such, the following policies are relevant to the determination of this application:

Policy 1 - Climate Change and Sustainable Development;
Policy 2 – Communities;
Policy 3 – An Address of Choice;
Policy 5 - Promoting Accessibility and Sustainable Transport;
Policy 9 - Local Environment;
Policy 10 – Affordable Housing;
Policy 11 – Housing;
Policy 18 – Energy;
Policy 19 – Water and Flooding;
Policy 20 – Design;
Policy 22 – Protecting Open Land;
Policy 23 – Open Spaces and Sports; and,
Policy 25 – Developer Contributions

CONSULTATIONS

Highways Engineer:	No objection subject to conditions and the implementation of highway improvement works, which can be secured through a S.278 Agreement.
Environmental Health:	No objection subject to conditions
Spatial Planning:	Concerns raised in relation to the principal of development. Does not support the erosion of OPOL 11 and does not agree with the applicant's assertions the development complies with Policy 23 in respect of the loss of open space as described in the Committee Report in detail below.
Education:	No objection and no request for a contribution
Greater Manchester Police:	No objection subject to condition
Arboricultural Officer:	No objection subject to condition
Greater Manchester Archaeology Advisory Service:	No objection
United Utilities:	No objection subject to conditions
Greater Manchester Ecology Unit:	Awaiting final comments

Transport for Greater
Manchester:

No objection subject to conditions

REPRESENTATIONS

The application has been publicised by means of neighbour notification letters, site notice and press notice. In response, 98 representations have been received raising the following (summarised) issues:

- Equality & Disability Act 2010 is being breached.
- The Energy Statement submitted with the application fails to comply with Local Plan Policy 18
- The plans submitted are inconsistent and incorrect, with various errors
- The value of the existing properties in the immediate vicinity will be adversely impacted by the development.
- The consultation period given by the Council to comment on the planning application is insufficient, and underhanded.
- The applicant has given no consideration to the existing residents on Maltby Court
- The development will adversely impact the rich ecology on the land, including bats, bird, and badgers, and will also result in the loss of a huge number of trees and plantation.
- Impacts to traffic levels in the area, which are already very bad. The transport detail is based on information from 2019, and needs to consider all local roads and junctions that are affected by the development
- The development would result in an increase of 84 cars and this puts an intolerable pressure on the only entrance / exit available from Maltby Court to Rhodes Hill, Lees New Road and Hartshead Street Jct.
- Inadequate Transport Assessment submitted
- A cumulative traffic impact assessment needs to be undertaken to consider the impacts of this development and other recent applications that have been approved.
- The development will put undue pressure on all the existing local amenities, including doctors and dentists in the area
- Lack of footways for pedestrians outside the site, which will increase risks of injury and accidents to adults and children.
- Lack of parking provision in Lees to accommodate the additional residents
- There are plenty of brownfield sites to consider
- Construction vehicles will struggle to access the site, and will cause amenity issues
- Mental health issues as a result of a loss of green space
- There are no bus stops available on Hartshead Street, Rhodes Hill, Lees New Road
- Risk to subsidence and damage to existing properties
- No affordable housing is proposed within the development
- Increase of noise and loss of privacy, and existing residents will be overlooked by 3 storey properties
- The proposed road width is not wide enough for a two-way operation
- The layout is not fit for those with wheelchair requirements

- The development will cause increased potential for flooding on the site, because surface water does have anywhere to go.
- No confirmation on where the waste from the additional properties will go
- A landscape buffer strip has not been proposed between the existing and proposed properties
- The area does not have the infrastructure for all the new homes proposed for the area
- The development has the potential to add to the amount of speeding cars on Rhodes Hill
- The development fails to comply with NPPF paragraph 92 as it does not propose a healthy, inclusive place, with streets that allow pedestrian and cycle connections that are safe and accessible.
- The lack of drop kerb availability for wheelchairs, would force wheelchair users on to carriageway, which is dangerous
- The loss of OPOL is devastating to the local community
- It is refuted that homes will be bought by local people, which will free up housing stock lower down the chain
- The proposed development represent overdevelopment on the land.
- The development lacks sustainability, with poor bus links
- The development is not needed
- The development would result in children not being able to play outside due to the increase in traffic
- The land is not fit for the intended use
- The cumulative loss of both OPOL 11 & 12 is detrimental to local communities
- The development is not identified in the Strategic Housing Availability Assessment as a potential housing site.
- No street lighting appears to be proposed within the site for pedestrian safety and safeguarding
- The proposed development will destroy everything that makes the area attractive
- Hartshead Street is used as a race track daily and more cars will make this worse
- The development will add pollution to the area with additional vehicles
- There is no continuous footpath on Rhodes Hill in either direction from Maltby Court, which is dangerous for pedestrians
- The application approved for 265 homes on Knowles Lane provides adequate levels of housing provision in the area, a further 42 units on Maltby Court is not required
- Damage to the trees within the site and on Maltby Court
- Objection to the proposed layout on the basis of it representing overdevelopment of the site

PLANNING CONSIDERATIONS

Principle

Housing Provision

Oldham's housing requirement, under the nationally-set Local Housing Need standard methodology calculation, was 677 homes per year as at 1 April 2021. The most recent published housing land supply position for Oldham, which covers the period 1 April 2021 – 31 March 2026, identifies a five-year supply of 2,893 homes taking into account projected clearance. This represents 85% of the dwellings required over the five-year period against the standard methodology (5 x 677 = 3,385 dwellings), not including any buffer. Given that the Council cannot therefore demonstrate a five-year housing land supply position against this national requirement, this means that Local Plan Policy 3 is out of date in terms of the distribution of housing.

