

## **DEVELOPMENT CONTROL COMMITTEE**

TUESDAY, 7TH MARCH 2017, 6.30 PM

COUNCIL CHAMBER, TOWN HALL, CHORLEY

I am now able to enclose, for consideration at the above meeting of the Development Control Committee, the following reports that were unavailable when the agenda was published.

<b>Agenda No</b>	<b>Item</b>	
<b>A</b>	<b>16/00926/FULMAJ - BRINSCALL MILL ROAD, WHEELTON</b>	(Pages 27 - 44)
<b>B</b>	<b>16/00633/OUTMAJ - GLEADHILL HOUSE STUD, GLEADHILL HOUSE, DAWBERS LANE, EUXTON</b>	(Pages 45 - 60)
<b>E</b>	<b>16/00510/OUTMAJ - CHARTER LANE, CHARNOCK RICHARD</b>	(Pages 61 - 78)
<b>F</b>	<b>17/00038/FULMAJ - CHORLEY RUGBY UNION CLUB, CHANCERY ROAD, ASTLEY VILLAGE, CHORLEY, PR7 1XP</b>	(Pages 79 - 82)
<b>4</b>	<b>APPEALS AND OTHER DECISIONS</b>	(Pages 83 - 104)
	Report of the Director (Customer and Digital) enclosed.	

GARY HALL  
CHIEF EXECUTIVE

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**APPLICATION REPORT – 16/00926/FULMAJ**

**Validation Date: 31 October 2016**

**Ward: Pennine**

**Type of Application: Major Full Planning**

**Proposal: Rehabilitation centre, comprising pool complex, gym and therapy building, seventeen accommodation cabins, car park, access road, running (sprint) track and associated plant.**

**Location: Land 100M East Of Wheelton House Brinscall Mill Road Wheelton**

**Case Officer: Mrs Helen Lowe**

**Applicant: Ms Ann Nikolakis**

**Agent: John Welbank**

**Consultation expiry: 1 December 2016**

**Decision due by: 10 February 2017**

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**Members will recall that determination of this application was deferred at the previous DC Committee to allow a site visit to take place. The applicant has provided additional information to support the application which is summarised below. The original report, and addendum to that report then follow.**

**ADDITIONAL INFORMATION PROVIDED BY THE APPLICANT**

The applicant has provided a very detailed response to the committee report which is summarised below:

*Planning policy:* The applicant comments that the main issue seems to be prioritisation of Local Plan policy BNE2 above the Core strategy plus the Rural Development SPD. Within the Core Strategy, 'Policy 1: Locating Growth' there is the allowance for exceptional circumstances.

The applicant notes that the committee report accepts that there are no sequentially preferable sites and that there is unlikely to be any impact on existing town centre facilities. On this basis the applicant suggests that the requirements of the Rural Development SPD have been met.

The applicant considers that an urban or even urban fringe environment will simply not provide the functional requirements for the business.

*Landscape Impact Assessment :* The applicant states that the simple reason that an assessment was not undertaken is because it wasn't requested following the pre application enquiry and they were only asked for some landscape artists impressions which were provided. They state that the first time they were aware about this when they read the committee report.

*Ecology and trees:* The applicant still rejects the reference to 'sites of high ecological value' and contends that there is no detail on what was being suggested. They feel that generally poor ecological advice has been provided that is not backed up with any evidence. With regard to trees, they are happy to increase tree planting and work with the tree officer to come up with an

acceptable mitigation strategy and suggest that this could include some additional habitat creation but without knowing what this needs to be its difficult for them to assess.

Around 140 'low value' trees would be removed. They applicant has confirmed that they would be happy to plant an additional 500 elsewhere. Suggested species could include oak, alder and birch. They have confirmed that they would be happy for a condition to be applied to produce a tree mitigation plan that was acceptable to the tree officer.

*Highways:* The applicant considers that there are lots of highway issues that they don't agree with including policy, local roads etc. Again they would be happy to relook at design providing they are reasonable and only involved the applicant's land – suggestions are made in the response and the applicant considers that this could be subject to an agreeable condition.

The applicant contends that comments made by the Highways Department ignore national planning guidance with regard to rural developments

The supplied Transport Statement and Green Travel Plan included detailed sections on pedestrian, cycle, public transport options and highway accident. It provided estimates for access and trip generation and a Transport Management Plan identifying percentage of patients and staff using the various forms of transport to and from the site along with timings. The Green Travel Plan detailed how the site would provide its own minibus service for both staff and patients, how this service would be encouraged and marketed and the monitoring processes that would be put in place so that the service can be improved over time. On this basis the applicant suggests that the Transport Statement should be more than sufficient information for an assessment to be made.

## **RESPONSE**

The following consultees have responded to the additional information that has been provided:

**LCC Highways:** The highway authority uses thresholds based on size or scale of land use to determine whether or not a development proposal should be accompanied by a Transport Assessment or a Transport Statement. As a guide, for the proposed use class, any development in excess of 1500M2 must be accompanied by a Transport Assessment (TA) and a Travel Plan. The scale of the current proposal is 4203m2 which is far in excess of the guide threshold, yet in the further information provided; the applicant seems insistent that, the Transport Statement (TS) which accompanied the application submission was sufficient and should be accepted. However, as explained in the highways response, the TS is a simplified version of the required TA which would have provided a more comprehensive and systematic process setting out the transport issues of the development. If the TA had been submitted, it would have helped identify the measures to be taken to deal with the anticipated transport impacts of the development and also measures to be taken to improve accessibility of the site by walking, cycling and use of public transport. By failing to submit a TA, the transport issues have not been fully appraised and suitable mitigation measures have not been identified.

As explained, the applicant appears not to have given consideration to whether or not a safe and suitable access to the site can be achieved for all people as the NPPF requires of large developments as proposed. In the further information submitted, the applicant appears to assume that the site would always be accessed via Chapel Lane and as such, did not see the need for an assessment to be made of Tithebarn Lane, which seems inappropriate.

The applicant did not carry out any assessment of the junction of the A674 Blackburn New Road and Chapel Lane to see how the proposed development would impact the junction.

To reiterate, the NPPF requires developments that generate significant movements to be located where there would be little need to travel and where use of sustainable transport modes can be maximised, including public transport use. As pointed out, the site is located in an area of low accessibility. The only two roads in the area have no footways and no improvements are proposed to the public rights of way and the only proposed cycle route in the area for improved accessibility of the site. It is noted that the applicant proposes improvements to the access for

better visibility and two passing places along the site access. While these measures are welcomed, they are not considered adequate for improved accessibility of the site.

The applicant has therefore not sufficiently exploited opportunities for use of sustainable transport modes and that the cumulative highway impacts have not been appropriately quantified and assessed. It is therefore recommended that approval of the application be resisted.

**GMEU** have commented that they do not have anything further to add to their previous comments as no new information has been provided. As previously stated the mitigation put forward for the impact of the proposal is limited and overall there appears to be no compensation for the loss of the habitats present.

#### **OTHER MATTERS**

The HSE have commented that it has been identified that the swimming pool and gym are of vulnerable construction. Part of these structures fall within the vulnerable building safeguarding zone. The HSE are, therefore, reviewing the justification of the safeguarding zones and will provide a full response in due course.

Comments are awaited from the Council's Parks and Open Spaces Officer (a qualified Landscape architect) and will be reported on the addendum.

#### **Conclusion**

On the basis of the above, it is still considered that the applicant has failed to demonstrate that the proposal would not give rise to any undue harm to highway safety or give rise to harmful ecological impacts. It is the responsibility of the applicant to provide supporting information and appropriate mitigative measures, not to rely upon these to be provided by the consultees as they appear to suggest in the additional information that has been submitted since the last Committee meeting. In summary, it is still considered that the proposal is not appropriate in an area of other open countryside. No further information to demonstrate the need for the facility has been provided, such as information from Salford University, that it is stated the applicant is working with. The recommended reasons for refusal, therefore, remain the same as previously suggested.

#### **ORIGINAL REPORT**

##### **RECOMMENDATION**

1. The application is recommended for refusal.

##### **SITE DESCRIPTION**

2. The application site consists of a mixture of rough grassland and woodland. The site was formally used by the MOD historically and two open reservoirs are still present on the site. Brinscall Brook runs through the site.
3. Land levels vary across the site, with the western and central most parts of the site being flatter and the site generally rising towards the northern end.

##### **DESCRIPTION OF PROPOSED DEVELOPMENT**

4. The application proposes the erection a rehabilitation centre to provide care for people in the following clinical areas:
  - Physical rehabilitation following acute trauma
  - Sports injury
  - Dementia treatment
  - Alzheimer treatment
5. The facilities on site would comprise:
  - A two storey gym/therapy building
  - A two storey pool building
  - Parking area with 31 parking spaces (plus four disabled spaces)
  - Seventeen single storey log cabins (with associated car parking)

- A running track, measuring approximately 9m by 74m
- An access road off Brinscall Mill Road,
- Two treatment plant buildings.

## CONSTRAINTS

Parish

SSSI Impact Risk Zones

Ward

## RELEVANT HISTORY OF THE SITE

**Ref: 14/00097/FULMAJ Decision: WDN Decision Date: 19 February 2014**

**Description: Erection of a sport and military rehabilitation centre including the modification of the two existing water tanks to provide a 50m swimming pool, the creation of an athletics track, on-site accommodation and associated parking areas.**

**Ref: 15/00838/SCE Decision: PESCEZ Decision Date: 9 September 2015**

**Description: Request for Screening Opinion Pursuant to Regulation 5 of The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 for a rehabilitation centre incorporating therapy building and gym, swimming pool and facilities block, 17 Log Cabins, Running Track and associated parking**

## REPRESENTATIONS

- Thirteen letters of objection have been received. They make the following comments:
  - The development is unsuitable for the area;
  - The access is already a cause for concern, without worsening the problems by allowing the development of a 'hotel' with leisure facilities on site;
  - Building this massive development would cause a tremendous strain on the already weak infrastructure of the area;
  - Details within the proposal are misleading, e.g. there is no bus service;
  - The road is single track and dangerous;
  - Many people come to the area of Heapey and White Coppice to walk on the peaceful and quiet paths this development would certainly worsen the area in that respect.
  - Road junctions are completely unsuitable for the volume of traffic that uses the road at the present time, without the introduction of more.
  - The development would cause the destruction of wildlife;
  - This development will significantly increase the traffic flow that uses Chapel Lane, Tithe Barn Lane and Brinscall Mill Road;
  - The "green" transport plan put forward by the applicant grossly understates the increase traffic flow that this development will attract;
  - If open to the public the traffic it would generate will be considerable and the location does not facilitate good access.
  - the ensuing development will change the character of Heapey and White Coppice forever. It will damage the natural habitat with unsuitable buildings, traffic, noise and light pollution.
  - Local residents have not been consulted (by the applicant);
  - The impact on the Grade II listed buildings would be at very least moderate;
  - Brinscall Mill Road is in a very poor state of repair;
  - There is no basic infrastructure to support any sizeable business, other than farming and country pursuits. There is not even a Broadband facility here.
  - No details of proposed screening have been provided;
  - Can long term viability be guaranteed?
  - The number of heavy vehicles required to develop the site;
  - The principle of development does not comply with the development plan;
  - It will lead to an unsustainable development;
  - It is unclear what the intended access arrangements are;

- the site boundaries do not go right up to Brinscall Mill Road, which is unadopted. Primrose Holdings are currently in dialogue with the land registry regarding registration of this land, which we consider falls within our ownership. Any plans to widen/improve or add passing places would therefore fall on land out of the applicants ownership;
  - A wider, more comprehensive Landscape and Visual Impact Assessment should be needed for a development of this size;
  - The sequential test has not been carried out in enough detail;
  - The location of the proposed rehabilitation centre is contrary to local plan Policy BNE2 which limits development in the countryside. Development can only therefore be granted where other material considerations outweigh this. However, there are also other adverse effects to add into the balance;
  - There is no evidence of need for this facility;
  - The land did flood in December 2015;
7. Five letters of support have been received. They make the following comments:
- This is a much needed centre for ex local service personnel and other people who have medical conditions who need the right level of care;
  - This means they can be treated in the community rather than having to travel hundreds of miles;
  - The current site is an eyesore and very rundown;
  - There is very little support at present for Alzheimer's sufferers in the area;
  - The increase in traffic will be minimal, Chapel Lane has plenty of space for the type and volume of traffic on this route.
  - The development will have a positive effect on local employment prospects;
  - The environment it will be set in will make a great learning environment;

## CONSULTATIONS

**Wheulton Parish Council** No concerns about the building, except for ensuring screening is included and eco-friendly methods to help the buildings blend in, such as sedum roofs. Express major concerns about the access to the development. It would raise major disruption for local residents and there are already traffic issues with traffic on Chapel Lane.

**CPRE (Lancashire Branch)** No comments received

**Lancashire Highway Services** No comments received

**Greater Manchester Ecology Unit** Based on the information within the ecological appraisal, the site support habitats of high ecological value, mainly semi-natural broadleaved woodland and acid grassland both of which are identified as Biodiversity Habitats. The assessment of the impacts on these habitats is lacking. The appraisal states that the woodland "should be retained and protected under the proposal" but this has not been followed through in the design of the scheme. It is therefore recommended that the application be refused in its current form.

Overall the proposals will involve the loss of a significant number of trees together with the loss of woodland and grassland habitats. There is a small amount of tree planting shown on the tree removal plans but no information appears to have been included on the species to be planted. Overall there appears to be no compensation for the loss the woodland and grassland habitats.

Following receipt of further comments from the agent for the application, the GMEU have advised that their comments remain unchanged.

**Planning Policy** The proposal is located outside areas where growth and investment should be concentrated, and is not small in scale, and is therefore contrary to Policy 1 of the Core Strategy. The proposal represents inappropriate development which will harm the open and rural character of the location. The proposal is contrary to Local Plan Policy BNE10: Trees. The impact assessment has demonstrated that there are no equivalent facilities within or around Chorley, and that there is unlikely to be an impact on the main town centre uses if the

development were to come forward. It is not considered that the proposal is in alignment with the visions identified within the West Pennine Moors Management Plan (2010-2020).

**Conservation Officer** No comments received

**Lead Local Flood Authority** No comments received

**Chorley Council Tree Officer** The tree stock within the planned development area is comprised of a mixture of native species. Trees predominately self-set examples of pioneer species of birch, willow, alder, oak.

Due to the nature of the proposed development it is likely that a number of trees will require removal. Trees which are likely to require removal are not of highly significant individual or collective value. Low quality trees of very limited merit, a number with defects.

Arboricultural Impact Assessment recommendations indicate minimal tree removal for the planned development. Self-set trees of low quality to be removed.

Recommend removal of minimal tree numbers. Planned replanting programme put in place.

**United Utilities** No objection, subject to the imposition of a number of recommended conditions.

**Ramblers' Association (Chorley Branch)** PROW Wheelton 3 lies on the lane to the west of the proposed development. The proposed Rehabilitation Centre would use this lane as it's access route for vehicular traffic. It is essential that the safety of walkers along PROW Wheelton 3 is not compromised by this development.

PROW Wheelton 3 and PROW Heapey 17 both run along the edge of the proposed site. These PROWs currently enjoy a pleasant rural environment and we do not want that rural environment to be spoilt.

**Lancashire County Council Public Rights Of Way** No comments received.

**Environment Agency** No objection in principal to the proposed development subject to the inclusion of conditions

**HSE** The site is within an explosive Safeguarding Zone. Further comments are awaited.

## **PLANNING CONSIDERATIONS**

### ***Principal of the development***

#### *Open Countryside*

8. The application site is located within an area of open countryside as identified in the Local Plan. Policy BNE2 of the Local Plan sets out the types of development that can be carried out within these areas. Development will be permitted provided that:
  - a) It is needed for the purposes of agriculture or forestry or other uses appropriate to a rural area;
  - b) It involves the rehabilitation and re-use of existing rural buildings where their form, bulk and general design are appropriate to the character of the surrounding countryside.
9. Due to the scale and nature of the proposed development, including all of the various elements involved, the scheme does not fall to be considered as uses appropriate to a rural area and as such the proposals are contrary to policy BNE2.
10. There is an existing reservoir on the site with its associated hard engineering elements, however it is considered that the erection of two large new buildings, the creation of a significant area of hardstanding (to be used for a variety of purposes), erection of log

cabins and formation of a running track would have a significantly greater impact on the openness and character of this rural area than the current reservoir does.

11. The Council has published a Rural Development Supplementary Planning Document which sets out the Council's approach to development in rural areas. Whilst the SPD does acknowledge that rural recreational development, which involves the restoration of damaged land, (which it may be possible to demonstrate in respect of part of this site) should be considered prior to the development of new facilities, this is only applicable where the scheme would not require new buildings in the countryside which would not be applicable in this case.
12. The SPD advises that applicants should consider the scale and intensity of use of a proposed scheme, ensuring that activities which attract relatively large numbers of people are readily accessible by public transport, and located within or as close to existing settlements as possible. The accessibility of the site is discussed further below.
13. Although elements of the proposals could be considered to be outdoor sport and recreation which can be considered as appropriate development within rural areas, it is not considered that the majority of the development proposed falls within this definition, and the scale of the proposals would result in a development which does not fall within the above criteria.
14. The applicant has put forward the following justifications for the proposals:
  - i) Rural Location: The rural location on the edge of the West Pennine Moors is a critical component within the rehabilitation process. The supporting sequential test demonstrates that there are no other alternatives within the District.
  - ii) Appropriate Scale of Associated Development: Although the two main structures are large they meet the functional needs of the proposal. A large pool area is critical for different groups to be able to work at the same time. Other facilities including treatment centre, gym and communal dining areas are the minimum size required for the numbers of patients and staff proposed. The lodges are located to the north of the site. The design aims to cluster the lodges but keep sufficient space between buildings to maintain sufficient tree screening.
  - iii) Minimum impact on the openness of the Countryside: Every effort has been made to use both existing landform and tree cover to screen the development. Although the two main buildings are large the location, screening and use of natural materials will mitigate impact.
  - iv) Transport Impact: The site is only 2.5km from the centre of Chorley. To access the site a short length of rural road will have to be used. To improve connections to the public transport network the business will implement a Green Travel Plan that will encourage staff to travel by foot, bike or private minibus. Patients themselves will also be encouraged to use the private minibus. This will provide a direct link to Chorley railway station.
15. The supporting statement acknowledges that the scale and nature of the development are beyond what would normally be considered appropriate development. They consider that a functional need for the facility has been demonstrated, there are no other equivalent facilities in the District or the north west, therefore the proposal meets the exception test. The accompanying sequential assessment demonstrates that there are no other alternative sites locally that would meet the function needs of the business (this is discussed further below).

#### *Sequential assessment*

16. The Framework is clear that the preference for the location for recreational development is within town centre locations. As the proposals are outside of the town centre and over 2,500 square metres it is required to show evidence of sequential testing showing that all town centre options have been thoroughly addressed before considering less central sites. Once it has been demonstrated that there are no suitable town centre sites, preference will then be given first to edge of centre and then to out of centre sites and these should be examined before sites outside the urban area are considered.

17. The applicant has provided a Sequential Test and Impact Assessment in support of the application. A series of sites have been considered as potential alternative locations for the proposed development, comprised of allocated sites, sites on the market and other greenfield sites.
18. It is confirmed that the three Local Plan listed sites are allocated for employment use (EP1.1, EP1.6 and EP1.12) and are being brought forward for B-class employment uses, and would not be suitable for the proposed use.
19. In relation to the site located at Back House Farm; it is confirmed that the location of this within the green belt would not be supported.
20. In relation to the assessment of other greenfield sites:
  - Site 1 is largely comprised of site EP1.1 referred to above,
  - Site 2 is part of EP1.3 which is an employment allocation and the remainder of the site is allocated as Green Belt, and
  - Site 3 is currently in use as the Mormon temple and associated curtilage, and the remainder of the site is identified as BNE4 – Area of separation.It is therefore confirmed that no sequentially preferable sites have been included within the sequential test.
21. The impact assessment has demonstrated that there are no equivalent facilities within or around Chorley, and that there is unlikely to be an impact on the main town centre uses if the development were to come forward. It is also agreed that the disaggregation of the uses would result in reduced viability.

#### *Sustainable development*

22. The golden thread running through the Framework is sustainable development. Policy 1 of the Adopted Core Strategy confirms that growth and investment will be focussed on well-located brownfield sites and the Strategic Location of Central Preston, the Key Service Centres of Chorley and Leyland and the other main urban areas in South Ribble, whilst protecting the character of suburban and rural areas. Some Greenfield development will be required on the fringes of the main urban areas. To promote vibrant local communities and support services, an appropriate scale of growth and investment will be encouraged in identified Local Service Centres, providing it is in keeping with their local character and setting, and at certain other key locations outside the main urban areas. The Policy confirms that growth and investment will be concentrated in Chorley Town (as a key service centre), some growth and investment at Adlington, Clayton Brook/Green, Clayton-le-Woods (Lancaster Lane), Coppull, Euxton and Whittle-le-Woods (as Urban Local Service Centres).
23. Limited growth and investment will be encouraged at the following Rural Local Service Centres to help meet local housing and employment needs and to support the provision of services to the wider area: Brinscall / Withnell, Eccleston and Longton. This site is however outside the defined boundary of Brinscall/ Withnell.
24. Policy 1 does confirm that in other places (smaller villages, substantially built up frontages and Major Developed Sites) development will typically be small scale and limited to appropriate infilling, conversion of buildings and proposals to meet local need, unless there are exceptional reasons for larger scale redevelopment schemes. The proposal would not meet any of these exceptions.
25. It is noted that the development will provide 20 new jobs which clearly is a positive consideration in respect of the local economy. The Rural Development SPD confirms that it is important that employment opportunities exist in rural areas firstly, to enable local people to access employment close to where they live, secondly, to help avoid excessive levels of commuting to urban areas and thirdly to ensure that local communities remain vibrant and

sustainable. However it does confirm that employment development proposals should be conveniently located in relation to the surrounding road network, provide a safe access, be adequately serviced or can be serviced at a reasonable cost which would need to be demonstrated in respect of this site. Similar job creation would be facilitated if this development was located elsewhere within the Borough.

26. It is not considered that the site is readily accessible by modes of transport other than the private car. The nearest bus stop that appears to be in use (according to information on the Lancashire county council website) is on Heapey Road and served only by a school bus service. There are no bus services along Brinscall Mill Road and given the lack of footpaths along the road access on foot to the closest bus stop is severely restricted.
27. A Transport Statement and Draft Green Travel Plan has been submitted in support of the application, however the Planning Policy section have advised that it is not considered that the anticipated level of public transport usage accurately reflects the needs of those target users of the centre, particularly those with restricted mobility or diminished responsibility (through dementia and Alzheimer's disease). The applicant considers that the travel plan is based upon the best estimate of likely use at his stage of development. It is a new venture where the final mix of clients will change over time, dependent upon demand.

#### ***Landscape and Visual Impact***

28. Landscape character is the physical make up and condition of the landscape itself. It arises from a distinct, recognisable and consistent pattern of physical and social elements, aesthetic factors and perceptual aspects. Visual amenity is the way in which the site is seen and appreciated; views to and from the site and, their direction, character and sensitivity to change.
29. Policy 21 of the Core Strategy requires that new development be well integrated into existing settlement patterns, appropriate to the landscape character type and designation within which it is situated and contribute positively to its conservation, enhancement or restoration or the creation of appropriate new features. However, the application is not supported by a full Landscape and Visual Impact Assessment (LVIA) and it is, therefore, difficult to properly assess any potential impact from either a local or wider landscape perspective.
30. A full Landscape and Visual Impact Assessment would normally be prepared in accordance with the most recent national and local character assessment guidelines and would determine the landscape sensitivity, landscape value and landscape quality. This would then establish a baseline position and the change to the site itself would be assessed following the implementation and establishment of mitigation measures, such as enhanced landscaping.
31. It is clear that some significant effects on the landscape and visual amenity, as a result of the proposed development, are inevitable. The judgement to be made is whether or not the significant effects identified are adverse, and if so, whether or not they are acceptable.
32. The proposal would introduce a number of incongruous elements into the rural landscape, and although it is acknowledged that efforts have been made to design the scheme in sympathy with existing land levels, it is considered that the proposed gym and pool building would be readily visible from outside of the site, along Brinscall Mill Road (which is also a public right of way) in particular. It is clear that the proposed scheme would involve the substantial shift in land use from unmanaged agricultural land to built form with probable detriment to the site and its surroundings.
33. It is accepted that the proposal could retain features which are attractive, such as existing vegetation, but the change to the broader landscape (beyond the development site), particularly that within the visual envelope of the site, would be significant and in the absence of any evidence to the contrary, it is considered that from a landscape and visual impact perspective, development of the site will have a harmful impact on its surroundings and will have a negative impact upon the landscape.

#### ***Highway Safety***

34. The application site is accessed via an unadopted narrow Lane. A new pedestrian access into the site from the junction of Brinscall Mill Road and Chapel, Lane is proposed. The vehicular access to the site would be located approximately 130m north east of the junction of Chapel Lane and Brinscall Mill Road.
35. Comments from LCC Highways are awaited; however there are a number of concerns with regards to the proposals. The access to the site is a narrow single track road, with limited passing places. Roads leading to Brinscall Mill Road (such as Chapel Lane and Tithe Barn Lane) are also narrow, country lanes. The proposal would cater for up to 60 residents and 20 staff, up to eight of whom would be resident on site. Given the scale of the development and it's remote it is considered that the site would generate a significant number of vehicle movements, many by people likely to be unfamiliar with the local road network.
36. The Framework is clear that development should only be prevented or refused in transport grounds where the residual cumulative impacts of development are severe. Subject to the receipt of comments from LCC Highways it is considered that given the nature of the location and roads leading to the site, that unacceptable harm to highway safety is likely to arise from a development of this size and scale, and the proposal is therefore contrary to policies ST3 and BNE1 of the Local Plan.

### **Ecology**

37. The applicant has submitted an Ecological Appraisal in support of the application. The appraisal comprises a Phase 1 Habitat survey of the site; a survey and assessment of all habitats for statutorily protected species; an evaluation of the ecological significance of the site, identification of development constraints and any mitigation and enhancement measures that may be required and identification of any further surveys or precautionary assessments that may be required. The report concludes that although bats are known to occur in the local area, there was no conclusive evidence of protected species regularly occurring on the site. A number of mitigation measures are proposed. It also states that the protection of trees on the site boundary and landscaping will promise structural diversity on the canopy and at ground level and will encourage a wider variety of wildlife.
38. The Greater Manchester Ecology Unit (GMEU) has advised that the assessment of the impacts of the proposals on the habitat within the sites is inadequate. The proposals would involve the loss of a significant number of trees, together with woodland and grassland habitats. A small amount of tree planting is shown on the tree removal plans, but there is no information on the species to be planted. Overall there is no compensation for the loss of the woodland and grassland habitats. The applicant has responded to confirm that compensatory tree planting will be included, and that they would be happy to agree to a landscaping condition. They have also queried why the Ecologist's states that the site supports habitats of high ecological value.
39. The Ecologist has confirmed that the evidence provided within the reports submitted supports the description of the habitats as being of high ecological value, and that the impact on the woodland areas is not just on the trees alone, but includes for example the ground flora. The mitigation proposed is limited and overall there is no compensation for the loss of the habitats present.
40. The Framework states that pursuing sustainable development involves seeking positive improvements in the quality of the natural environment, including moving from a net loss of biodiversity to achieving net gains for nature. Core planning principles in The Framework state that planning decisions should contribute to conserving and enhancing the natural environment.
41. The Framework goes on to state that the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including establishing coherent ecological

networks Planning decisions should address the integration of new development into the natural environment and opportunities to incorporate biodiversity in and around developments should be encouraged.

42. Policy BNE9 of the Local Plan sets out how development should safeguard biodiversity. Any adverse impacts on biodiversity should be avoided, and if unavoidable should be reduced or appropriately mitigated and/or compensated. Policy BNE11 states that planning permission will not be granted for development which would have an adverse effect on a priority species, unless the benefits of the development outweigh the need to maintain the population of the species in situ.
43. Taking into consideration the comments made by GMEU it is considered that to date the applicant has not fully demonstrated that the proposals would safeguard biodiversity and in particular that the habitats within the sites would not be adversely affected by the proposals.

#### **Trees**

44. The application would necessitate the removal of a large number of trees (approximately 140) from the application site, particularly in the mid part of the site. The Council's Tree Officer has confirmed that the trees to be removed are principally of low importance. Some replacement tree planting is proposed, along the north west boundary. The loss of the trees may not cause any significant impact in terms of the character of the landscape, however as discussed above it has not been fully demonstrated that the loss of the woodland as a whole would not have an unacceptable impact upon the ecology of the site.

#### **Flood risk**

45. Part of the application site is within flood zone 3, predominantly the area adjacent to the brook running through the site. The flood zone does not extend over the whole of the site, the lodges to be used as accommodation, would be located in Flood Zone 1. It is also proposed to set the floor levels of the other buildings above the flood levels to mitigate the risk of flooding. The environment Agency have confirmed that they have no objections to the proposals.

#### **Heritage Asset**

46. There are a number of Grade II listed buildings adjacent to the north western boundary of the site: Wheelton House and the barn to the rear. These properties have been recently renovated. Lower House Fold Farmhouse to the north of the site is also Grade II listed. A heritage assessment has been provided with the application. Applications affecting a heritage asset will be granted where they sustain conserve and where appropriate enhance the significance, appearance, character and setting of a heritage asset and the surrounding historic environment. There are no designated heritage assets within the application site boundary. A heritage assessment has been provided with the application. The report concludes that there is very little potential for the site to contain any significant buried archaeological remains. It also states that the proposed development would not alter the contribution of the setting of the adjacent listed building's significance. In accordance with the Framework the proposed scheme would have 'less than substantial harm' and thus, in heritage terms, the 'benefits outweigh the impacts'. The proposal is therefore considered to be acceptable in this respect.

#### **Sustainable Resources**

47. Policy 27 of the Adopted Core Strategy requires the minimum energy efficiency standards for all other new buildings will be 'Very Good' (or where possible, in urban areas, 'Excellent') according to the Building Research Establishment's Environmental Assessment Method (BREEAM). A number of other criteria are also required to be met. The applicant has provided an Energy Resource Conservation Statement with the application showing how the proposal aims to meet the criteria of policy 27. This would be secured by condition should the proposal be granted.

#### **EIA**

48. The development falls to be considered Schedule 2 development under column 1, part 12c of Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as Holiday villages and hotel complexes outside urban areas and associated developments. However as the proposal involves the creation of a rehabilitation centre with all of the proposed elements intrinsically linked to the main use as a rehabilitation centre and as such part 12c is not applicable. A screening opinion was therefore issued in 2015 confirming that an EIA is not required to support the planning application.

## CONCLUSION

49. In conclusion, the impact of the proposals on this rural area is one of the key considerations in respect of the proposed development of this site. Most of the elements of the proposals fall to be considered inappropriate development in accordance with Policy BNE2 of the Local Plan and as such the proposals need to be fully justified in respect of why such a facility needs to be located here.
50. A significant concern in respect of this site is the sustainability impact of creating an isolated facility which is primarily car orientated within this rural area. The Framework sets out the three dimensions to sustainable development including ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and by contributing to protecting and enhancing our natural, built and historic environment.
51. While the sequential assessment has demonstrated that there are no equivalent facilities within or around Chorley, and that there is unlikely to be an impact on the main town centre uses if the development were likely to come forward, the site is in an isolated rural location; that is inaccessible by modes of transport other than the private car and that has not been identified for growth in either the Core Strategy or The Local Plan. The proposal is therefore considered to be contrary to policy BNE2 of the Local Plan.
52. Furthermore, the application has failed to demonstrate that the proposal would not have an unacceptable impact upon the habitats of high ecological value within the site; nor that the site would not have a harmful impact on its surroundings and a negative impact upon the landscape. Significant concerns remain with regard to highway safety. The proposal is accordingly recommended for refusal for the following reasons:
1. The proposed development would be located within the Open Countryside (as defined by the Local Plan). The proposal does not fall within any of the types of development identified in policy BNE2 as being acceptable in the Open Countryside. Insufficient reasons have been put forward to justify an exception to this policy.
  2. The application cannot be fully assessed due to the provision of insufficient information in respect of the ecological impacts of the scheme. In particular further clarification is required on impacts of the proposals on the habitats of high ecological value that have been identified in the supporting information. No information on any proposed compensation for the loss of the habitats has been provided. The proposal is therefore contrary to policy BNE9 of the Local Plan.
  3. The proposed development would be harmful to the visual amenity and character of the local area, by reason of the size, scale, incongruous appearance and inappropriate nature of the proposals. Additionally, inadequate information has been provided to demonstrate that the visual impact of the proposals can be adequately mitigated.
  4. By reason of the remote and inaccessible nature of the application site, the proposal would give rise to an unacceptable degree of vehicle movements that would be both harmful to the rural character of the area and highway safety. The proposal is therefore contrary to policy ST3, BNE1 of the Local plan and the Framework.

**RELEVANT POLICIES:** In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan (the Central Lancashire Core Strategy, the Adopted Chorley Local Plan 2012-2026 and adopted Supplementary Planning Guidance), unless material considerations indicate otherwise. Consideration of the proposal has had regard to guidance contained within the National Planning Policy Framework (the Framework) and the development plan. The specific policies/ guidance considerations are contained within the body of the report.

### **ADDENDUM**

**ITEM 3f - 16/00926/FULMAJ – Land 100M East Of Wheelton House, Brinscall Mill Road, Wheelton**

**The recommendation remains as per the original report**

**The following consultee responses have been received:**

**LCC Highways** have made the following comments:

The proposed development is a rehabilitation centre for long term treatment of patients through the use of sports and outdoor recreation with focus on clinical areas as physical rehabilitation following acute trauma, sports injury, dementia and alzheimer treatments. As indicated above, the development comprises a therapy building and a gymnasium of size 987M2, swimming pool and facilities block of size 3216M2, and 17no. 2 bedroomed accommodation cabins.

The site is adjoined by Brinscall Lane to the west and stretches from Scow Croft Lane to a point south of Brinscall Mill Road and although it is indicated in the submissions that the site would be accessed from Brinscall Lane, no site plan seems to have been submitted to show the point of access off Brinscall Lane to the site. I have therefore been unable to comment on the suitability of such an access especially given that apart from the first 150m or so of its junction with Chapel Lane the rest of Brinscall Lane is un-adopted.