However, the Places for Everyone Joint Plan (PfE) for nine of the ten Greater Manchester Authorities (including Oldham) was submitted to the Planning Inspectorate for examination in February 2022. PfE proposes a stepped housing requirement for Oldham of 352 homes per year for the first five years of the plan period (2020-2025); 680 homes per year for years 6-10 (2025-2030); and 868 homes per year for years 11-17 (2030-2037). Based on the PfE stepped housing requirement for 2021-2026 (2,088 dwellings), the 2,893 dwelling supply as at 1 April 2021 would represent 139% of the PfE requirement, i.e., not only showing a five-year supply with an appropriate buffer but a significant surplus over a five-year supply (a 39% buffer). Given that PfE has been submitted to the Planning Inspectorate for examination, it is now appropriate to give the document 'limited weight' in the decision-making process, and so this improved housing land supply position under PfE should be given weight and will be considered in the planning balance.

Furthermore, the robustness of the above housing supply has been supported by the fact that several large sites (which are also allocations under PfE) have been granted planning permission since 1 April 2021, thus confirming the deliverability of those sites and their appropriate inclusion in the five-year housing supply.

In addition, housing delivery is increasing in the Borough. The latest Housing Delivery Test result for 2021, which was published 14th January 2022, sets out that Oldham has delivered 91% of its housing need over the past three years. This is a significant improvement on the previous years' results of 80%. As per the latest result, the Council are no longer required to identify a 20% buffer of deliverable housing land on top of the five-year supply, but only the standard 5% buffer.

Based on the above, Oldham's housing land supply position is strengthening, and this is a material consideration in determining how much weight can be afforded to housing provision in the tilted balance.

However, notwithstanding this, the Council's position is that it cannot currently demonstrate a five-year supply of deliverable housing land, when considered against the standard methodology, and paragraph 11d) of the National Planning Policy Framework ("NPPF") states

that, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless:

- i. The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

In assessing whether the most important policies for determining the application are 'out of date', it is for the Local Planning Authority to decide how much weight should be afforded to the 'most important policies' in the determination of the application.

In relation to NPPF paragraph 11d(i), the development is not considered to adversely impact areas or assets of particular importance as set out in footnote 7. Considering NPPF paragraph 11d(ii), a balancing exercise will need to be undertaken to determine whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

It is important to state from the outset that this is a finally balanced case, however, for the reasons set out in this report, it is considered that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, and therefore, the principal of residential development is not considered to be acceptable in this instance.

In coming to this view, the following factors have been considered:

Other Protected Open Land 11 (OPOL 11)

OPOL 11 has been assessed against the Local Green Space ("LGS") criteria set out in the NPPF as part of the work undertaken for the Other Protected Open Land Interim Position Paper ("OPOL IPP"), which was adopted on 20th September 2021. The document states that OPOL 11 overall does meet the LGS criteria and states that:

"The land is of local significance due to its beauty, tranquillity, wildlife, recreational value and historic significance."

The OPOL IPP is a material consideration in the determination of the application. The development proposal would have an impact on OPOL 11 and would essentially erode 1.5% of the OPOL. This would constitute piecemeal development in the OPOL, and the impacts will need to be weighed up in the planning balance.

In establishing how much weight should be afforded to the erosion of the OPOL, Local Plan Policy 22 is relevant, and it must be established how much weight can be afforded to the Policy in this assessment. Given that the Council cannot demonstrate a 5-year housing land supply and Local Plan Policy 22 is a policy that restricts the delivery of housing, it should be considered as being out of date in this respect, however, that does not mean that 'no weight'

should be given to the Policy in the planning balance. It has been established through the Courts in other cases that it is in the decision makers planning judgement as to what weight should be afforded to relevant restrictive policies. However, a logical approach to take would be to give less weight to restrictive policies if the shortfall in the housing land supply is larger and more weight if it is small.

In coming to a view on what weight should be given to Local Plan Policy 22 in the balancing exercise, the strength of the housing land supply position is a factor. The housing land supply position is improving in Oldham and has now increased to 85% of that which would be required against the standard methodology as at 1 April 2021. This would improve to 139% against the stepped PfE requirement. In addition, deliverability has improved and so, given the status of PfE now that it has been submitted for examination, it is appropriate to give this improving housing land supply position at least 'limited weight' in the balancing exercise.

When all the above factors are considered together, it is therefore a reasonable planning judgement to elevate the weight given to Local Plan Policy 22 from 'limited' to 'moderate', whilst also reducing the weight given to the provision for housing from 'significant' to 'moderate'. This is considered justified given the overall improvement in the housing land supply position and deliverability and the status of PfE, and the fact that the OPOL that the Maltby Court site lies within is considered worthy of continued protection under the OPOL IPP and is not proposed as an allocation for development under PfE.

With the above considered, the development can now be assessed against Local Plan Policy 22. Based on the criteria set out in Local Plan Policy 22, the development fails to accord with the Policy. Local Plan Policy 22 does allow for small-scale or ancillary development located close to existing buildings within the OPOL, which does not affect the openness, local distinctiveness or visual amenity of the OPOL, taking into account its cumulative impact. The development is not small scale or ancillary and will in part harm the distinctiveness, by eroding the quality of an OPOL that meets LGS criteria. Overall, the development results in the loss of 1.5 hectares of OPOL (1.5%) and this does not comply with Local Plan Policy 22, and this does not weigh in favour of the development in the planning balance.

Green Corridor

The site is also designated as being within a Green Corridor. Policy 6 is relevant and states that development proposals where appropriate must:

- a. promote and enhance the borough's Green Infrastructure network. This currently consists of nature conservation sites, strategic recreation routes, green corridors and links, canals and open spaces which are defined below; and
- b. make a positive contribution to Green Infrastructure assets and its functions in priority areas identified in the Greater Manchester Green Infrastructure Framework and elsewhere where there are deficiencies in quantity, quality, accessibility and functionality.

Policy 21 is also relevant and states that development proposals must protect and maximise opportunities for Green Infrastructure at or near to the site; and maintain, extend or link existing green corridors and links, including strategic recreational routes, where appropriate.

The application encroaches into the Green Corridor, and Spatial Planning have concluded that by the very nature of the encroachment, it does not protect the Green Corridor. The development will create additional footpaths outside the site boundary to make areas of the remaining Green Corridor and OPOL more accessible and this does create opportunities and benefits. However, these improvements need to be balanced with the fact that the development has the potential to adversely impact the Green Corridor.

In this regard, GMEU are currently reviewing the information submitted and will confirm the level of impact to the Green Corridor, and this will be added to the late list.

Benefits

The development does demonstrate some clear benefits, which need to be considered in the balancing exercise, and these are as follows (in summary):

1. The contribution of housing provision towards the Borough's housing land supply position;
2. The development will create new footpaths, and accessible areas in the immediate surrounding of the site. The scheme will also include provision for a new bridge across Thornley Brook; and
3. A new wildlife habitat will be created on a parcel of land west of the development, which has the potential to deliver 30.65% Biodiversity Net Gain (BNG).

The contribution to the housing land supply position has been discussed above and does not need addressed again here.

In terms of benefit number 2, the applicant is proposing various improvements to the wider site that need to be considered carefully in the planning balance. New footpaths are being created through the site and out to the wider area, which will make areas of OPOL 11 accessible. A new footpath is proposed to the south of the site, which will provide new linkages to a play area, a sports pitch and also Wildsmoor Avenue, which provides a direct link to Lees New Road. In addition, a new footpath link is proposed to the north, which will involve the creation of a bridge over Thornley Brook, which will then allow pedestrian access and linkages to an area of new wildlife habitat, and also the existing allotments and Mils Recreation Area further north, and this is clearly a benefit of the scheme.

In relation to the BNG the applicant concludes that the improvements will deliver a 30.65% net gain. The Biodiversity Impact Assessment Revision A ("BIA") submitted by the applicant concludes that this will be achieved through the mitigation measures proposed across the wider site. This will include the enhancement and expansion of the existing broadleaved woodland and the creation of a wildflower grassland, which will not only increase habitat connectivity across the site but also within the wider landscape. The BIA also concludes that the planting approach will achieve a more diverse woodland structure, providing shrub and understorey layers, as well as a structured woodland edge habitat. In addition, the proposal will result in 100% BNG in hedgerow units, due to the lack of hedgerows that exist within the site. The specifics of the BNG proposals will be discussed in more detail below in the Ecology section of the report.

It should be noted that the Council only received the applicants latest BNG submissions on the 28th June 2022, and GMEU are currently reviewing the proposals to see if they concur with the BNG calculations. The Council are expecting a response from GMEU prior to Planning Committee, and this will be reported as part of a late list.

Viability & S106 Contributions

Given the scale of the proposed development, in normal circumstances, contributions would be sought for affordable housing and open space at the very least in accordance with the relevant Local Plan Policies. The applicant has highlighted the challenges of developing a scheme, whilst also covering the cost of planning contributions. With that considered, the applicant has submitted a Viability Assessment undertaken by Roger Hannah. The Viability Assessment submitted concludes that if planning contributions were sought to a policy compliant level, then this would result in a residual land value loss of £268,000.

The viability assessment submitted by the applicant has been reviewed on the Councils' behalf by the Northern Land Agency ("NLA"). Extensive discussions were undertaken between Roger Hannah and NLA in respect of viability. NLA conclude that the majority of the inputs adopted by Roger Hannah are reasonable and accord with NLA's experience and professional opinion. However, NLA did consider that the following adjustments needed to be made:

- Decrease in the value of the 'D' housetype (Townhouse)
- Decrease base build costs to £127 per sqft
- Decrease contingency to 3%
- Decrease professional fees to 6%
- Decrease sales and marketing to 3%
- Reduce the premium to the landowner within the Benchmark Land Value ("BLV") and adopt a lower BLV of £901,725.

When those above adjustments were made, NLA concluded that the scheme was capable of contributing £65,000 towards S106 contributions. This response was given to the applicant, who did not object to the outcome, and therefore, if the development was considered acceptable, the contribution would be secured through a S106 Agreement to fund open space provision and affordable housing requirements (discussed below).