In addition to the 17no, 2-bedroomed accommodation cabins, the total size of the pool and the gym is 4203m2. For a development of this scale, a Transport Assessment (TA), which is a more comprehensive and systematic process that sets out transport issues relating to a proposed development is usually required to be submitted. The TA identifies what measures will be taken to deal with the anticipated transport impacts of the development and to improve accessibility and safety for all modes of travel, particularly for alternatives to the car such as walking, cycling and public transport. Instead of the full TA however, the applicant submitted a simplified report in the form of a Transport Statement (TS), as a result of which the transport issues arising out of the development proposal appears not to have been adequately addressed and suitable mitigations identified.

The suitability of access is an important consideration. As required by the National Planning Policy Framework (NPPF), for large developments of the type proposed it should be considered whether safe and suitable access to the site can be achieved for all people; and whether improvements can be undertaken where necessary to limit significant impacts of the development. No significant assessment seems to have been made of the suitability of Chapel Lane and Tithebarn Lane which provide routes to the site. The routes newly generated development traffic might take have not been predicted and no studies have been carried out of existing junctions to ascertain how they would cope if the development were to go ahead. Chapel Lane and Tithebarn Lane are both rural single 2-way roads, they are narrow with difficulties for safe passage of two vehicles due to none existence of standard passing places. The applicant has also not submitted a detailed proposal towards improving the junction of Chapel Lane/Tithebarn Lane/Brinscall Lane to ensure visibility for safe access and egress of the site.

Chapel Lane and Tithebarn Lane have no footways, but the un-adopted section of

Brinscall Lane, Brinscall Mill Road and Scow Croft Lane are public rights of way and the only cycle route in the area is the proposed route along the dismantled railway line on the eastern edge of the site. The cycle route is proposed to link Brinscall and beyond and the M61 at Junction 8; and although the NPPF requires developments that generate significant amounts of traffic to promote sustainable modes of travel, safe access and improvements to existing transport networks, no improvements are proposed to the cycle route and the public rights of ways. It would therefore appear that the applicant has failed to provide the network of safe and convenient pedestrian and cycle routes required by the NPPF.

New developments must be accessible by public transport in order to meet the needs of people without access to private transport and to reduce reliance on car usage. As noted, the bus stops in the area falls outside the recommended 400m walking distance from the site, except one near the junction of Chapel Lane and Tithebarn

Lane which is a school bus the use of which is not available to the general public.

Therefore in line with the NPPF, it is not considered that accessibility by public transport has sufficiently been demonstrated due to insufficient measures proposed to facilitate the use of public transport.

In the TS, the applicant provided an estimate of traffic to be generated by the proposed development, however as a result of use of far reduced level of parking provision, from the standard requirement of 191 parking spaces to a total of 68 spaces, the impacts vehicular trip generation would have on the local highway network seems underestimated.

It is clear from the above that the issues relating to access, sustainability and accessibility by non-car modes and the cumulative highway impacts have not been appropriately quantified and assessed. The highway authority is therefore not satisfied that the impacts of the proposed development can be mitigated. As such, it is recommended that approval of the application is resisted.

#### **Natural England have made the following comments:**

##### ***Statutory nature conservation sites – no objection***

Based upon the information provided, Natural England advises the Council that the proposal is unlikely to affect any statutorily protected sites or landscapes.

##### ***Priority Habitat as identified on Section 41 list of the Natural Environmental and Rural Communities (NERC) Act 2006***

The consultation documents indicate that this development includes an area of priority habitat, as listed on Section 41 of the Natural Environmental and Rural Communities (NERC) Act 2006. The National Planning Policy Framework states that 'when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.'

##### ***Protected species***

We have not assessed this application and associated documents for impacts on protected species.

##### ***Biodiversity enhancements***

This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application. This is in accordance with Paragraph 118 of the National Planning Policy Framework. Additionally, we would draw your attention to Section 40 of the Natural Environment and Rural Communities Act (2006) which states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. Section 40(3) of the same Act also states that 'conserving

biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat’.

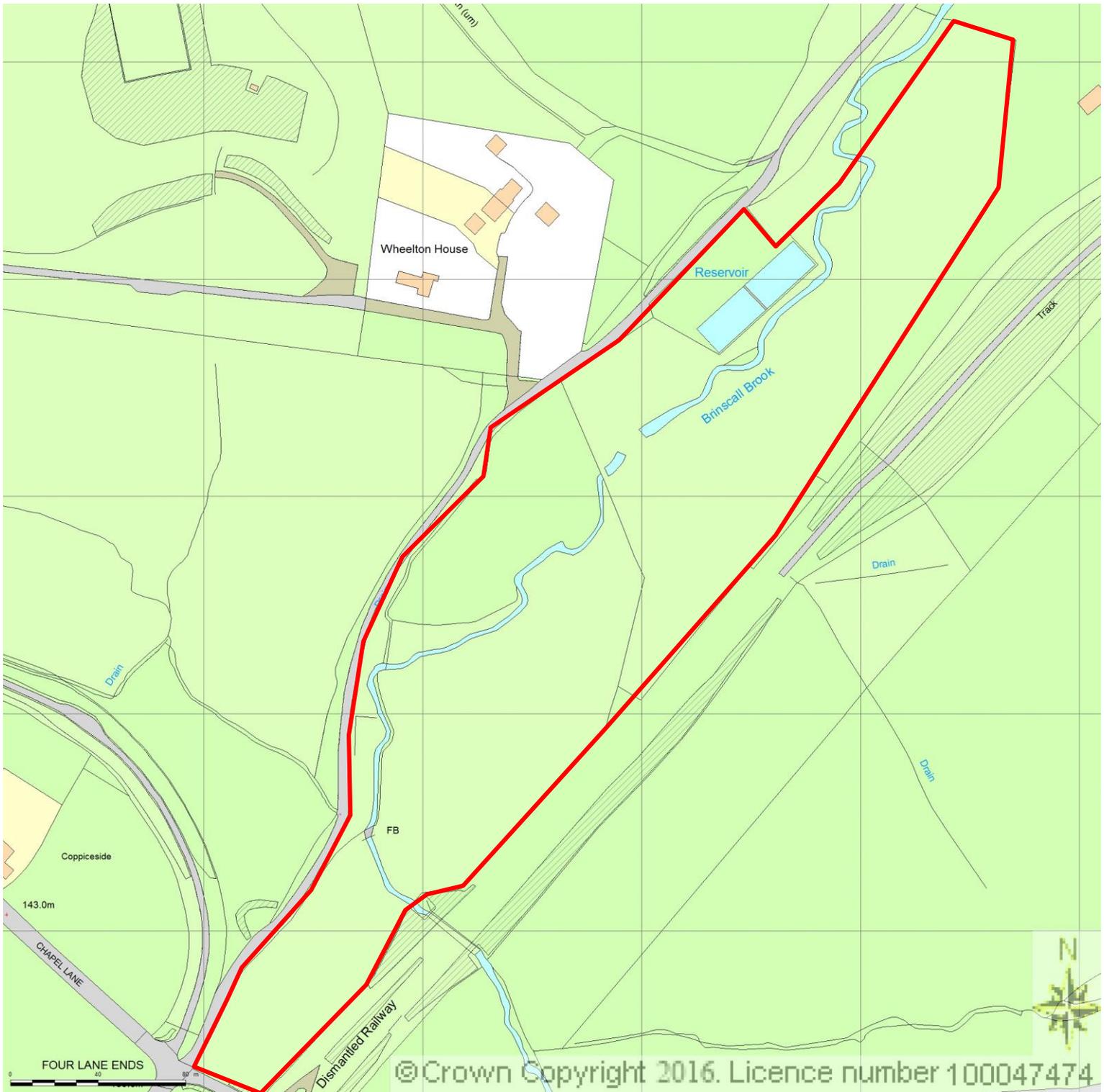
***Landscape enhancements***

This application may provide opportunities to enhance the character and local distinctiveness of the surrounding natural and built environment; use natural resources more sustainably; and bring benefits for the local community, for example through green space provision and access to and contact with nature. Landscape characterisation and townscape assessments, and associated sensitivity and capacity assessments provide tools for planners and developers to consider new development and ensure that it makes a positive contribution in terms of design, form and location, to the character and functions of the landscape and avoids any unacceptable impacts.

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**HEAPY REHABILITATION CENTRE SITE LOCATION PLAN**  
**AREA 25 HA**  
**SCALE 1:2500 on A4**  
**CENTRE COORDINATES: 361359, 420076**



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**Agenda Item 3b****APPLICATION REPORT – 16/00633/OUTMAJ**

**Validation Date: 4 August 2016**

**Ward: Euxton South**

**Type of Application: Major Outline Planning**

**Proposal: Demolition of existing buildings and erection of upto 12no detached self-build houses with double garages and associated infrastructure**

**Location: Gleadhill House Stud Gleadhill House Dawbers Lane Euxton Chorley PR7 6EA**

**Case Officer: Mr Paul Whittingham**

**Applicant: Mr David Forshaw**

**Agent: Mr Bob Margerison**

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**RECOMMENDATION****Approve subject to Conditions and S106 agreement**

Following the decision at 7<sup>th</sup> February to defer the application for a site visit, the site visit has been undertaken prior to this application being re-determined and the application has been amended to “upto 12 Dwellings” with a reduced proposed volume and reduced footprint but also a reduced incursion into the greenfield element of the site.

**SITE DESCRIPTION**

1. The site of Gleadhill Stud is located to the south of Euxton with existing access to Dawbers Lane. The site is bounded by a stone wall in excess of 2metres fronting Dawbers Lane and separating the site from Euxton Park open space area. To the north is Euxton Park Care Home and Euxton Park Hospital, to the east is Euxton Park or the Millenium Green whilst to the south west is Fieldside Avenue. To the west of the existing complex of buildings are open fields used by the stud for grazing.
2. There is access through this site to existing buildings to the north west and a training track or gallops that is sited beyond an existing woodland within which there is a public footpath that extends from the A49 westwards past this site to meet up with Dawbers Lane.

**DESCRIPTION OF PROPOSED DEVELOPMENT**

3. The proposal is an outline application with all matters except access being reserved, to redevelop the site of the Gleadhill Stud that consists of Gleadhill House, 3 residential buildings used for jockey accommodation in addition to the large stable complex and associated infrastructure for up to 13 self-build dwellings.

4. The site is located in the Green Belt as defined by the Chorley Local Plan and is on the north of Dawbers Lane, with direct vehicular access off Dawbers Lane using the existing gated access to the original large house. There would be a requirement from LCC highways to improve the junction with Dawbers Lane and widen the footpath towards the A49. It is also proposed to extend the current high stone wall fronting Dawbers Lane northwards into the site at the western edge of the application site and also a proposed advance planting tree belt to the west of the site with woodland understorey planting to the north.

## REPRESENTATIONS

### Six letters of objection have been received that raise the following comments:-

- Able to see the new buildings from my kitchen window (blight)? When will this stop. It will only increase traffic now and if and when the sand quarry starts to produce, the traffic along Dawbers Lane will be horrific. It could possibly spoil the outlook from my House.
- The proposals are contrary to the guidance given in the National Planning Policy Framework and the councils own guidance for development within greenbelt areas, despite the claims made by the applicant in their statements to the contrary. The former Pincock Mill is an eyesore and should be developed before any fields are built on. I would have thought that the former Camelot site should also be developed before building on green belt.
- The development proposed isn't contained within the confines of the original farm / outbuildings and sprawls out onto undeveloped land which in my opinion has a direct impact on the openness of the greenbelt, whether it is visible from the road or not.
- The other concern this proposal raises is what will happen to the land around the current site if the existing stud farm / buildings were demolished to make way for housing.
- Euxton is already overdeveloped and the proposed dwellings can hardly be classified as 'much needed'. There are already many developments and additional housing projects in and around Euxton, Astley Village and Buckshaw. Surely this is adequate enough for a small village, considering the lack of infrastructure to support a growing population.
- Nothing in it benefits the local community, the developer does not provide any suggestion of appropriate development in any of the exceptions listed in the National Planning Policy, Chorley Local Plan or Rural Development SPD. In fact, this development is everything the Local Plan and National Planning Policy attempt to stop.

**One letter has been received that does not object to the development but seeks for improvements to be made to the junction of Fieldside Drive and Dawbers Lane.**

### Euxton Parish Council comments are as follows:-

1. Euxton Parish Council (EPC) has a long history of opposing development in the green fields and especially in the Green Belt that surrounds the village. There are many examples that could be given in support of this statement. Amongst these were EPC's opposition to some of the extensive new green field housing developments that were proposed under the now confirmed Chorley Local Plan (CLP) as it passed through its various stages.
2. Once it was approved, however, EPC accepted CLP as the basis for its responses to new development applications and has not sought to oppose in principle developments that were submitted in accordance with it, although it may have made comment or objection on matters of detail. Also, EPC has supported CLP in its response to development proposals that were not in accordance with it. Examples are the recently proposed development at land off Pear Tree Lane and the consultation proposal by Chorley Borough Council (CBC) to replace sports and recreation facilities, in Euxton, at Chorley Rugby Club with a care home and associated housing. EPC has relied upon CLP as the basis for its response to development applications - it had a long and thorough preparation and examination period and EPC hopes that this was not simply a waste of time – for members of the public, for parish councils and local pressure groups, for the professionals that prepared, presented and defended the Plan,

and for the Inspector who prepared a long and detailed report of the proceedings and of her conclusions.

3. It is worthy of note, because it concerns a site close to the application site, that on only one occasion in recent years has EPC actively supported housing development in the Green Belt. This is at the former Euxton Mill (Xelflex) site where the EPC took the view that proposed developments for a retirement living community and later for self-build housing were in accordance with Policy BNE5 of CLP and also for the more pragmatic reason that something needs to be done with this eyesore of a site in a potentially most attractive location.
4. So, CLP is the basis of EPC's objection to the proposals at Gleadhill House. The entire site subject of the application is within the Green Belt. The main house and its satellite residential properties, including gardens, occupy only a small proportion (roughly one fifth) of the application site and EPC would have no objection to the redevelopment of this part of the site provided that it met the requirements of Policy BNE5.
5. Another part of the site, of slightly less area than the house etc, is used for stabling and equestrian training facilities. It is not used for residential purposes. EPC can see no reason why this land, used in connection with a rural industry, should be converted to housing, but would accept that, if it is no longer viable in its current use, a new use will be required. EPC does not know if the applicant has sought to dispose of the site in its current use. It is also noted that for this part of the site and for the adjacent field (see next paragraph) no planning application has been submitted for a change of use to residential.
6. The remainder of the application site, approximately two thirds of the total, is open field pasture. EPC does not consider this an acceptable opportunity for residential development any more than any other currently undeveloped site in the Green Belt. If development, residential or otherwise, is acceptable here it must be equally acceptable at any other undeveloped location within the Green Belt, in Euxton or beyond, and many landowners would be tempted to increase the value of their holding by a large multiplier, referring to the Gleadhill site as their example to follow.
7. EPC is therefore strongly opposed to this proposed development.
8. There are other aspects of this proposed development that concern EPC. The first is the encouragement that it appears to have received from the CBC Planning Section. The consultations with the Planning Officer are reported in the Design and Access Statement that is included with the application. The consultations may have been selectively reported but at no point does the Planning Officer appear to have expressed any concerns about a proposal for development in the Green Belt and in conflict with the CLP, but only suggests how the proposal might be improved. EPC would be most concerned if this view of CLP and the Green Belt is generally taken by the CBC Planning Department and wonders if it reflects the view of the Borough Council.
9. The nearby Euxton Mill site (see para 3) is clearly in some difficulties and the developer has already had two attempts at finding a viable proposal and has made a false start on implementation. This is a potentially very attractive site with the rare opportunity of a river frontage. It may have been an opportunity for high-end housing, such as is now proposed at Gleadhill House. Surely, efforts by the Planning Department to assist a developer to find the best option would be better applied here, where a solution is clearly required for the benefit of the developer and the local and wider community, than they are to a site where housing is not wanted by the local community because it is in conflict with CLP and is in the Green Belt.
10. EPC is reluctant to discuss the consequences of accepting this development, which it is sure should be rejected as a matter of principle. However, in the most unlikely event of it being considered acceptable, EPC is concerned about those consequences for the large area of agricultural land to the north. The buildings and facilities that service this land are situated to the north of Gleadhill House, just outside the application site. Although there are alternative, very indirect, routes to these buildings from outside the area, the only direct one is to and from Dawbers Lane past Gleadhill House. The application makes provision for this to be

retained, but passing through the new housing estate. This would not be a satisfactory means of serving a large area of farmland, especially for the residents of the estate.

11. This leads EPC to ask how the developer and CBC see the future of this farmland, if the buildings that serve it are effectively cut off from access? It is at present used for equestrian purposes, but it must be assumed that the loss of the stabling etc would make it no longer fit for this purpose. How is it to be used? Is CBC content that not only would approval of this application conflict with Green Belt and CLP, but would also effectively render the large area of land to the north with a very uncertain future - perhaps lining up future residential development proposals?
12. In conclusion EPC considers that this development, in conflict with the recently approved CLP and the Green Belt and raising issues about the future of a much larger area of land, should be rejected out of hand. A new application which sought to redevelop only the existing residential parts of the site would be acceptable provided it met the requirements of CLP Policy BNE5.