Open Space

The site is identified as natural/ semi-natural open space (Thornley Brook NSN) within the Open Space Assessment, and the development will result in a loss of open space.

Local Plan Policy 23 states that the development of a site that is currently or was most recently used as open space or for sport or recreation will be permitted provided it can be demonstrated the development brings substantial benefits to the community that would outweigh the harm resulting from the loss of open space, and;

- g. a replacement facility which is at least equivalent in terms of usefulness, attractiveness, quality and accessibility, and where appropriate quantity, to

existing and future users is provided by the developer on another site prior to the development commencing; or

- h. if replacement on another site is neither practicable nor desirable, an agreed contribution is made by the developer to the Council for new provision or the improvement of existing open space or outdoor sport and recreation facilities and its maintenance within an appropriate distance from the site, or within the site; or
- i. a mixture of both g) and h)

The applicant would need to satisfy the loss as per the above through providing either a replacement facility or an agreed contribution to new or existing provision elsewhere or a mixture of the two.

There has been some debate with the applicant on the interpretation of Local Plan Policy 23, specifically in terms of the loss of open space. The applicant asserts that because of the recreational improvements proposed in the wider site as part of the development, this would meet part (e) of Local Plan Policy 23. Part (e) of the policy permits the loss of open space where proposals are for a new outdoor or indoor sport or recreation facility which is of sufficient benefit to the development of sport and recreation, or to the open space function, to outweigh the harm resulting from its loss, and it could not be reasonably located elsewhere, and does not create or worsen an existing deficiency of open space in the area.

It is fully acknowledged that the applicant proposes making some improvements to the wider vicinity of the site, including new footpaths and a bridge over Thornley Brook, which will make the wider site more accessible and useful, as well as delivering a new area for wildlife habitat, which are all welcomed improvements and may encourage new recreation to the area. However, these improvements would only be delivered as part of building a major residential development of 40 dwellings on a site identified as Open Space. Therefore, the proposals are not (in their entirety) for a new outdoor sport and recreation facility, as it includes a proposal for a major residential development. Therefore, in the Councils' view, the development cannot comply with part (e) of Local Plan Policy 23.

Therefore, the development results in the loss of an area identified for natural and semi natural open space. However, it is noted that part (h) of Local Plan Policy 23 states that the loss of an area designated as open space can be mitigated by way of a financial contribution if a replacement on another site is neither practicable nor desirable. The financial contribution aspect will be discussed below.

Separately to the loss of open space, given that the scheme is major residential development, there is also a separate requirement to contribute to the provision for new additional open space through either on site provision or if this is not practicable a financial contribution. In identifying suitable additional provision, it is important to look at any surpluses and deficiencies in the area. The area is identified in the Open Space Study as being sufficient in accessibility to all the required types of open space; however, there are deficiencies in quality and quantity for three typologies of open space – parks and gardens, provision for children and provision for young people. There are deficiencies in the quality of amenity greenspace, outdoor sports

facilities and natural/ semi-natural. Where an area within which a site is located is deficient in at least one of the standards of open space provision (accessibility, quality, and quantity), overall, the area is classed as being deficient in that typology of open space.

Whilst the improvement works on the wider site are welcomed, no information has been supplied by the applicant, which demonstrates how the proposals would address the shortfalls in the typologies identified above. With that considered, Spatial Planning have calculated that a contribution of **£310,473.06** would be required to account for the loss of the open space designation and also contribute to new open space provision.

However, as set out above, due to viability reasons, a contribution of only **£65,000** can be sought, split between affordable housing and open space. Therefore, the contribution that could realistically be sought for the loss of open space, and the provision for new open space to address the shortfalls, is substantially below the amount required just to mitigate the loss and make the development acceptable in Policy terms. Whilst the viability of the scheme has been proven and the constraints are understood, the figure for the loss of open space and the provision for new open space is very low and is not policy compliant. This is not considered to weigh in favour of the development as a benefit in the planning balance and would not meet the tests of Local Plan Policy 23.

Affordable Housing

The development qualifies for affordable housing provision. Changes to the National Planning Policy Framework in July 2021 now require that planning obligations should be applied to developments of 10 dwellings or more on the basis that obligations should only be required for 'major' developments. Currently, Local Plan Policy 10 refers to the trigger for affordable housing as being 15 dwellings, however, in line with the requirements of the NPPF, the trigger point has been reduced to 10 dwellings. This change has been secured through an Interim Planning Position Paper which was agreed at Cabinet in January 2022. In addition, the Interim Position Paper also secured the expected affordable housing tenure split, which is 25% First Homes, 25% other intermediate tenure, 50% social/ affordable rent.

Local Plan Policy 10 states that the current target for affordable housing provision is for 7.5% of the total development sales value to go towards the delivery of affordable housing.

The development does not propose any on site affordable housing provision, and instead proposes a financial contribution in lieu. Due to viability constraints the developer is able to contribute £65,000 to cover all contributions. Notwithstanding the financial constraints of the scheme, this is not considered to be a high contribution, given the scale of the scheme.

The Local Housing Needs Survey 2019 reveals that there is an ongoing need for a range affordable housing in the Borough for all tenure types and given that no on site provision is proposed and the level of contribution is considered low overall, this is not considered to weigh in favour of the development as a benefit in the planning balance.