## CONSULTATIONS

**Lancashire Highway Services** – No objection subject to conditions see the body of the report

**Lancashire Constabulary Architectural Liaison** – No objection subject to conditions

**Trees** – No objection subject to the retention of the significant specimen trees

**Greater Manchester Ecology Unit** – No objections subject to conditions

**Planning Policy** – comments included within the report

**Planning Policy (Open Space)** – Requirement for Playing Pitch and allotments totalling £20,997

**United Utilities** – No objection subject to Conditions

**Lancashire County Council Archaeology Service** - No objection

## PLANNING CONSIDERATIONS

### Principle of the Development

5. The application site is within the Green Belt with a proportion of the site being occupied by existing buildings and the stud whilst the remainder of the application site is used in association with the stud but is greenfield land.
6. National guidance on Green Belt is contained in Chapter 9 of the Framework which states:

79. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

80. Green Belt serves five purposes:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

89. A local planning authority should regard the construction of new buildings as inappropriate in Green Belt. Exceptions to this are:

limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

7. The application site constitutes partial previously developed land within the Green Belt which would engage within the exception contained within paragraph 89 of The Framework involving the complete redevelopment of a previously developed site on the proviso that the development does not have a greater impact on the openness of the Green Belt and the purpose of including land within it.
8. Policy BNE5 of the Adopted Local Plan relates to previously developed land within the Green Belt and reflects guidance contained within the Framework as follows:  
The reuse, infilling or redevelopment of previously developed sites in the Green Belt, will be permitted providing the following criteria are met:  
In the case of re-use
  - a) The proposal does not have a materially greater impact than the existing use on the openness of the Green Belt and the purposes of including land in it;
  - b) The development respects the character of the landscape and has regard to the need to integrate the development with its surroundings, and will not be of significant detriment to features of historical or ecological importance.  
In the case of redevelopment:
  - d) The appearance of the site as a whole is maintained or enhanced and that all proposals, including those for partial redevelopment, are put forward in the context of a comprehensive plan for the site as a whole.
9. The construction of the new buildings will constitute inappropriate development unless one of the exceptions in the Framework is engaged. To benefit from the relevant exception in the case of this site, the applicant must demonstrate that the construction of the new buildings constitutes:
  - The partial or complete redevelopment of previously developed land;
  - Which would not have a greater impact on the “openness” of the Green Belt; and
  - Which would not have a greater impact on the purposes of including land in the Green Belt.
10. Whilst the test for sites such as this relates to the impact on openness it is important to note that the Framework contains no specific definition of ‘openness’.
11. It is considered that in respect of the Framework that the buildings on site have an impact on the openness of the Green Belt when viewed from public vantage points, including to the north from the public footpath network and there is an impact to openness simply because the buildings/structures exist. The remainder of the application site would be considered as greenfield development and so does not meet the exceptions within the Framework or Development Plan policy.
12. The proposed development as a whole does constitute inappropriate development and as such the tests of paragraph 88 of the Framework are engaged. In this case very special circumstances need to be demonstrated which outweigh the harm the development will have to the Green Belt.
13. The scale of the existing built form is split between the residential elements on the site that in accordance with the development plan can be replaced 30% larger and the stables buildings that can be replaced with a like for like volume within Policy. The volume of the existing residential units with an increase of 30% is 6569.08m<sup>3</sup> with the addition of the volume of the stables buildings (4453.8m<sup>3</sup>) equates to 11,022.88m<sup>3</sup>. The applicant is seeking a volume of 11,640m<sup>3</sup> reduced from 12,100m<sup>3</sup> at last committee which is a greater volume than that which would be considered acceptable in policy. Very special circumstances would need to be demonstrated for this increase in volume to deliver this self-build scheme.

14. The application is for upto 13 residential units based on a self-build programme with the reserved matters applications being constrained by the upper volume limit of 12,100m<sup>3</sup> for the whole site. In theory therefore the site may not be fully developed out for 13 houses as this will depend on which self-build purchasers come forward. The limit on the volume would be controlled through the legal agreement and the phasing of the site, covered by condition the applicant has also agreed that the self-build properties would be controlled through the legal agreement to the effect that they would not be extended in the future and so what is built as a self-build property would be the limit of the scale of the development within the application site. The additional volume proposed to be built is considered acceptable in principal having regard to the very special circumstances considered below and the constraints on future development that would be imposed. I have also taken into account that existing residential units could be extended or the proposed houses could be extended in future and this could potentially result in greater volumes of building on site.

### **Very Special Circumstances**

15. Very Special Circumstances are required to be demonstrated to support the development as a whole despite part of the site being the redevelopment of a previously developed site.
16. The site is proposed to be completed as a self-build scheme and under the Housing and Planning Act 2016 and the Custom Housebuilding Act 2015 places a duty on Local Planning Authorities to identify sites, maintain a register and deliver suitable sites to meet demand. The applicant has identified interest from 4 people and the Council register has two registered people. The applicant also has evidence of the delivery of a self-build site at Farington Lodge in Leyland which was an 11 dwelling scheme built under a design code with the whole site now complete from the granting of consent in 2011.
17. The scheme at Leyland – Farington Lodge secured self-build customers that were seeking to invest in an individual property but also take forward business opportunities in the local area and a number of the individuals who have purchased these self-build properties are business leaders within the local area. There is no guarantee that these self-build properties will deliver jobs and investment within Chorley however there is evidence that would support the potential.
18. The footpath connections from the site entrance towards the A49 are not in accordance with modern standards with narrow footpaths and limited widths on both sides of Dawbers Lane. As part of the development the layby style space at the site entrance will be modified to improve the footpath and ensure that vehicles entering and exiting the application site approach Dawbers Lane at right angles to ensure that the visibility of vehicles exiting is improved.
19. There are a number of improvements and landscaping proposals that provide mitigation to visual impact but also will benefit the wider development site and surroundings. The shelter belt to the west of the site and extending the stone wall at the western boundary into the site all provide improvements and benefits to the scheme as a whole. Understorey planting in the woodlands to the north and improvements to the footpath within this woodland that is regularly used by local people and dog walkers is considered as a whole to be a significant benefit to the scheme.
20. The benefits of the redevelopment of the site consist of the removal of the built form from the eastern boundary that is visible from the woodland footpaths frequently used and the redevelopment would also remove the significant built form from the road access from the site to the land beyond but where the footpath crosses this access. This change is significant and beneficial as the development is imposing upon this public vantage point.

21. As detailed further within this report the public open space requirement would be £20,997 as a contribution to borough wide provision of playing pitches, the applicant is aware of the concerns of Euxton Parish Council and other objections that this development is not contributing to local needs and wishes to put forward a contribution of £50k to local provision of public open space and tied to this in the legal agreement. There are schemes locally that need funding to be delivered and are important to local provision and therefore such a sum can deliver local benefit and significant weight is attached to this provision that would not necessarily be secured by the standard S106 agreement.
22. There is concern locally about provision of school places and as this site is not an allocated site and would be considered to be a windfall site then it is appropriate for the consideration of the provision of school places. The assessment, that has been updated to reflect the current proposal for upto 13 dwellings would require £67,372.65 and this contribution to primary education is a material consideration that would carry significant weight.
23. The site will deliver self-build properties that will seek to attract investors and support the Councils register of self-build sites however the site in accordance with Core Strategy Policy 7 requires developments of 5 or more dwellings in rural areas to provide 35% affordable housing. Recent changes to the NPPG set a threshold of 11 or more dwellings for tariff style contributions. This development would therefore be required to provide contributions in accordance with the Councils SPD which would be set out within the legal agreement if the development is approved. The provision of an off-site affordable housing contribution is a material consideration that would carry significant weight.

### Visual Impact

19. It has been established in case law that openness and visual impact are different concepts in terms of Green Belt Policy. However they can relate to each other and as such the visual impact is a material consideration. In *Heath & Hampsted Society v LB of Camden* [2007] EWHC 977, the difference between openness and visual impact was explained as follows:
21. The discussion above is concerned with the size of the replacement dwellings, not with its visual impact. There are good reasons why the relevant test for replacement dwellings in the Green Belt and replacement of stables with dwellings is one of size rather than visual impact. The essential characteristic of Green Belts is their openness. The extent to which that openness is, or is not, visible from public vantage points and the extent to which a new building in the Green Belt would be visually intrusive are a separate issue...
- The fact that a materially larger (in terms in footprint, floor space or building volume) replacement dwelling is more concealed from public view than a smaller but more prominent existing dwelling does not mean that the replacement dwelling is appropriate development in the Green Belt.
20. When interpreting paragraph 89 of the Framework the Judge in *Timmins v Gedling BC and Westerleigh Group Limited* [2014] analysed the relationship between openness and visual impact. He held inter alia:
74. Any construction harms openness quite irrespective of its impact in terms of its obtrusiveness or its aesthetic attractions or qualities. A beautiful building is still an affront to openness, simply because it exists. The same applies to a building this is camouflaged or rendered unobtrusive by felicitous landscaping.
21. In this case the Judge concluded that:

78. In short it seems to me that there are three points which arise from the above analysis. First, there is a clear conceptual distinction between openness and visual impact. Secondly, it is wrong in principle to arrive at a specific conclusion as to openness by reference to visual impact. Thirdly, when considering however whether a development in the Green Belt which adversely impacts upon openness can be justified by very special circumstances it is not wrong to take account of the visual impact of a development as one, inter alia, of the considerations that form part of the overall weighing exercise.

22. As the development falls to be considered inappropriate development the landscape/ visual impact of the proposed development is a key material consideration in terms of the overall balance as to whether there is harm.
23. The development site generally benefits from a level of containment created by the local topography, surrounding walls and existing trees and woodland areas around the boundaries of the site. A large part of the site is effectively 'screened' when viewed externally from Dawbers Lane with the main views of the site from the footpath which runs within the woodland to the north.
24. Longer distant views have been assessed and there is little impact from the changes resulting from the development proposed. In terms of the views from the footpath to the north, the proposed properties are being moved away from the walled boundary to the east, reducing the visual impact compared to the current position, the other more significant improvement is the point where the footpath crosses the track running north, where views of a very dense cluster of permanent buildings has a current significant impact. The view from this point would be significantly improved with properties being spread out within the site and landscaping around this access road that will be maintained for access to the stables buildings and exercise track beyond that will mitigate the development in the future.
25. In terms of views from Dawbers Lane and from the west, the maintenance of the tree belt running along the Dawbers Lane frontage within the site and the separation of garden curtilages from this boundary together with the extension of the wall into the site at the western end will support the sites integration into the contained landscape and limits visual impact. To the west there is proposed to be a landscaping shelter belt and it is proposed that this would be delivered in advance or at an early stage of the development to allow for this to mature as the site is delivered, this would be controlled by condition. It is considered that the proposed additional landscaping and design and layout of the site all contribute to the visual impact of the proposed development being limited.
26. In conclusion the site is a contained site and due to the package of mitigation measures then the visual impact is considered to be limited.

### **Ecology**

27. The bat survey information found no signs of bats or bat usage. However given that the site is located adjacent to excellent foraging habitat and bats are highly mobile creatures, I would advise that an informative be placed on any permission that if bats or signs of bats are found at any time during works, then work should cease immediately and advice be sought from Natural England or a suitably qualified bat worker. The final two bullet points in the recommendations section of the phase 1 survey report should also be required by condition.
28. With regard to other ecological issues, based on the recommendations in the Extended Phase 1 Survey of the site I would advise that the following conditions (BS 42020:2013) be attached to any permission:
29. Following the Supreme Court ruling (Morge vs Hampshire County Council – Supreme Court ruling Jan 2011) the Local Authority now have a responsibility to consult Natural

England on proposals which may affect protected species and ask the following questions:

- Is the proposal likely to result in a breach of the Habitats Regulations?
- If so, is Natural England likely to grant a licence?

30. Natural England has not been consulted on the proposals as it is not considered that the proposals will result in a breach of the Habitats Regulations.
31. Following the high court decision (R (on the application of Simon Woolley) v Cheshire East Borough Council, June 2009) the Local Planning Authority have a legal duty to determine whether the three 'derogation tests' of the Habitats Directive implemented by the Conservation (Natural Habitats &c.) Regulations 1994 have been met when determining whether to grant planning permission for a development which could harm a European Protected Species. The three tests include:
  - (a) the activity must be for imperative reasons of overriding public interest of for public health and safety;
  - (b) there must be no satisfactory alternative and
  - (c) favourable conservation status of the species must be maintained.
32. This requirement does not negate the need for a Licence from Natural England in respect of Protected Species and the Local Planning Authority are required to engage with the Directive.
33. The Framework (para 118) confirms that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles: if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
34. As such the Framework adopts a tiered/ cascade approach in that the first test is whether there is an alternative to developing the site. The development has possible beneficial consequences to the environment with the potential to deliver ecological improvements directly related to the erection of housing on this site. As such it is considered that the first two derogation tests and the alternative site test within the Framework are met in that there is no satisfactory alternative.
35. The next test is whether a favourable conservation status of protected species will be maintained and whether the biodiversity impacts are adequately mitigated. As set out above it is considered that a favourable status of protected species will be maintained. To compensate for the limited habitat losses and to ensure that the proposed scheme does not adversely impact on protected species suitable conditions are proposed. As such it is considered that the Local Authority has engaged with the three tests of the Habitats Directive and the guidance contained with the Framework and from an ecological perspective the proposals are acceptable.

### Highways

36. The proposed layout is acceptable in principle, however, it should be provided and constructed to the Lancashire County Council Specification for Construction of Estate Roads to be accepted for adoption under the Section 38 agreement of the Highways Act 1980. In this regard, while the proposed 5.5m width of the site access is acceptable, the footways proposed along the access should be 2.0m wide. Improvements are also required at the site access for the development to meet acceptable highway adoption standard. The proposed footways on both sides of the access should be extended from the development to connect the existing footway along Dawbers Lane, so that pedestrians going in and out of the site would not have to use the live carriageway in doing so. Similarly, the rear vehicular access should be provided, such that it can allow future extension to the land beyond the application site, in which case the 5.5m access width should be maintained up to the application site boundary with 2.0m footways on both sides. Parking should be provided to the current Chorley Council Parking Standard

with the proposed garages provided to sizes of 6.0m x 3.0m for a single garage and 6.0m x 6.0m for double.

37. As the proposed development would result in more vehicles using the access than at present, the presence of the existing layby across the access is not considered to be in the best interest of highway safety, as due to its available width, motorists may inappropriately use any section of the layby to access and egress the site. An improvement would therefore be required to ensure that the site can be accessed and egressed using a clearly defined access. This would require the provision of some form of a build-out to delineate the site access from the layby and ensure that the access is brought forward to the edge of the carriageway for improved visibility. As part of the highway improvements, the section of footway to the back of the layby should be widened such that at its narrowest the width of the footway would not be less than 2.0m. I have attached a rough sketch suggesting the required build-out, the size of which would be agreed on site. the applicant may however, provide their own design for the approval of the highway authority. The off-site highway works would be undertaken through the Section 278 agreement of the Highways Act 1980 with the full cost of the works borne by the applicant.

**Public Open Space Contributions**

38. THE TOTAL FINANCIAL CONTRIBUTION REQUIRED FROM THIS DEVELOPMENT IS AS FOLLOWS:

Amenity greenspace	= £0
Equipped play area	= £0
Parks/Gardens	= £0
Natural/semi-natural	= £0
Allotments	= £210
Playing Pitches	= £20,787
Total	= £20,997

39. The applicant has stated that they wish to support the provision of local services and public open space provision and have increased the above figure to £50k to support specific schemes in the local area that are supported by the Parish Council and where funding has yet to be secured.

**School Places**

40. There is a request from Lancashire County Council for funding towards primary school places that amounts to £67,372.65 and as this is not an allocated site then the applicant would support the provision of this payment and it would be secured through the legal agreement.

**Affordable Housing**

41. Core Strategy Policy 7 requires developments of 5 or more dwellings in rural areas to provide 35% affordable housing. Recent changes to the NPPG set a threshold of 11 or more dwellings for tariff style contributions. Affordable housing would be required from a development such as this however this development is a self-build scheme that aims to attract investors and employers and it is therefore appropriate for an off-site affordable housing contribution that would be calculated in accordance with the Councils SPD and incorporated within the S106 document.

**CIL**

42. The development would be CIL liable however as the intention would be to deliver a self-build scheme then the individual owners and occupiers of the plots would have to claim the self-build exemption in accordance with the regulations. It is therefore likely

that there would be no CIL contribution from this development if all of the self-build exemptions are complied with.

## **CONCLUSION**

43. Balancing the size and scale of the existing buildings, together with the character of the site and existing and potential level of activity on the site together with the mitigation proposals put forward and the community benefits put forward, it is considered that the proposed dwellings (together with associated gardens, driveways and planting) would not have any significantly greater impact on the openness of the Green Belt that would warrant a reason for refusal. The proposal is therefore considered to be an appropriate form of development within the Green Belt having regard to the specific very special circumstances put forward and in accordance with the Framework and the development plan as a whole.

**RELEVANT POLICIES:** In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan (the Central Lancashire Core Strategy, the Adopted Chorley Local Plan 2012-2026 and adopted Supplementary Planning Guidance), unless material considerations indicate otherwise. Consideration of the proposal has had regard to guidance contained within the National Planning Policy Framework (the Framework) and the development plan. The specific policies/ guidance considerations are contained within the body of the report.

## **RELEVANT HISTORY OF THE SITE**

**Ref: 03/00490/TPO Decision: PERTRE Decision Date: 31 July 2003**  
**Description: Felling of four Mature Beech Trees under TPO (Euxton) 1982 ref A1**

**Ref: 08/00001/TPO Decision: PERTRE Decision Date: 8 February 2008**  
**Description: Works to trees covered by TPO 1 (Euxton) 1971, TPO 4 (Euxton Hall) 1982, and TPO 5 (Euxton) 1993, including felling of 18 trees,**

**Ref: 16/00633/OUTMAJ Decision: PCO Decision Date:**  
**Description: Demolition of existing buildings and erection of 14no detached houses with double garages and associated infrastructure**

**Ref: 90/00016/FUL Decision: PERFPP Decision Date: 22 May 1990**  
**Description: Change of use of first floor to saddlery and first floor of garage to residential**

**Ref: 86/00701/FUL Decision: PERFPP Decision Date: 13 January 1987**  
**Description: Erection of stables and staff accommodation**

**Ref: 85/00202/FUL Decision: PERFPP Decision Date: 29 March 1985**  
**Description: Erection of car port with hay loft over**

## **Suggested Conditions**

1. An application for approval of the reserved matters (namely the appearance, layout, scale and landscaping of the site) must be made to the Council before the expiration of three years from the date of this permission and the development hereby permitted must be begun two years from the date of approval of the last of the reserved matters to be approved. Reason: This condition is required to be imposed by the provisions of Article 3 (1) of the Town and Country Planning (General Development Procedure) Order 1995 and Section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Either as part of the first reserved matters application or prior to the commencement of the development details of a scheme for the construction of the off-site works of highway improvement shall be submitted to and approved in writing by the Local Planning Authority.  
Reason: In order to satisfy the Local Planning Authority that the final details of the scheme/works are acceptable before work commences on site.

3. No part of the development hereby approved shall be occupied until the approved scheme for the construction of the off-site works of highway improvement has been constructed and completed in accordance with the scheme details.  
Reason: In order that the traffic generated by the development does not exacerbate unsatisfactory highway conditions in advance of the completion of the highway scheme/works.

4. Prior to the commencement of the development a phasing plan for the development as a whole shall be submitted to and approved in writing by the Local Planning Authority, the phasing plan for the site shall include the following:-

- Demolition works
- Internal Access Road
- Advance Planting
- Extension of existing walls on perimeter of site
- Footpath improvement within woodland to the North and East of the application site and details of connection to the Millennium Green

The development shall be implemented in accordance with the proposed phasing plan unless agreed otherwise.  
Reason: The application proposes a self-build scheme for the development of individual serviced plots and the proposal is to ensure certain works are undertaken ahead of the construction of the self-build plots.

5. Prior to the commencement of any individual dwelling the phasing of the self-build plots shall be submitted to and approved in writing by the Local Planning Authority.  
The self-build plots shall be implemented in accordance with the phasing plan unless agreed otherwise.  
Reason: This is a proposed self-build scheme and the sequence of building the plots is essential to ensure the layout and sequence of plots minimises the impact on the site and the greenbelt as a whole.

6. A scheme for the landscaping of the advance / strategic planting belt shown on plan 16 054 SK04 shall be submitted within 3 months of the grant of planning permission. These details shall include all existing trees and hedgerows within the strategic planting belt; detail any to be retained, together with measures for their protection in the course of development; indicate the types and numbers of trees and shrubs to be planted, their distribution on site, those areas to be seeded, and detail any changes of ground level or landform, proposed finished levels, means of enclosure, minor artefacts and structures. The scheme should include a landscaping/habitat creation and management plan which should aim to contribute to targets specified in the UK and Lancashire Biodiversity Action Plans. Landscaping proposals should comprise only native plant communities appropriate to the natural area. The content of the plan should include elements to mitigate for loss of trees shrubs and bird nesting habitat.  
All hard and soft landscape works shall be carried out in accordance with the approved details within the first planting and seeding seasons following the approval of the scheme and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.  
Reason: To ensure that a satisfactory landscaping scheme for the development is carried out in advance of the development being undertaken as this was put forward as a very special circumstance to support the application and to mitigate the impact of the development and secure a high quality design.

7. A scheme for the landscaping of the development and its surroundings shall be submitted as part of the reserved matters application. These details shall include all existing trees and hedgerows on the land; detail any to be retained, together with measures for their protection in the course of development; indicate the types and numbers of trees and shrubs to

be planted, their distribution on site, those areas to be seeded, paved or hard landscaped; and detail any changes of ground level or landform, proposed finished levels, means of enclosure, minor artefacts and structures. The scheme should include a landscaping/habitat creation and management plan which should aim to contribute to targets specified in the UK and Lancashire Biodiversity Action Plans. Landscaping proposals should comprise only native plant communities appropriate to the natural area. The content of the plan should include elements to mitigate for loss of trees shrubs and bird nesting habitat.

All hard and soft landscape works shall be carried out in accordance with the approved details within the first planting and seeding seasons following the occupation of any buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To ensure that a satisfactory landscaping scheme for the development is carried out to mitigate the impact of the development and secure a high quality design.

8. Either as part of the first reserved matters application or prior to the commencement of the development details of a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions shall be submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards. In the event of surface water draining to the public surface water sewer, the pass forward flow rate to the public sewer must be restricted to 5 l/s.

Reason: To promote sustainable development, secure proper drainage and to manage the risk of flooding and pollution. This condition is imposed in light of policies within the NPPF and NPPG.

9. Either as part of the first reserved matters application or prior to the occupation of any of the dwellings hereby approved details of a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority and agreed in writing. The sustainable drainage management and maintenance plan shall include as a minimum:

- a. Arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a resident's management company; and
- b. Arrangements for inspection and ongoing maintenance of all elements of the sustainable drainage system to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall subsequently be completed, maintained and managed in accordance with the approved plan.

Reason: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development.

10. No removal of or works to any hedgerows, trees or shrubs shall take place during the main bird breeding season 1st March and 31st July inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority.

11. Prior to occupation, a "lighting design strategy for biodiversity" for areas to be lit shall be submitted to and approved in writing by the local planning authority. The strategy shall:

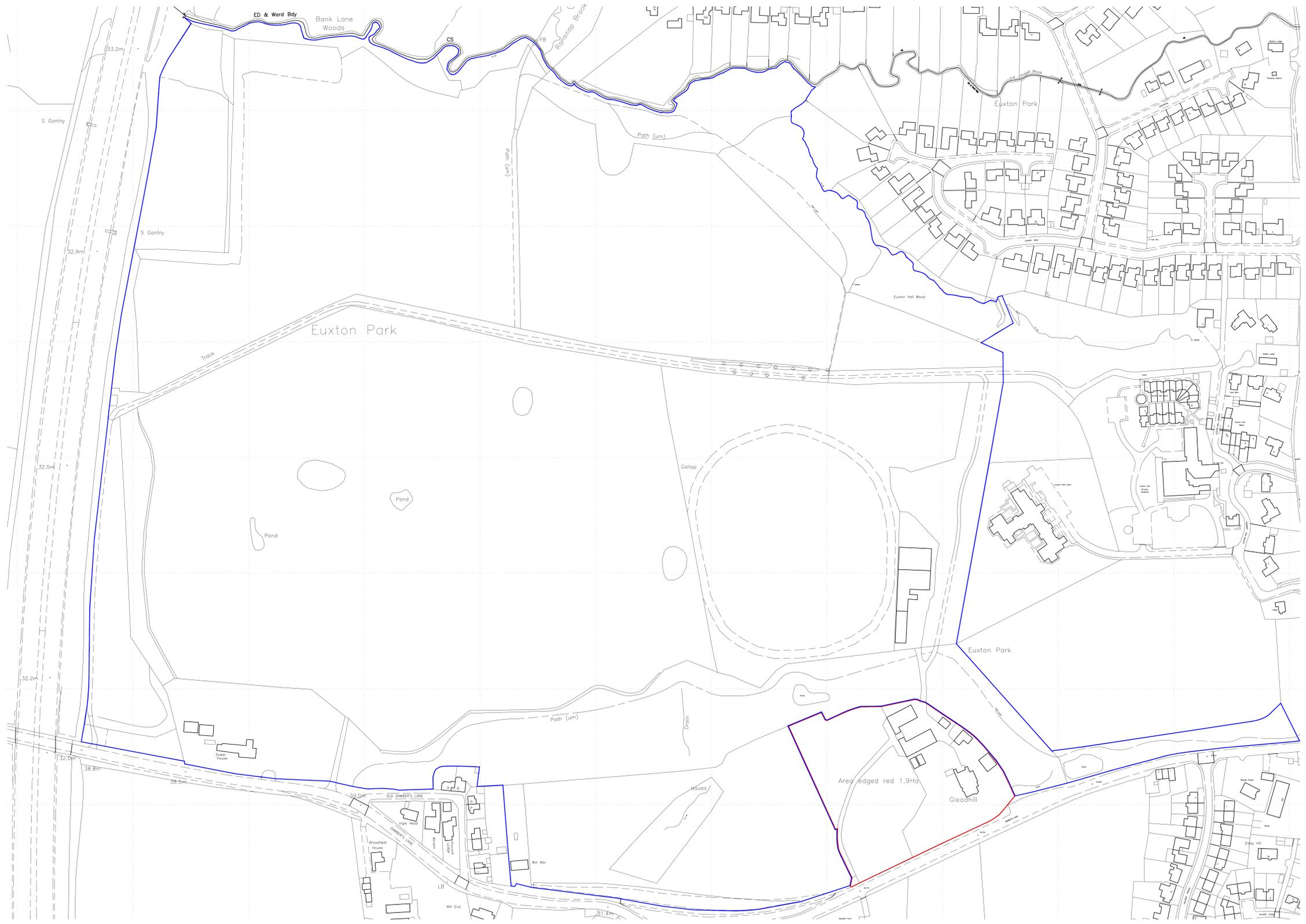
- a) identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
- b) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

12. Footpath

13. Foul and surface water shall be drained on separate systems.

Reason: To secure proper drainage and to manage the risk of flooding and pollution.



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Revision Notes:

**LMP**  
ARCHITECTURAL CONSULTANTS

CLIENT:  
Gleadhill House Stud Ltd.

PROJECT NAME:  
Proposed Demolition of Existing Buildings & Residential Development of 14no  
Detached Dwellings & Infrastructure at Gleadhill, Dawbers Lane, Euxton.

DRAWING NAME:  
Location Plan.

SCALE	DRAWN BY	DATE	DRAWING NUMBER	REVISION
1:1250 @ A0	JRM	07-07-2016	16/054/L01	-

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**APPLICATION REPORT – 16/00510/OUTMAJ**

**Validation Date: 27 June 2016**

**Ward: Chisnall**

**Type of Application: Major Outline Planning**

**Proposal: The erection of up to 60 dwellings, a village shop, community parking, landscaping, provision of public open space, access and associated infrastructure**

**Location: Land 120M East Of 27 Charter Lane Charnock Richard**

**Case Officer: Mrs Helen Lowe**

**Applicant: Taylor Wimpey UK Limited And Conlon Holdings Limited**

**Agent: Taylor Wimpey UK Limited And Conlon Holdings Limited**

**Consultation expiry: 29 November 2016**

**Decision due by: 10 April 2017**

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**RECOMMENDATION**

It is recommended that the application is refused.

**SITE DESCRIPTION**

1. The application site is area of land within the settlement boundary of Charnock Richard. The site extends to approximately 3.42 Ha. The land is generally flat and at present undeveloped, consisting of fields that appear to be used mainly for the grazing of horses. The land is bounded to the north by Charnock Richard Primary School, to the west by Charter Lane and the houses that front onto Charter Lane, to the south by Charnock Richard Football club and to the east by the rear of properties on Leeson Avenue. There are a number of mature trees along the site boundaries, particularly the north and south.

**DESCRIPTION OF PROPOSED DEVELOPMENT**

2. This is an outline planning application, with all matters reserved apart from access. The proposal is described as:

*“The erection of up to 60 dwellings, a village shop, community parking, landscaping, provision of public open space, access and associated infrastructure”*

The applicant is proposing that as well as the residential development the scheme would include up to 21 affordable homes (35%), a village shop, community car parking area (up to 20 spaces) and a community orchard. Vehicular access is proposed off Charter Lane, close to the northern site boundary.

3. The application is accompanied by an illustrative masterplan showing how the development may be accommodated on the site. The following documents have been submitted in support of the application:

- Ecological assessment
- Design and access statement
- Arboricultural report
- Amphibian survey
- Great crested newt survey
- Air quality assessment
- Transport assessment
- Noise assessment
- Heritage assessment
- Planning, CIL and affordable housing statement
- Flood risk assessment and drainage management strategy
- Statement of community involvement
- Land contamination assessment
- Technical paper on housing issues

#### RELEVANT HISTORY OF THE SITE

**Ref:** 5/5/07975      **Decision:** WDN      **Decision Date:** 18 February 1971  
**Description:** Site for 145 dwellings

#### REPRESENTATIONS

4. 59 Letters of objection have been received, and a petition (393 signatures), making the following comments:
  - Issues of highway safety, Charter Lane is very narrow
  - The land is waterlogged and suitable drainage would be needed
  - Would cause flooding
  - There are great crested newts on the land
  - The schools and roads would not be able to cope
  - Would be detrimental to the character of the village
  - There is inadequate infrastructure
  - This is a commercial application for profit purposes
  - The effect on wildlife would be enormous
  - There is no space in the local school
  - Green Belt land should be protected
  - The land is not allocated in the Local Plan for housing
  - Extra traffic would be dangerous for horse riders
  - The hammering in of pilings raises concerns over the possible damage this could cause to nearby properties due to the vibrations caused
  - Severe impact on quality of life
  - Builders vehicles may damage the bridges
  - Would devalue homes
  - Could lead to an increase in crime and anti-social behaviour
  - The noise, dust and light pollution the development would temporarily and permanently cause is not acceptable.
  - There are already parking problems along Charter Lane from the school and football club
  - Would cause more power cuts
  - Would we get a reduction in Council Tax?
  - The present wastewater and surface water pumping station cannot cope in severe conditions
  - The proposed parking spaces would not help
  - A shop is unlikely to work
  - There is no housing provision for the elderly
  - Loss of privacy for residents adjacent to the site
  - Charnock Richard would no longer be a village
  - There are many more suitable development sites already allocated for building in the Chorley area

- There is no shortage of houses in the area
- It would be a further degradation of green space & natural outlook for the community
- Chorley meets its housing development requirements without the use of this site
- It would lead to increased surface water run off
- In the local plan, Charnock Richard is allocated for small scale development and limited infill, and this planned site is neither of these things
- There is a lack of public transport in the area
- The Council should look elsewhere for development
- Light and noise pollution would be increased
- The ecological assessment is incorrect, there are water voles in the area
- A Village Green is not needed, we already have the orchard gardens, a playing field, a football club, scout hut, community centre
- Brownfield development should take place first
- Any affordable housing must be built in Charnock Richard and provided to the residents of Charnock Richard
- The changes to reduce the number of properties from 90 to 60 does not make the proposed development any more acceptable
- The comparison to the Mawdesley development is not considered to be valid

5. 26 letters of support have been received, making the following comments:

- Would not have any effect on Green Belt
- Would create jobs
- Good for the community, more homes are needed
- The village does not have many houses that fit into the first time buyer bracket
- The proposal includes community facilities
- Would like the opportunity to remain in the area they grew up
- A village store is a much needed facility

## CONSULTATIONS

The Coal Authority: Low risk area, standing advice applied.

Lancashire County Council Archaeology Service: A scheme of archaeology work should be undertaken as part of the development. Recommend a condition be added.

Lancashire Constabulary Architectural Liaison: A cul de sac arrangement with one vehicular entrance route in and out is recommended. The dwellings and shop should be built to secured by design standards. Recommendations are made regarding boundary fencing details and lighting. Rear parking courts should be avoided.

Conservation Officer: The proposed development would be acceptable as it would preserve the appearance of the adjacent listed buildings and thus also sustain the significance of these designated heritage assets. Accordingly the proposed development would be in conformity with S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Framework and local planning policies.

Greater Manchester Ecology Unit: Great crested newts have been recorded on the north eastern corner of the application site, and may use parts of the site as a terrestrial habitat. It would be possible to allow the development and meet the derogation tests, subject to additional amphibian surveys being carried out to confirm the population size of the great crested newts locally and a comprehensive method statement prepared giving full details of measures to be taken to avoid any possible harm to great crested newts during the course of the scheme. Once approved, this Method Statement must be implemented in full. As part of this Method Statement sufficient space would need to be retained within the site to support amphibian populations.

Overall the site is not of substantive ecological interest. The site is dominated by relatively species-poor agricultural grassland. It is recommended that existing trees and hedgerows be retained wherever possible, and protected from harm during any construction period, and that a

comprehensive landscape creation and management plan be prepared for the site and submitted to the council for approval as part of any reserved matters applications that may come forward in future. No tree felling or vegetation clearance that may be required by the scheme should take place during the optimum period for bird nesting ((March to July inclusive). All nesting birds their eggs and young are specially protected under the terms of the wildlife and Countryside Act 1981 (as amended).