Layout and Residential Amenity

Given the scale of the development, residential amenity is a key consideration for this scheme, especially for the existing residents of Maltby Court. Separation distances are a key factor in establishing whether residential amenity of existing and future residents would be adversely impacted. It is generally accepted that to achieve good amenity levels in accordance with Local Plan Policy 9, the separation standards to achieve is 21m distance between facing habitable room windows and 10-12m between habitable room windows to non-habitable room windows / blank gable.

In relation to the separation distances these are considered to be acceptable. For example, the distance between Plots 24 – 32 of the development and the existing properties on Maltby Court, specifically no's 22-30 Maltby Court, are in excess of the separation standards set out above. In addition, the separation distance between Plot 24 and 30 Maltby Court is approximately 24m, and the distance between Plot 30 and 22 Maltby Court is in excess of 25m, which are entirely acceptable. The separation distances within the development are also considered acceptable, for example, the separation distance between Plots 10 and 21 is approximately 21m (private garden side), which is acceptable, and the distance between Plots 13 & 15 is above 21m (private garden side). Overall, the separation distances within the development would be considered as acceptable.

The submitted cross sections plan Rev C, specifically sections D-D and E-E, further demonstrate the relationship between the proposed development and the existing properties on Maltby Court. The sections demonstrate that the properties on Maltby Court would sit slightly higher than Plots 22 and 30 of the development, and given the separation distances, it is reasonable to conclude that impacts to privacy and amenity would be very limited. In addition, the applicant has sited house types A and B in this location, which are 3 bed semi-detached properties, these are the smallest house types in the development and are of a similar scale to those on Maltby Court. The larger house types are situated within the site, further away from existing residents, and the three storey properties (house type C) are situated on the southern and northern boundaries, and face only the gables of other properties in the development. The approach to the layout helps to maintain privacy and avoid the potential for overlooking, and this complies with Local Plan Policy 9.

Considering occupier amenity within the proposed dwellings, all the relevant rooms, including bathrooms and bedrooms, will meet the criteria set out in the National Described Space Standards (NDSS). This will give future residents of the proposed development sufficient space to achieve a good standard of living, which is a positive of the scheme and is supported.

Given the surroundings, which comprise mostly of residential properties, the construction phase of the development does have the potential to cause a disturbance, if this is not appropriately managed. Following consultation with Environmental Health, if the development was considered to be acceptable, a condition could be placed on any planning permission to ensure the submission of a Construction Management Plan.

Overall, it is considered that subject to condition, the development would not have an unacceptable impact on existing and future residents, and on that basis, the development complies with Local Plan Policy 9 and NPPF paragraph 130.

Design and Appearance

In relation to appearance, the scheme incorporates seven different house types as follows:

- House Type A = two storey 3 bed semi detached
- House Type A = two storey 3 bed semi detached
- House Type C = three storey 4 bed semi detached
- House Type D = two storey 4 bed detached
- House Type E = two storey 4 bed detached
- House Type F = two storey 4 bed detached
- House Type G = two storey 4 bed detached

The house types vary in scale and appearance, which does create some visual interest in the development. The proposed house types range from 2 to 3 storeys, in both a detached and semi-detached format, with a mix of roof designs comprising either pitched, gable or hipped. House types E, F and G have integral garages attached, and some of the house type designs have features such as bay windows. The bigger house types do have a large massing; however, this is not considered to be out of character with the area. The dwellings overall have a traditional appearance in terms of scale, massing and appearance, and this would not be out of character with the immediate setting.

In terms of materials, the applicant has not specified a materials schedule as part of the application. However, they have indicated that consideration will be given to the external materials used in the wider area. In terms of the properties that surround the site, these appear to incorporate a basic traditional palette of materials that include brick external walls and concrete tiled roofs. A mix of timber and uPVC window frames are also common characteristics within the area. Given the lack of specific detail on materials, a condition could be applied to ensure that the appearance is acceptable.

In terms of the soft landscape proposals, these have been reviewed by the Arboricultural Officer and are considered to be acceptable. The development would result in the loss of four individual trees and a further unspecified number of trees from within several groups, however given the scope of the re-planting proposed, this is considered to outweigh the loss, and the details set out in the Arboricultural Method Statement and Tree Protection Plan could be secured by way of condition.

The hard landscaping is standard for the type and scale of development proposed. The access road and footpath would be constructed in a bitmac finish, paving slabs would be incorporated in the rear garden areas and a mixture of both 1.5m and 2.1m close boarded timber fencing would be used to divide the properties appropriately. The frontage of the properties across the development would be left absent of any fencing in an open plan arrangement which is considered acceptable.

Overall, the design and appearance of the development is considered acceptable as would the materials and tenure types proposed. Therefore, it is concluded that the development meets the tests of Local Plan Policy 20 and NPPF Section 12.

Highways

The Highways Engineer has reviewed the details submitted and following extensive discussions with the applicant, no objections are raised to the application on highways grounds.

The Highways Engineer concludes that the site is located close within an established residential area with good access to a wide range of amenities and public transport links. In addition, it is also concluded that there will not be any adverse or significant increase in traffic generation or any additional demand for on street parking to the detriment of highway safety.