Lancashire County Council (Education): (these comments are provided in response to the revised proposal of 60 houses) Where the growth in pupil numbers is directly linked to housing development and existing school places are not sufficient to accommodate the potential additional pupils that the development may yield, Lancashire County Council would seek to secure developer contributions towards additional school places. The latest information available at this time was based upon the 2016 School Census and resulting projections.

Based upon the latest assessment, taking into account all approved applications, LCC are seeking a contribution for 23 primary and 9 secondary school places.

Regulatory Services - Environmental Health: Have confirmed that they have no comments to make.

Waste & Contaminated Land: Recommend imposition of a condition requiring an assessment of ground contamination.

Lancashire Highway Services: Do not object in principle to the proposed development, however, due to the pedestrian safety concern regarding obstructions to pedestrians by parked vehicles on the existing footway, the applicant would be required to provide a footway on the west side of Charter Lane for its full length of approximately 600m to provide an alternative walking surface. The footway provision is essential to make the proposed development acceptable as there is risk the development might exacerbate the current unsatisfactory condition. It is considered that there is adequate highway verge available to allow the 2.0m footway to be provided.

LCC Highways have confirmed that their comments are unchanged following a reduction in the maximum number of houses being proposed from 90 to 60.

Strategic Housing: Comments based on proposal for 90 houses: For a development of this size in Charnock Richard a 35% affordable housing contribution is required, which equates to 31.5 properties and is therefore rounded up to 32 according to the policy.

22 properties should therefore be Social Rented, and 10 Shared Ownership reflecting the 70/30 policy split. However from looking at previous sites in Charnock Richard and neighbouring parishes, the delivery of large numbers of affordable properties at any one time can mean for many of the properties there is no local demand, and therefore this adds to future need. Therefore to better meet local need the delivery of the affordables should be phased into 3 or 4 tranches several months apart with no more than ten Social Rent in each tranche and a mix of property types.

To meet local need and demand in the Charnock Richard parish the 22 Social Rented should be as follows:

10 x 2 bedroom 4 person houses and  
 4 x 2 bedroom 3 person bungalows.  
 4 x 1 bedroom 2 person flats  
 4 x 3 bedroom 6 person houses

The shared Ownership properties should be:

3 x 2 bedroom 4 person houses  
 7 x 3 bedroom 6 person houses.

All properties should meet the Nationally Described Space Standards.

Properties should be prioritised in order for

Households with a local connection to Charnock Richard  
Households with a local connection to any other rural west parish  
Households with a local connection to the borough of Chorley

The Rent Reduction for RPs 2016-20 and LHA Cap from 2018 should be taken into account when factoring in expected offer values for Social Rented properties.

Lead Local Flood Authority: Have no objection to the proposed development subject to the inclusion of conditions, in consultation with the Lead Local Flood Authority.

Prior to designing site surface water drainage for the site, a full ground investigation should be undertaken to fully explore the option of ground infiltration to manage the surface water in preference to discharging to a surface water body, sewer system or other means. Although they are satisfied at this stage that the proposed development could be allowed in principle, the applicant will need to provide further information to ensure that the proposed development can go ahead without posing an unacceptable flood risk to neighbouring existing properties on Charter Lane, Lesson Avenue, Willow Drive and Christ Church Charnock Richard Church of England Primary School.

Charnock Richard Parish Council (these are the second comments submitted in response to the revised proposals): The Parish Council has no objections in principle to these proposals as they are aware that this land is earmarked for development.

However, the Parish Council concerns about the number of houses proposed remain unchanged. Planning Policy 1(f) of the Core Strategy allows for “small developments” or “infill” development in Charnock Richard. Proposals for up to 60 homes still cannot be considered a small development.

The Parish Council remain extremely concerned about the highway safety implications of the proposals. The Council believe that the existing road infrastructure is incapable of supporting a development of even 60 additional homes and the 280+ vehicular movements per day in and out of the site this will create.

Charter Lane, being only 5.5 metres wide, is not suitable as an access road. The junctions of Charter Lane/Chorley Lane and Charter Lane/Church Lane have not been constructed to deal with this significant increase in vehicular movements without seriously compromising highway safety for pedestrians and road users. The junction of Charter Lane and Chorley Lane is completely inadequate to support this size of development. The sightlines are already restricted and, there is no land available to increase the visibility splay to accommodate the additional number of vehicular movements which would be created by a development of 60 homes. Similarly, at the junction of Charter Lane and Church Lane, sightlines are restricted, often by parked cars associated with children attending the Primary School on Church Lane, and again it is difficult to see how this access could be altered to service the number of cars associated with a development of 60 homes.

If the Planning Committee has a mind to grant planning permission however, the Parish Council request that the following conditions are included in the planning permission:

- 1) That the original drainage ditch which runs along the edge of the site be opened again as it was filled many years ago and has not been piped. The ditch needs to be excavated and suitable drainage installed to ensure that drainage from the site is adequate and does not impact on any neighbouring development.
- 2) That instead of the footway on the opposite side of Charter Lane, suggested in Lancashire County Council highways response to the initial application, this land be used to widen Charter Lane from its existing 5.5 metres.
- 3) That conditions are attached to ensure that some of the affordable housing in the development is available to buy with first priority under all circumstances being given to young

people who live, and wish to remain, in the Parish or, who have a connection with the locality. Similarly, any affordable housing in the development which will be available to rent should include a "Local Letting Policy" as part of the planning permission to ensure that first priority under all circumstances is given to local people who live, or wish to remain, in the Parish or who have a connection with the locality.

4) That conditions are imposed to ensure that this is the first and final application for development on this site and no further phases of development can be undertaken at this location in the future.

5) The Council would also ask that a condition be included to ensure that construction work and vehicles can only operate during social hours and that any damage caused to existing highways during the construction period must be repaired as soon as practicable after it occurs "

Chorley Council Tree Officer: G2, G3 Mature, semi mature, early mature groups along site boundary with playing field, recreation ground and football pitch. Prominently oak with alder, hawthorn, crab apple, sycamore, holly. Trees in good condition screening site. Good habitat value. Recommend retain. Group within northern section of the site, unable to gain access.

United Utilities: No objection subject to the imposition of conditions.

Charnock Richard C Of E School (School Governors): As the school playing field adjoins the proposed development, there are fears that building would further increase our problems with poor drainage.

Secondly, traffic access to the estate for possibly a hundred or more cars would exacerbate the congestion which occurs along both Church Lane and Charter Lane at the start and end of the school day. This would further compromise the safety of children, particularly those walking or cycling to school. Parked cars already reduce the roads to single width and virtually a one-way system. Both junctions from Charter Lane on to Church Lane and on to Chorley Lane are hazardous.

Present school buildings cannot accommodate seven straight-age classes, which results in one class being currently based in the Scout/Guide Building. Previous building developments within the village have failed to provide any additional funding to meet educational provision within the village.

This application for development on such a scale would have a serious impact on the already stretched village infrastructure and services.

## PLANNING CONSIDERATIONS

### Applicant's case

6. The applicant has put forward that the benefits of the development are as follows:
  - The creation of up to 60 homes to significantly boost the supply of housing land whilst protecting Green Belt;
  - The presumption in favour of sustainable development in settlement areas within Policy V2 of the LP;
  - The delivery of up to 21 affordable homes to meet local needs;
  - The provision of a village shop to increase social integration and to improve the sustainability of the village;
  - The provision of community car parking to provide benefits to existing residents and help alleviate congestion on surrounding roads;
  - Connectivity of the site with the surrounding area will be established by creating linkages which are not currently available. A link from the existing play area to the south of the site through to the scout hut and school to the north will reduce walking time significantly for residents around Leeson Avenue and provide a safer and more attractive route for pedestrians. This will also help to facilitate the integration of new residents with the existing community, creating healthy, inclusive communities also supported by the Framework in paragraph 69;

- The building of up to 60 houses will provide economic stimulus as well as help to support 35 temporary construction jobs per year of build throughout this time;
- Beyond the construction phase, additional benefits will occur through household expenditure in the local area in the region of £1.4 million;
- The scheme could generate approximately £422,000 of New Homes Bonus payments over a six year period which can be spent as required by the Council;
- Financial contributions required through the Community Infrastructure Levy will contribute up to £230,000 which will help to improve local facilities such as education and deliver local infrastructure improvements; and
- New residents will contribute an additional £63,000 per annum in Council Tax receipts.

### **National Policy Framework**

7. There is a clear presumption in the Framework in favour of a sustainable development which will support economic growth, create jobs, facilitate the provision of significant affordable housing and provide community facilities. The Framework states for larger scale residential developments, planning policies should promote a mix of uses in order to provide opportunities to undertake day-to-day activities including work on site. Key facilities such as primary schools and local shops should be located within walking distance of most properties. The Framework identifies that there are three dimensions to sustainable development: economic, social and environmental and that the planning system must therefore perform a number of roles: an economic role – contributing to building a strong, responsive and competitive economy; a social role – supporting strong, vibrant and healthy communities; and an environmental role – contributing to protecting and enhancing the natural, built and historic environment.

### **Local Policy Framework**

8. Core Strategy Policy 1 sets out the locations for growth and investment across Central Lancashire. Charnock Richard is not identified as a Rural Local Service Centre therefore criterion (f) is applicable. Under this criterion development will typically be small scale and limited to appropriate infilling, conversion of buildings and proposals to meet local need, unless there are exceptional reasons for larger scale redevelopment schemes.
9. The application site is approximately 3.42 hectares in size. The proposal is not wholly to meet local need; 21 houses are for affordable homes (35%), the remainder are general market housing. The site wholly comprises previously undeveloped land (greenfield).
10. The applicant claims that the development is small scale. It is however not considered that the development of 60 dwellings is small scale. The proposal is also not redevelopment therefore the proposal is contrary to criterion (f) of Policy 1.
11. The site is located within the settlement area of Charnock Richard under Policy V2 of the Local Plan. This policy sets out a presumption in favour of sustainable development, subject to material planning considerations and other policies and proposals in the plan.
12. The applicant has argued that there is conflict and inconsistency between Local Plan Policy V1 and Core Strategy Policy 1 as they consider that development within the settlement boundary represents sustainable development, and that land within settlement boundaries should be fully utilised. They also argue that Policy 1 is inconsistent with the Framework as it seeks to restrict the growth of Charnock Richard which they claim is a settlement designated as sustainable by virtue of it having a settlement boundary designated under Policy V2. The Council do not believe that there is a conflict between the two policies or that having a settlement boundary means that Charnock Richard is a sustainable location. Core Strategy Policy 1 sets out a hierarchy of settlements with most growth and investment being focussed in the more sustainable settlements. The Core Strategy Inspector found this policy sound and stated in paragraph 37 of his report "The Local Plan is clear in terms of its vision and proposals. It ensures an appropriate scale of development in accordance with the existing or proposed size of the settlement and the present and/or future range of its services, including public transport."

13. The application site was specifically considered as part of the Chorley Borough Local Plan 2012-2026 review. It was put forward as an alternative site (AL26) and was discussed at the Examination. The Inspector stated:

"Several suggested alternative sites (ALs) are located outside settlements identified for growth in CS policy 1 and are also located in the Green Belt. The Plan has not sought to re-define settlement boundaries, which are carried forward from the Local Plan Review 2003, and the CS makes no provision for a strategic review of the Green Belt boundaries. Thus their allocation would be inconsistent with the development plan and with the Framework, and would make the Plan unsound. Consequently, for these reasons I conclude that the following sites should not be allocated; AL02 - Flash Green Farm, AL08 - Land at Darwens Farm, Buckshaw Village, AL09 - Land at Clayton-le-Woods, AL11 - Sharrats Path, Charnock Richard, AL12 - Land at Orchard Heys Farm (only part of the site is in the Green Belt), AL26 - Land at Charnock Richard and AL27 - Land opposite 35 Preston Road, Coppull."

14. Although it is wrongly referred to as being in the Green Belt, it was discounted as it is located in a settlement not identified for growth in the Core Strategy and is not in a sustainable location. The site was assessed as part of the sustainability appraisal of the Local Plan and was scored as a band D. Site Suggestions for the emerging Local Plan were banded A – E with band A being the most sustainable and Band E the least. The site assessment shows distances to: a railway station is over 3km; a service centre is over 3km; a supermarket is over 3 km; a GP surgery is over 3km. Bus frequency is less than 1 hour in each direction, the distance to a NHS hospital is over 10km and distance to a further/higher education is over 5km.
15. The application site is considered to be located in an unsustainable location, outside of where the Local Plan seeks to direct development, unless there are exceptional reasons. Notwithstanding the issues raised below regarding housing land supply, the applicant considers that there are significant benefits arising from the development, particularly in relation to the delivery of affordable housing. These are discussed further below.

### **Housing supply**

16. The applicant also considers that Chorley Council is unable to demonstrate a five year supply of housing land. The applicant argues that the Council's housing requirement is based on out of date information and does not represent the full objectively assessed need for housing in the Borough. They have commissioned a report into the Council's objectively assessed need which suggests a requirement of at least 618 dwellings per annum, rather than the annual housing requirement of 417 dwellings per annum set out in the Local Plan.
17. They consider that the application should fall to be considered under paragraph 14 of the Framework which sets out a presumption in favour of sustainable development. It states that where the development plan is absent, silent or relevant policies are out of date planning permission should be granted unless 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.
18. The Council do not believe that the adopted housing land supply policies set out in Core Strategy Policy 1: Locating Growth, Core Strategy Policy 4: Housing Delivery and Local Plan Policy HS1: Housing Site Allocations are out of date.
19. The Core Strategy was adopted in July 2012. The housing requirement in Policy 4 was based on Regional Strategy housing figures however the Core Strategy Inspector considered the requirement sound and stated in his report "The amount of housing proposed, together with the policies which seek suitable densities and high quality design and other relevant policies, accord with the Government's policy, set out in the

Framework, of delivering a sufficient amount and wide choice of high quality homes, widening opportunities for home ownership and creating sustainable, inclusive and mixed communities. As a result, everybody should have the opportunity of living in a decent home which they can afford in a community where they want to live. In these respects the Local Plan is sound.”

20. The Chorley Local Plan 2012-2026 was adopted in July 2015. Representations were received during preparation of the Local Plan that the housing requirement is not based on a robust, up to date objective assessment of need as required by the Framework. The Inspector concluded in her report that the Core Strategy target for 417 dwellings remained appropriate. She also stated “The Regional Strategy for the North West (RS) was revoked by the Secretary of State during the examination period. The impact of this on the soundness of the Plan, particularly regarding the justification for retaining the RS housing and employment targets, was consulted upon and discussed at the hearing sessions. I conclude that no soundness issues have arisen as a consequence.”
21. Furthermore, in a recent appeal decision APP/N235/W/15/3007033 for up to 150 dwellings at Land at Preston Road, Grimsargh dated 9th May 2016 the Inspector for that appeal concluded that the Central Lancashire Core Strategy housing policies were not out of date. She stated in paragraph 21 “I have no reason to conclude that the relevant policies for the supply of housing are out of date with respect to the strategy for the location of housing. The Core Strategy was adopted in July 2012 in the context of the NPPF and the Local Plan was adopted as recently as July 2015.” The Chorley Local Plan was also adopted in July 2015 therefore it should be considered up to date in light of this appeal decision. The appeal was allowed due to the uncertainties surrounding the delivery of housing and the Inspector took the view that the housing land supply for Preston amounted to approximately 4.79 years. As a five year supply had not been demonstrated the Inspector concluded in accordance with paragraph 40 of the Framework that the relevant policies for the supply of housing were out of date.
22. It is considered that the Core Strategy housing requirement is not out of date and the Council can demonstrate a five year supply. The Five Year Housing Supply Statement for Chorley published in September 2016 identified that there was a 7.2 year deliverable housing supply in the Borough over the period 1st April 2016 – 31st March 2021.
23. In total there are 2,424 deliverable dwellings over the five year period. 1,681 are on allocated sites with planning permission, 600 on windfall sites with planning permission and a windfall allowance of 143 dwellings has been included.
24. Whilst the Council believes that these policies are not out of date and comply with paragraph 47 of the Framework, it is accepted that it is timely to review the objectively assessed housing needs and housing requirements set out in the Core Strategy and this work is presently ongoing.

### **Planning Balance**

25. The Council considers that the adopted housing land supply policies are up to date, therefore the proposal is contrary to the development plan. Paragraph 12 of the Framework states “Proposed development that accords with an up to date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.”
26. Notwithstanding the information that the applicant has submitted to demonstrate that they consider that the Council’s housing requirement is out of date (as it derives from the now revoked Regional Spatial Strategy), they have also considered that the proposal would give rise to significant social and economic benefits. Therefore, even where the Council can demonstrate a five year supply, a development may be granted where material considerations indicate that a proposal should be determined other than in accordance with the development plan.

27. They would like to draw Member's attention to a recent appeal decision in Lichfield (ref. APP/K3415/A/14/2224354). The appeal was recovered for the Secretary of State's determination in pursuance of section 79 of the Town and Country Planning Act 1990 because the appeal involves proposals for residential development of over 150 units which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable and inclusive communities. The application was for 750 dwellings and additional neighbourhood facilities. The Secretary of State overruled the Inspector and allowed the appeal despite the Council being able to demonstrate a 5 year housing land supply. This is because significant weight was given to the social and economic benefits of the scheme which represented sustainable development.