Several highway improvement works are proposed within the vicinity of the development, including the following:

1. Visibility splays are proposed at the site entrance between Maltby Court and Rhodes Hill.
2. A pedestrian crossing is proposed over Maltby Court with tactile paving and dropped kerbs.
3. The grass verges on Maltby Court near the entrance to the site would be changed to tarmac to allow for a continuous footpath in and out of the site.
4. The kerb Radii fronting 30 Maltby Court, would be increased, with a full kerb.

The Highways Engineer has worked closely with the applicant to agree the above improvement proposals. They are intended to improve pedestrian connectivity through the site. These works could be secured through a s278 Agreement, which the applicant is aware of. Therefore, subject to the delivery of the improvement works, no objections would be raised to the development on highways grounds. Conditions are recommended in relation to the implementation of parking, a highway improvement scheme and a construction management plan.

Therefore, subject to the implementation of a highway improvement scheme as described above and suitably worded planning conditions, the development is considered acceptable on highways grounds and complies with Local Plan Policies 5 & 9 and NPPF section 9.

Visual Impact

The applicant has submitted a Landscape and Visual Impact briefing note with the application which considers the viewpoints that surround the site and how the development could impact these.

In terms of any change within the site, the briefing note concludes that the likely overall, magnitude of change within the site can be considered as low – medium adverse, and the likely overall, magnitude of change to the surrounding area is considered to be low adverse.

To mitigate for any impacts, the applicant is proposing a full package of landscaping proposals. The proposals include new planting, which would include a high percentage of indigenous trees and shrubs. Where native shrubs are not appropriate the emphasis would be on ornamental shrub species which are attractive to wildlife, particularly insects. A mixed species native hedgerow or native shrub buffer would also wrap around the site boundary and would

include substantial native tree planting. The landscaping proposals have been reviewed by both the Arboricultural Officer and GMEU and no objections have been raised to the proposals.

The briefing note then describes what the residual impacts would be when the mitigation is implemented. The briefing note states that the proposed landscaping will soften the site boundaries, to some extent and plot landscaping would help to break up the massing of the development. However, notwithstanding this, the briefing note still concludes that the development will have some visual impact, and this is characterised as being low-medium adverse.

There is no reasonable basis to disagree with the findings of the report submitted. Whilst landscape and visual impacts would not form the basis of a reason for refusal in itself, the fact that the development does have a low-medium impact even with mitigation in place, this is not considered to weigh in favour of the development in the planning balance.

Ecology

To consider ecology, the applicant has submitted an Extended Phase I Habitat Survey undertaken by Rachel Hacking Ecology. The survey recommends that if the application was acceptable then any vegetation clearance within the site should be carried out outside nesting bird season. If clearance work was required within nesting season, then a nesting bird survey would be required prior to work commencing. In addition, it is also recommended that the tree belts adjacent to the northern and southern boundaries are protected through a sensitive lighting scheme, to avoid harming potential bat foraging. Both recommendations could be secured by way of a suitably worded planning condition.

The Phase I also identified Rhododendron and Himalayan Balsam, which are invasive species. This would require a management plan to ensure their successful removal from the site. GMEU have not raised any objections to the outcome of the Phase I, and therefore the recommendations are considered reasonable and acceptable.

During the application process, a single hole badger sett was discovered in an area identified for offsite mitigation. The applicant submitted an Ecological Addendum to consider this, as badgers and their setts are protected by law. The sett consists of a single hole and appeared to be inactive at the time of the survey, however evidence of recent activity was present. The Ecological Addendum concludes that if the development was to go ahead then reasonable avoidance measures must be implemented, to avoid any potential adverse impacts on the sett and badgers. Reasonable avoidance measures should include a toolbox talk, which provides training on badgers and general animal welfare. In addition, night-time work should also be avoided, and any trenches or excavations left open overnight should be covered or have a means of escape. GMEU are currently reviewing this information, and the Council are expecting a response prior to Planning Committee. Any feedback from GMEU will be added to the late list.

As stated above, the applicant has also submitted a Biodiversity Impact Assessment, which concludes that the development will deliver 30.65% BNG. This would be secured through a mixture of on and off-site enhancements. The BIA concludes that some existing habitats will be retained and enhanced. This includes the broad-leaved woodland (off site), in which

invasive species (Himalayan Balsam and Rhododendron) will be removed. The BIA states that this will encourage and enable growth of the woodland, which will improve the existing habitat unit score. An area of semi-improved grassland is to be enhanced in the north west area (off site), which will be seeded with wildflower grassland mix to add to the current species.

The BIA also concludes that the grass land on site will be improved as part of the landscaping scheme, 26 new street trees will be planted on site, along with shrub planting, and a considerable number of hedgerows will also be planted. An area of new wildlife habitat is proposed off site, with the aim being to extend the existing broadleaved woodland, which the BIA states will increase habitat connectivity to the wider area, linking areas of woodland to the north east, north and south-west. This would be achieved by planting areas of native trees and shrubs and areas of native shrub. The total area to be improved is approximately 1.76ha.

As stated above, we are still awaiting comments from GMEU on whether they concur with calculations presented in the applicants BIA in relation to BNG, and this is critical to the applicants' case. However, the biodiversity improvements proposed, along with the proposals for new footpaths outside the site to the north and south, which will make the wider area more accessible, are clearly benefits of the scheme and do weigh in favour of the development.

Energy

The applicant has submitted an Energy Statement with the application undertaken by Lancaster Maloney (Rev.A November 2021). Policy 18 is relevant in relation to energy and requires a 15% reduction in CO₂ emissions as set out in Part L 2013 Building Regulations. The Energy Statement concludes that with thermally enhanced external envelope and efficiency enhanced heating, hot water, ventilation and lighting systems, this will result in a saving of 15.14%, against Part L 2013 Building Regulations, which meets the Policy requirement. The Energy Statement has been reviewed and no objections are raised to the conclusions.

Based on the above, the development is considered to comply with Local Plan Policy 18 subject to condition.

Drainage

Local Plan Policy 19 states that the council will ensure development does not result in unacceptable flood risk or drainage problems by directing development away from areas at risk of flooding.

According to the Environment Agency Flood Maps, the whole site is in Flood Zone 1 (having the lowest risk of flooding). The Council expects that proposals for all new development will use Sustainable Urban Drainage Systems in accordance with the Surface Water Drainage Hierarchy.

United Utilities and the Lead Local Flood Authority have both been consulted on the application, and whilst neither have an objection to the development in principle (subject to condition), no drainage details have been submitted with the application. Therefore, the imposition of a suitably worded pre-commencement condition would be required to ensure

a drainage scheme is appropriately designed and implemented. With the imposition of such a condition the development would comply with NPPF Section 14 and Local Plan Policy 19.

Ground Conditions

NPPF paragraphs 178 and 179 and Local Plan Policies 7, 8 and 9 are relevant, which seek to ensure that a site is suitable for its use, taking account of ground conditions, including from natural hazards or former activities such as mining, pollution arising from previous uses and any proposals for mitigation.

The Environmental Health team has advised that having reviewed the application and the site history, there are no objections to the proposal subject to conditions requiring a landfill gas investigation and contaminated land assessment is submitted before development commences on site.

CONCLUSION

Balancing Exercise

In weighing up the assessment of the application, regard must be given to NPPF paragraph 11 (as referenced earlier in this report) and the Council's lack of a 5-year housing land supply. As a consequence, the '*tilted balance*' and presumption in favour of sustainable development set out in NPPF paragraph 11 is triggered. Given that NPPF paragraph 11 is triggered, the relevant matters now need to be balanced together to determine whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits in accordance with NPPF Paragraph 11d (ii).

There are several material planning considerations which must be weighed up in the assessment, and as set out above, this is a very finely balanced case. The following matters are considered in the planning balance:

The matters in favour of the application include:

1. The provision of housing, and the type of housing proposed which will assist in meeting the Council's housing land supply, and also address an ongoing tenure need;
2. The development will create new footpaths, and accessible areas in the immediate surrounding of the site. The scheme will also include provision for a new bridge across Thornley Brook; and
3. A new wildlife habitat will be created on a parcel of land west of the development, which has the potential to demonstrate 30.65% Biodiversity Net Gain (BNG).

Overall, these benefits are given 'moderate weight' in favour of the application. The housing land supply position and deliverability is continually improving, and the shortfall is closing. In addition, now that PfE has been submitted to the Planning Inspectorate for examination, this is now given 'limited weight'. With all those matters considered, there is now a justification for reducing the weight given to housing provision. Therefore, the provision for housing is given 'moderate weight' in favour of the development.

In addition, whilst the improvements to the accessibility of wider area are welcomed, they are not considered to address an identified shortfall in a specific open space or recreational typology. The ecological and BNG proposals are welcomed and are no doubt improvements. However, at this stage, given the late submission of the final BNG information, we do not have any confirmation from GMEU that they concur with the BNG calculations submitted, which is critical to the applicant's case. Notwithstanding this, it is clear that both these elements are benefits of the scheme.

The matters not in favour of the application:

1. The development would erode 1.5% of OPOL 11 and would result in the piecemeal development of the OPOL.
2. The development would result in the loss of part of an area identified as natural and semi natural Open Space (Thornley NSN).
3. Whilst the financial constraints of the site are understood and accepted, the level of contributions available at £65,000 for replacement open space provision, new open space provision and affordable housing provision is considered very low and not Policy compliant.
4. The low-medium adverse landscape and visual impacts of the development.

As stated above, there is now greater weight being applied to Local Plan Policy 22, given the improvement in the housing land supply position. OPOL 11 meets the LGS criteria in the NPPF and is considered to have local significance due to its beauty, tranquility, wildlife, recreational value and historic significance. Whilst the application only relates to a small portion of the OPOL, the incremental erosion of this, will adversely impact the overall significance of the designation.

In addition, the development will result in the loss of part of an area identified as natural and semi natural open space. Whilst the improvements to the wider site are welcomed, these will only be delivered as part of developing a site identified as Open Space. In terms of the requirement for new provision, the applicant has failed to demonstrate how the proposed improvements will address the open space shortfalls identified in the Borough, and whilst the applicant is proposing a £65,000 contribution, this falls far short of policy compliant levels in terms of a contribution, which has been calculated at £310,473.06. Therefore, the development fails to comply with Local Plan Policy 23 and NPPF section 8.