*"The Secretary of State concludes that the social and economic benefits of providing affordable and market housing are of such importance that they outweigh the environmental harm, and that the proposal would thus represent sustainable development. Overall, therefore, he concludes that the material considerations indicate that the appeal should be allowed."*

They consider that the Lichfield appeal should be given significant weight.

28. The applicant has identified a number of benefits of the proposed development. These include :
- the delivery of up to 60 high quality homes to significantly boost the supply of housing land whilst protecting Green Belt and the delivery of up to 21 affordable homes to meet local needs.
  - The potential for a community shop and off road parking provision within the site
  - Economic stimulus and 35 temporary construction jobs per year of the build
  - Household expenditure in the local area in the region of £1.4 million
  - £63,000 in Council Tax revenues and a CIL payment of over £300,000 which will benefit the local area substantially
29. The Council acknowledges that there is a need for affordable housing in Charnock Richard, however it is considered that the amount being proposed far exceeds the need and the proposal would lead to households outside the Parish being housed in Charnock Richard. This is based on an assessment of the number of houses on the Housing Register and the numbers of recently let properties. The provision of affordable housing as part of this development is not considered sufficient to justify allowing a development of this scale.
30. The applicant has further drawn attention to the similarities between this proposal and an earlier approval for 56 Houses granted in Mawdesley (ref. 14/00022/OUTMAJ). Again, this site fell to be assessed against the provisions of Policy 1 of the Core Strategy. It was considered that there were exceptional reasons to justify a larger redevelopment scheme in Mawdesley: the provision of affordable housing and ensuring the long term viability of the existing furniture business. It is considered that there are a number of crucial differences between the current proposals in Charnock Richard and the previous approval in Mawdesley. The Mawdesley proposal comprised the redevelopment of an existing, previously developed site. At the time the application was determined it was accepted that there was an exceptional need for affordable housing to which the proposal would significantly contribute. The site in Charnock Richard is not a previously developed site, does not support a local business and as previously discussed there is not an overriding need for the level of affordable housing proposed.

**Layout and design**

31. The applicant has submitted a detailed Design and Access Statement which demonstrates an understanding of the site, its context and proposes a layout which responds to the character of Charnock Richard and the site.
32. Opportunities to enhance the setting of the site have been taken, for example the creation of a community orchard in the north west corner is indicated on the illustrative masterplan and a village green in the south east.
33. There are residential properties immediately adjoining the site to the east and west. The illustrative masterplan demonstrates the potential layout of the residential and commercial development and has considered the relationship the new development would have with the existing properties.
34. Whilst matters of siting are not for consideration at this stage, there is a sufficient degree of separation between the existing dwellings and the developable area of the site to ensure that the Council's spacing standards would be respected. As such it is considered that the proposal would not result in any loss of amenity for existing residents and the future residents within the development.

**Landscape and Visual Impact**

35. Landscape character is the physical make up and condition of the landscape itself. It arises from a distinct, recognisable and consistent pattern of physical and social elements, aesthetic factors and perceptual aspects. Visual amenity is the way in which the site is seen and appreciated; views to and from the site and, their direction, character and sensitivity to change.
36. Policy 21, 'Landscape Character Areas' of the Core Strategy, states that new development will be required to be well integrated into existing settlement patterns, appropriate to the landscape character type and designation within which it is situated. The introduction of a new residential development will result in permanent albeit localised changes in the landscape. The character of the landscape of the site will have changed from a pastoral one to residential with open space.
37. It is considered that the proposals would have an impact upon the local landscape and the visual amenity of immediately adjacent neighbours. However, these impacts are considered to be relatively localised and contained. It is considered that from a landscape and visual impact perspective, development of the site would have minimal impact on its surroundings and would not have a negative impact upon any valued landscape or sensitive sites.

**Trees**

38. The application is accompanied by a detailed tree survey that has confirmed that there are a number of high quality trees within and on the site boundaries. The submitted masterplan would allow for the retention of the highest quality trees, although some felling of trees within the site along field boundaries is likely to be necessary. The trees abutting the southern boundary are considered to be of especially good quality and should be retained. A comprehensive landscaping scheme at detailed stage would need to take all of these considerations.
39. From an arboricultural perspective, the proposals are considered to be acceptable and compliant with the provisions of policy BNE10 of the Local Plan 2012-2026 which states that proposals will not be permitted if they result in the loss of trees, woodland areas or hedgerows which make a valuable contribution to the character of the landscape or settlement.

**Ecology**

40. The application is accompanied by an Ecological Assessment, Amphibian Survey and Great Crested Newt (GCN) Survey Report. The Ecological Assessment consisted of a desktop study and a Phase 1 Habitat Survey. It found that other than GCN, no other

EPS or species listed on Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 (e.g. hedgehogs *Erinaceus europaeus*) were identified as being adversely affected by the proposed development. A number of recommendations are made regarding the removal of trees, scrub and hedges in order to protect nesting birds and around removal of invasive species (Himalyan Balsam) found on the site. Opportunities for biodiversity enhancement should be included in the plans for the proposed development.

41. The Great Crested Newt Survey found great crested newts to be present on the site. Therefore, a derogation licence from Natural England (NE) would be required prior to work commencing on the site. The NE licence will require that GCN are removed and excluded from construction areas of the development site via a fencing and trapping scheme. It will also require that the final landscaping scheme provides sufficient quality and quantity of terrestrial habitats to mitigate for losses. As the onsite pond is being retained there is no need to provide additional aquatic habitats.
42. The Framework states that pursuing sustainable development involves seeking positive improvements in the quality of the natural environment, including moving from a net loss of biodiversity to achieving net gains for nature. Core planning principles in The Framework state that planning decisions should contribute to conserving and enhancing the natural environment.
43. The Framework goes on to state that the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including establishing coherent ecological networks. Planning decisions should address the integration of new development into the natural environment and opportunities to incorporate biodiversity in and around developments should be encouraged.
44. Circular 06/2005 provides guidance on the application of law relating to planning and nature conservation as applies in England. It is clear in Circular 06/2005 that if protected species are reasonably likely to be present and affected by the proposed development, then a survey/assessment to establish the presence or absence of protected species and the extent that they may be affected by the proposed development needs to be undertaken before planning permission is granted.
45. Following the Supreme Court ruling (*Morge vs Hampshire County Council – Supreme Court ruling Jan 2011*) the Local Authority now have a responsibility to consult Natural England on proposals which may affect protected species and ask the following questions:
  - Is the proposal likely to result in a breach of the Habitats Regulations?
  - If so, is Natural England likely to grant a licence?
46. Having regard to the standing advice and guidance provided by Natural England it is considered appropriate to rely on the advice provided by the Greater Manchester Ecology Unit. Natural England will only provide bespoke advice for priority habitats and priority species which occur outside of designated sites in exceptional circumstances. The application site does not include any European designated sites or SSSIs.
47. Under the Conservation of Habitats and Species Regulations 2010 which enacts the EU Habitats Directive into the UK, a licence will be required from Natural England to derogate the terms of this legislation before any work can commence with the potential to cause harm to protected species. Before a licence can be granted three tests must be satisfied. These are:
  - i) That the development is “in the interest of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequence of primary importance for the environment”;

- ii) That there is “no satisfactory alternative”;
- iii) That the derogation is “not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range”.

48. In considering planning applications that may affect European Protected Species, Local Planning Authorities are bound by Regulation 9(1) and 9(5) of the Conservation of Habitats and Species Regulations 2010 to have regard to the Habitats Directive when exercising their functions. All three tests must be satisfied before planning permission is granted on a site and Natural England will seek evidence from the LPA that the three tests were considered during the grant of any planning permission before agreeing to issue a license
49. GMEU have advised that the information submitted is satisfactory. It would be possible to retain the pond and the immediately surrounding habitat as part of the development, and to retain and improve other habitats on the site that may be of use to amphibians. If the northern hedge-line is retained and protected it would also be possible to retain habitat connectivity with the wider landscape. Outline mitigation for avoidance of harm to great crested newts has been put forward in the ‘GCN Survey Report’ submitted as part of the application. It would be possible to allow the development and meet the third test above, subject to the imposition of a number of conditions.

#### **Flood risk**

50. A Flood Risk Assessment (FRA) has been submitted with the application, in accordance with The Framework. The application site is within Flood Zone 1, within which ‘vulnerable’ uses such as residential uses are considered to be an appropriate development type. There is no in principle issue with development of the site from a flood risk perspective. The report submitted, therefore, focusses on the effective management of surface water runoff. The issue of surface water drainage has also been raised as a matter of concern by a number of local residents.
51. The FRA has been reviewed by the Lead Local Flood Authority (LLFA) and United Utilities who have confirmed that they are satisfied that the proposed development would be safe and that it would not be at an unacceptable risk of flooding or exacerbate flood risk elsewhere, provided that any subsequent development proceeds in accordance with the recommendations of the FRA. Appropriate conditions are recommended.

#### **Traffic and Transport**

52. A Transport Assessment has been submitted with the application. It contains an assessment of the accessibility of the proposed development by a variety of modes of transport, including: foot, cycle, bus and rail and concludes that the site is accessible by all modes and would promote a choice of travel modes, other than the private car. It also proposes a travel plan to encourage residents and visitors to travel to the site by non-car modes. A traffic impact analysis has also been carried out, with traffic surveys undertaken in February 2016. Trip generation and peak hour trip rates have been forecast for the proposed development (these were based on a development of 90 houses, and have not been revised following a reduction in the proposed number of dwellings). A site visit was also undertaken when a football match was underway and at school drop off time. The report concludes that the development would not have a material impact the operation of the road network.
53. The Framework is clear that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. Both the Core Strategy and Local Plan policies seek to secure more sustainable modes of transport.
54. The applicant considers that the proposed development complies with national and local planning policy for the following reasons:

- The proposed development will reduce the need to travel due to it being located in the centre of the village and in close proximity to a range of services such as a school and
  - The site is located in close proximity of a range of public transport opportunities, which will facilitate non-car travel to and from the proposed development;
  - The site promotes sustainable transport in accordance with the NPPF as it facilitates sustainable development and contributes to wider sustainability and health objectives.
55. The LCC Highways Engineer concurs with the findings of the Transport Assessment that the impact of the development site on the increase in traffic would be marginal (it is predicted that once the development is opened, there would be 4.8% and 5.5% increase in traffic at Church Lane/Charter Lane respectively during the weekday AM and PM peaks. Chorley Lane/Charter Lane will also see an increase in traffic of 6.0% and 6.2% respectively during weekday AM and PM peaks).
56. The Highway Engineer also comments that although the observed level of on-street parking is not concerning given the length of Charter Lane, the fact that pedestrians are forced onto the carriageway due to inadequate width of the existing footway is of highway concern. Overall, the highway authority does not object in principle to the proposed development, however, due to the pedestrian safety concern expressed above, regarding obstructions to pedestrians by parked vehicles on the existing footway, the applicant would be required to provide a footway on the west side of Charter Lane for its full length of approximately 600m to provide an alternative walking surface. The footway provision is essential to make the proposed development acceptable as there is risk the development might exacerbate the current unsatisfactory condition. It is considered that there is adequate highway verge available to allow the 2.0m footway to be provided.
57. The concerns that local residents have raised regarding issues of highway safety are noted. However, as the LCC Highways engineer has confirmed that they consider the findings of the transport assessment that has been provided to be accurate, and that measures can be put in place to alleviate the problems of on street parking in the area, it is not considered that a refusal could be sustained on this basis. There is no evidence before us to suggest that the proposal would give rise to severe impacts on highway safety.

#### **Public Open Space**

58. The proposed development would generate a requirement for the provision of public open space in line with policies HS4a and HS4b of the Chorley Local Plan 2012 – 2026 and the Open Space and Playing Pitch SPD. The applicant is proposing that open space would be provided on site in the form of a community orchard, village green and planting, particularly around the perimeter of the site, although matters of layout are not being applied for at this time.

#### **Sustainability**

59. Policy 27 of the Core Strategy requires all new dwellings to be constructed to Level 4 of the Code for Sustainable Homes or Level 6 if they are commenced from 1st January 2016. It also requires sites of five or more dwellings to have either additional building fabric insulation measures or reduce the carbon dioxide emissions of predicted energy use by at least 15% through decentralised, renewable or low carbon energy sources. The 2015 Deregulation Bill received Royal Assent on Thursday 26th March 2015, which effectively removes Code for Sustainable Homes. The Bill does include transitional provisions which include:

“For the specific issue of energy performance, local planning authorities will continue to be able to set and apply policies in their Local Plans which require compliance with energy performance standards that exceed the energy requirements of Building Regulations until commencement of amendments to the Planning and Energy Act 2008 in the Deregulation Bill 2015. This is

expected to happen alongside the introduction of zero carbon homes policy in late 2016. The government has stated that, from then, the energy performance requirements in Building Regulations will be set at a level equivalent to the (outgoing) Code for Sustainable Homes Level 4. Until the amendment is commenced, we would expect local planning authorities to take this statement of the government's intention into account in applying existing policies and not set conditions with requirements above a Code Level 4 equivalent."

"Where there is an existing plan policy which references the Code for Sustainable Homes, authorities may continue to apply a requirement for a water efficiency standard equivalent to the new national technical standard, or in the case of energy a standard consistent with the policy set out in the earlier paragraph in this statement, concerning energy performance."

60. Given this change, instead of meeting the code level the dwellings should achieve a minimum Dwelling Emission Rate of 19% above 2013 Building Regulations in accordance with the above provisions. This can be controlled by a condition.

#### **CIL**

61. The Chorley CIL Infrastructure Charging Schedule provides a specific amount for development. The CIL Charging Schedule was adopted on 16 July 2013 and charging commenced on 1 September 2013. The proposed development would be a chargeable development and the charge is subject to indexation in accordance with the Council's Charging Schedule.
62. Lancashire County Council Education Department have requested that a financial contribution be made towards the provision of school places. For allocated sites, education requests such as this are included in the CIL levy. However, as this site is not allocated it is considered appropriate to seek such a contribution through a legal agreement, should the application be approved. The applicant has indicated that they would be willing to enter into such an agreement.

#### **CONCLUSION**

63. It is considered that the proposal does not comply with Policy 1 of the Core Strategy. The Council would disagree that there is any conflict between Policy 1 of the Core Strategy and Policy V2 of the Local Plan. Furthermore, the Council considers that its housing figures are up to date at the present time.
64. The Council would acknowledge that there is a level of need for affordable housing in Charnock Richard, however even with a revised proposal of 60 dwellings, the level of affordable housing that would be provided would be far in excess of the current level of demand for affordable housing in Charnock Richard (the level of current demand being based upon an assessment of households currently on the Housing Register and the numbers of recently let properties). An oversupply of affordable housing would both increase future need and demand in the village and likely result in properties being allocated to people without a local connection.
65. Therefore, the provision of affordable housing does not carry sufficient weight to outweigh the fact that the proposal is contrary to Policy 1 of the Core Strategy.
66. The similarities between this current application and the previous approval in Mawdesley (ref. 14/00022/OUTMAJ) are noted. However, it is considered that there are a number of crucial differences between the two schemes. The site in Charnock Richard is not a previously developed site, does not support a local business and as previously discussed, there is not an overriding need for the level of affordable housing proposed.
67. The Council is, therefore, unable to support the application and it is recommended that the application is refused for the following reason:

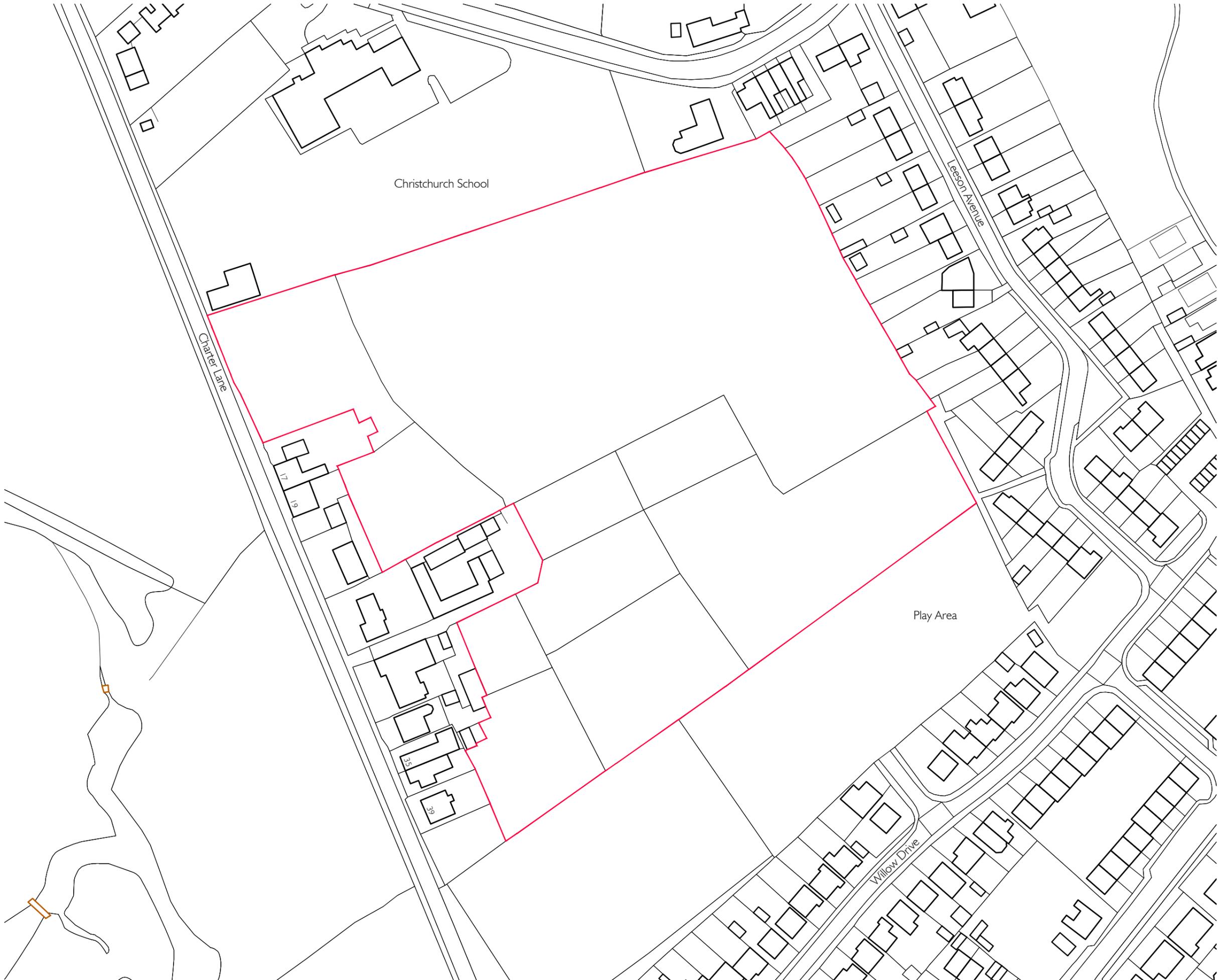
The proposed development is contrary to Policy 1 of the Core Strategy. The application site is not within an area that has been identified for growth and investment. The only types of development that would be considered acceptable in smaller villages, such as Charnock Richard, will typically be small scale and limited to appropriate infilling, conversion of buildings and proposals to meet local needs. The proposal does not meet any of these criteria. Insufficient exceptional reasons have been put forward to support a larger scale development scheme.