Finally, the landscape and visual impacts of the development are considered to be low-medium adverse following mitigation, as identified by the applicant's own consultant. Whilst this is not considered to be a reasonable basis to refuse the application on its own, it clearly does not weigh in favour of the development in the planning balance.

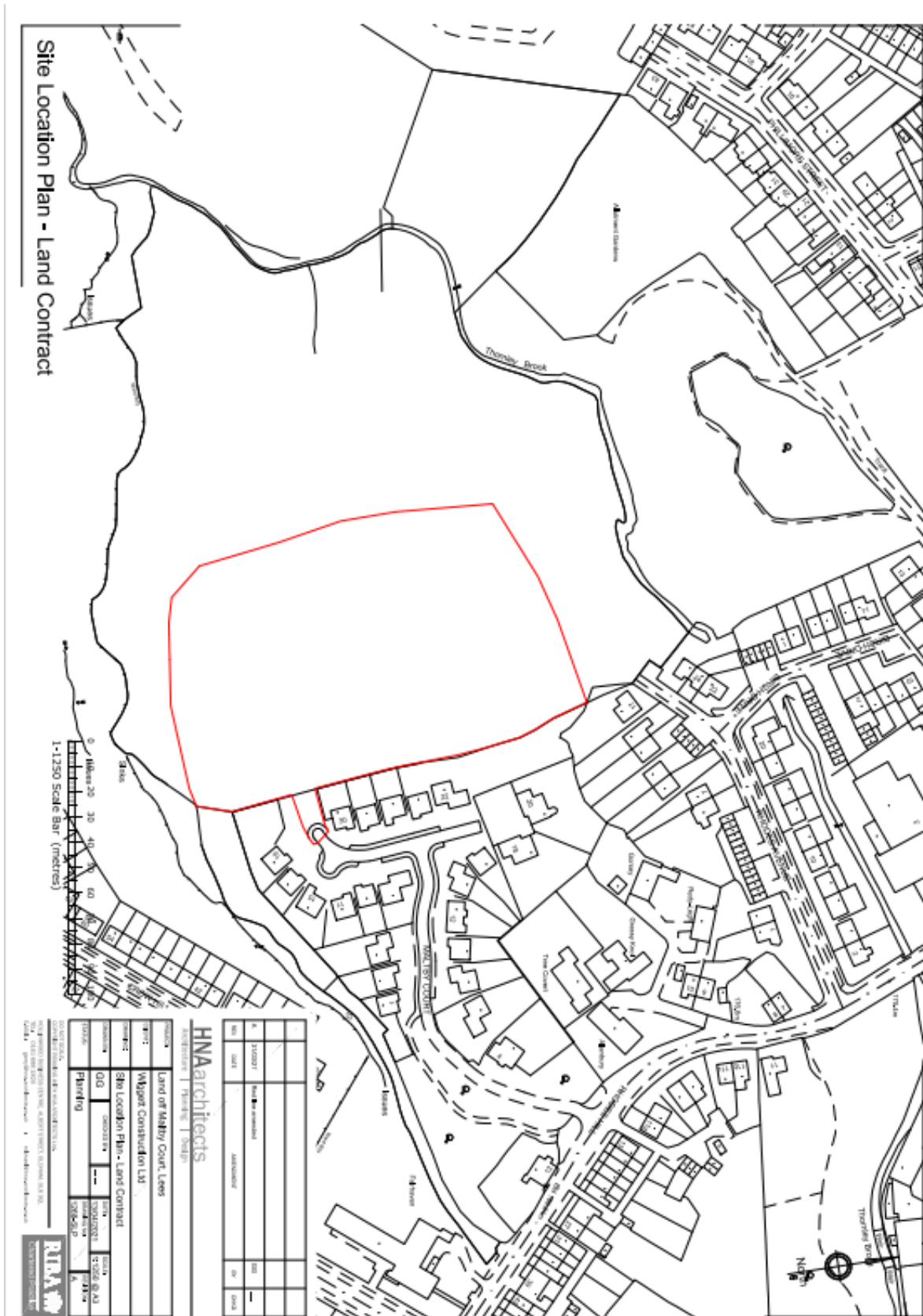
Overall, when taking all those matters together as a whole, these are given 'substantial weight' in the planning balance for the reasons given above and throughout the report. Therefore, it is considered that the adverse impacts of granting planning permission in this instance would significantly and demonstrably outweigh the benefits and therefore the presumption in favour of sustainable development is not triggered and for the reasons set out in the report, it is recommended that planning permission should be refused.

RECOMMENDATION

Refuse planning permission for the following reason:

1. The development would result in the incremental erosion of an area designated as being part of Open Protected Other Land 11, which is identified in the Open Protected Open Land Interim Position Paper overall as having local significance due its beauty, tranquillity, wildlife, recreational value and historic significance. The benefits of the scheme are not considered to significantly and demonstrably outweigh the harm, and it is considered that the development fails to comply with Oldham Local Plan Policy 22.

SITE LOCATION PLAN (NOT TO SCALE):



NO.	DATE	REVISION	BY	CHECK
1	11/20/22	Final Approved	MM	MM
2	04/27	Approved	MM	MM

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PROJECT	Land of Moby Court, Lees
CLIENT	Mogart Construction Ltd
DATE	Site Location Plan - Land Contract
SCALE	AS SHOWN
DATE	11/20/22
BY	MM
CHECK	MM

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