**RELEVANT POLICIES:** In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan (the Central Lancashire Core Strategy, the Adopted Chorley Local Plan 2012-2026 and adopted Supplementary Planning Guidance), unless material considerations indicate otherwise. Consideration of the proposal has had regard to guidance contained within the National Planning Policy Framework (the Framework) and the development plan. The specific policies/ guidance considerations are contained within the body of the report.



KEY

Red-line boundary  
(site area - 3.42ha)



**Charter Lane,  
Charnock Richard  
Location Plan**

SCALE: 1:1,250      DATE: 18.05.16  
DRAWN BY: LS      CHECKED BY: LS  
DRAWING NUMBER: 432B.07

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**APPLICATION REPORT – 17/00038/FULMAJ**

**Validation Date: 13 January 2017**

**Ward: Astley And Buckshaw**

**Type of Application: Major Full Planning**

**Proposal: Section 73 application to vary condition 26 of permission ref: 14/00429/FULMAJ (which was for the erection of 50 no. residential dwellings and the redevelopment of existing rugby club and associated facilities including floodlighting columns) to allow the phasing of the development to be changed - so that the pavilion/club house and car park shall be constructed prior to the occupation of the 40th dwelling and shall be completed prior to occupation of the 47th dwelling (as opposed to by the 30th and 40th dwelling previously approved).**

**Location: Chorley Rugby Union Club Chancery Road Astley Village Chorley PR7 1XP**

**Case Officer: Caron Taylor**

**Applicant: Mr Chris Gowlett**

**Agent: N/A**

**Consultation expiry: 15 February 2017**

**Decision due by: 14 April 2017**

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**RECOMMENDATION**

That the application is approved and the condition is therefore varied.

**SITE DESCRIPTION AND BACKGROUND**

1. The application site is the grounds of Chorley Rugby Union Club.
2. Planning permission was originally granted on the site in 2013 for the erection of 50 residential dwellings and the redevelopment of the existing rugby club and associated facilities (ref: 13/00082/FULMAJ). It was intended at that time that Persimmon Homes Homes, who were to build the houses, would build the new rugby facilities on behalf of the Rugby Club Trustees.
3. Following this approval the Rugby Club Trustees decided to procure and manage the build of the new rugby facilities themselves. They applied for and received a further planning permission (ref: 14/00429/FULMAJ) for an enhanced two-storey clubhouse building and to make alterations to the parking.
4. A further application to re-plan the layout of 14 of the dwellings was submitted by Persimmon Homes Homes following the discovery that a water main crossing the site was not in exactly the same location as had been advised to Persimmon Homes Homes which affected the siting of some of the properties. This was permitted under 15/00577/FULMAJ.

5. The acceptability of the principle of the development of the site has already been established and it is now under construction. This report will, therefore, consider the acceptability of varying condition 26.

#### RELEVANT HISTORY OF THE SITE

**Ref:** 13/00082/FULMAJ      **Decision:** PERFPP      **Decision Date:** 28 August 2013

**Description:** Proposed erection of 50 no. residential dwellings and the redevelopment of existing rugby club and associated facilities including 8 x 15m floodlighting columns

**Ref:** 14/00429/FULMAJ      **Decision:** PERFPP      **Decision Date:** 28 January 2015

**Description:** Section 73 application to vary condition no.5 (approved plans) of planning permission no. 13/00082/FULMAJ (which was for the erection of 50 no. residential dwellings and the redevelopment of existing rugby club and associated facilities including floodlighting columns) to change the size and design of the clubhouse building and make alterations to the parking.

**Ref:** 15/00577/FULMAJ      **Decision:** PERFPP      **Decision Date:** 9 September 2015

**Description:** Re-plan of 14 no. dwellings, including associated landscaping and parking (part of larger scheme of 50 dwellings previously approved under ref: 13/00082/FULMAJ and 14/00429/FULMAJ), to avoid water main that crosses the site.

#### REPRESENTATIONS

6. None received.

#### CONSULTATIONS

7. None received.

#### PLANNING CONSIDERATIONS

8. The current application has been made due to issues that have arisen during the construction of the new rugby facilities. The Rugby Club Trustees were to procure and manage the building of the rugby facilities themselves and appointed a construction management company to manage the build on their behalf. As Persimmon Homes were no longer building the facilities on behalf of the Trustees this was to be funded by Persimmon Homes making payments in line with agreed milestones in the build process. To date these payments have been made by Persimmon Homes as agreed, however the construction management company appointed by the Rugby Club Trustees, due to various issues they have had with them, are no longer involved with the project and there is a funding shortfall for the rest of the build. As a result building work has currently stopped on the enhanced rugby facilities.
9. The planning permission for the whole scheme restricts the number of houses that can be legally completed (through condition 26) in line with the progress of the new rugby facilities. Condition 26 allows 30 houses to be legally completed prior to the construction of the clubhouse and car park (including coach parking) and 40 units to be legally completed prior to its completion.
10. As the rugby club build has currently stopped, this prevents Persimmon Homes from completing any more properties, which they have buyers waiting for, but also prevents any more funding being released to the Rugby Club Trustees, as the funding is linked to house sales, to allow them to continue with the build of the rugby facilities.
11. As a result this application is made by Persimmon Homes to vary condition 26 to allow 40 legal completions prior to construction of the clubhouse building, car park and coach parking and 47 homes prior to its completion. This will allow Persimmon Homes to build further housing on the site, but also allow them to release further funding to allow the construction of the clubhouse etc. to continue.

12. It should be noted that Persimmon Homes have the option as part of the contract they have with the Rugby Club Trustees (outside the planning process), that if the rugby club do not build out their facilities in line with the agreed milestones (therefore limiting the number of homes Persimmon Homes can build on the site), Persimmon Homes can step-in and take over and finish the rugby club build themselves. This would however only be the scaled back facilities (a single storey clubhouse) as originally approved when it was envisaged Persimmon Homes would build it on behalf of the trustees. The site is now at a stage where due to the inactivity on the building of the rugby club facilities this 'step-in' could take place so Persimmon Homes could take over the build. They are however reluctant to do this as it would result in much more scaled back facilities than the rugby club are hoping for and they advise they would prefer to work with the Rugby Club and their associates to try and deliver the enhanced facilities they desire.
13. Persimmon Homes advise that if this application is approved so condition 26 is varied to allow them to build more houses before more rugby facilities are built, it will allow the Rugby Club Trustees, Persimmon Homes and the Council to work out the best way forward to complete the rugby club development.
14. It should be noted that condition 26 was imposed on the original permission for the protection of the rugby club, as the housing was only allowed on the site as a form of enabling development to finance the new facilities for the rugby club. The condition was to ensure that the rugby facilities were completed and that a situation could not arise whereby the houses were built without them being provided.
15. Members should be aware that if more houses are allowed to be built, there is some risk that the rugby facilities will not be completed if they are not built at the same time. This situation has however not come about due the fault of Persimmon Homes but rather due to the issues the Rugby Club Trustees have had with their construction management company which they have now parted company with. Varying the conditions will allow more funds to be released by Persimmon Homes to the Rugby Club Trustees but it should be noted that there will still be a funding shortfall to build out the enhanced two-storey rugby club facilities due to the issues they have had with the construction management company.
16. The rugby club is currently trying to explore alternative options to plug the funding shortfall to enable them to complete the enhanced facilities. The enhanced facilities are in turn hoped to support the further wider strategic aspirations of the Council to form a larger community sports facility incorporating the existing adjacent football fields on West Way owned by the Council.
17. If a solution is not found by the Rugby Club Trustees, Persimmon Homes could still step-in and complete the build to the lower specification originally envisaged.
18. There is an element of risk in approving the application, however the situation has arisen due to problems the rugby club have had with their construction management company. Varying the condition will allow Persimmon Homes to build more houses on the site for which they have waiting buyers and as a result release further finance to the Rugby Club Trustees. Although there will still be a financial shortfall to build the enhanced rugby club facilities, it will allow time to explore the options available. The risk is a factor to be taken into account but this has to be balanced against the fact that it is in Persimmon Homes' interest to see the site developed with rugby facilities as they have made commitments to recent purchasers of their properties on the site who bought properties on the understanding that these would be provided.

## **CONCLUSION**

19. The situation that has occurred on the site with the rugby club is not ideal, however this application seeks to vary a condition that will hopefully lead to a way forward being established. There is a risk to allowing the condition to be varied but this has to be considered in the context of the interests that Persimmon Homes has on the site and commitments it has made to purchasers of its properties on the site.

20. The Council's aim is to transform the Westway playing fields immediately to the north of the site which, along with the rugby Club site, will form a sports campus for local people. The enhanced rugby club facilities will aid this and is a corporate priority.

21. It is, therefore, considered that on balance, the condition should be varied as applied for.

#### **COMMUNITY INFRASTRUCTURE LEVY (CIL)**

22. If approved, this application would not be CIL Liable as it is an application to vary condition 26 of planning app 14/00429/FULMAJ, which in itself was also a Section 73 application to the original planning permission which pre-dates CIL. This variation of condition changes the original approval for the redevelopment of the existing rugby club and facilities between occupation of the 30th and 40th dwellings to between the 40th and 47th dwellings only, there is no change in floorspace to any of the dwellings or the rugby club buildings.

**RELEVANT POLICIES:** In accordance with s.38 (6) Planning and Compulsory Purchase Act (2004), the application is to be determined in accordance with the development plan (the Central Lancashire Core Strategy, the Adopted Chorley Local Plan 2012-2026 and adopted Supplementary Planning Guidance), unless material considerations indicate otherwise. Consideration of the proposal has had regard to guidance contained within the National Planning Policy Framework (the Framework) and the development plan. The specific policies/guidance considerations are contained within the body of the report.

#### Suggested Conditions

To follow.



Report of	Meeting	Date
Director (Customer & Digital)	Development Control Committee	7 March 2017

## **PLANNING APPEALS AND DECISIONS RECEIVED BETWEEN 1 FEBRUARY 2017 AND 28 FEBRUARY 2017**

### **PLANNING APPEALS LODGED**

Planning Application: 16/00368/FUL - Inspectorate Reference: APP/D2320/W/17/3166752

Appeal by Mr Asakir Asghar against the Committee decision to refuse full planning permission for the replacement of stable block and temporary storage buildings with new timber stable and equestrian storage building.

Hillview Stables, Buckholes Lane, Wheelton, Chorley, PR6 8JL.

Inspectorate Start Letter received 20 February 2017 - Written Representation procedure.

Planning Application: 16/01040/P3PAO - Inspectorate Reference: APP/D2320/W/17/3166833

Appeal by Mr Brian Pawson against the delegated decision to refuse prior approval under Schedule 2, Part 3, Class Q (a) and (b) of The Town and Country (General Permitted Development) (England) Order 2015 for proposed change of use of agricultural building to one dwellinghouse and associated operational development.

Land south east of Warburton House, Holt Lane, Brindle

Inspectorate Start Letter received 23 February 2017 - Written Representation procedure.

### **APPEAL DECISIONS**

Advertisement Consent Application: 16/00334/ADV- Inspectorate Reference:  
APP/D2320/Z/16/3159794

Appeal by Mr Barlow against the delegated decision to refuse advertisement consent for the installation of advertising hoarding attached to trailer.

New Park Hall Farm, Back Lane, Charnock Richard, Chorley,

Appeal dismissed 15 February 2017.

### **PLANNING APPEALS WITHDRAWN**

None

### **ENFORCEMENT APPEALS LODGED**

None

**ENFORCEMENT APPEAL DECISIONS**

None

**ENFORCEMENT APPEALS WITHDRAWN**

None

ASIM KHAN  
DIRECTOR (CUSTOMER & DIGITAL)

Report Author	Ext	Date	Doc ID
Adele Hayes	5228	7 March 2017	***



# The Planning Inspectorate

3G Hawk Wing  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

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Ms L Elo  
Head of Early Intervention and  
Support  
Chorley Council  
Civic Offices, Union Street  
Chorley  
Lancashire  
PR7 1AL

Your Ref:  
Our Ref: FPS/Q2371/14A/15  
Date: **08 FEB 2017**

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Dear Madam

WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION S14  
Lancashire County Council  
Refusal to Upgrade Euxton Footpaths 37, 38 and 39 (Culbeck Lane) to Restricted Byway

I enclose for your information a copy of the Inspector's decision on this Appeal.

Also enclosed are two leaflets entitled *Our Complaints Procedure* and *Challenging the Decision in the High Court*.

Please note that this decision can only be challenged by applying to the Administrative Court for a judicial review.

If you have any queries about the enclosed decision, please contact the Quality Assurance Unit at the following address:

Customer Quality  
The Planning Inspectorate  
3D Kite  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

Tel: 0303 444 5884

<https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>

An electronic version of the decision will shortly appear on the Inspectorate's website.

Yours faithfully

*Charlotte Callaway*  
(Rights of Way Section)

APPdesp



# The Planning Inspectorate

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## Appeal Decision

### by Barney Grimshaw BA DPA MRTPI (Rtd)

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 08 February 2017

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### Appeal Ref: FPS/Q2371/14A/15

- This Appeal is made under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 against the decision of Lancashire County Council not to make an Order under section 53(2) of that Act.
- The Application dated 8 December 2015 was refused by Lancashire County Council on 28 June 2016.
- The Appellant claims that a route known as Culbeck Lane (Euxton Footpaths 37, 38 & 39) running between Dawbers Lane and Runshaw Lane, Euxton, Lancashire should be upgraded from footpath to Restricted Byway.

### Summary of Decision: The appeal is dismissed.

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#### Preliminary Matters

1. I have been directed by the Secretary of State for Environment, Food and Rural Affairs to determine this appeal under Section 53(5) and Paragraph 4(1) of Schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act).
2. I have not visited the site but I am satisfied I can make my decision without the need to do so.
3. I attach copies of two maps prepared by Lancashire County Council showing the claimed route for reference purposes.

#### Main issues

4. Section 53(3)(c)(ii) of the 1981 Act provides that an Order should be made to modify the Definitive Map and Statement if evidence is discovered which, when considered with all other relevant evidence available shows that a highway shown in the map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
5. Some of the evidence in this case relates to usage of the claimed route. In respect of this, the requirements of Section 31 of the Highways Act 1980 (the 1980 Act) are relevant. This states that where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. The period of 20 years is to be calculated retrospectively from the date when the right of the public to use the way was brought into question.

Appeal Decision FPS/Q2371/14A/15

6. Common law also requires me to consider whether the use of the route and the actions of the landowner have been of such a nature that the dedication of the route by the landowners as a Restricted Byway can be inferred.
7. As this Appeal is concerned with a possible unrecorded vehicular route, it is also necessary to have regard to the provisions of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act) which extinguished rights of way for mechanically propelled vehicles (MPVs) subject to certain exceptions.

## **Reasons**

### ***Documentary Evidence***

#### *Commercial Maps*

8. The earliest commercial maps available do not show the claimed route. Cary's map (1789) does not show it at all but Yates (1786) and Greenwood (1818) show short sections close to Points A and F but not the remainder of the route.
9. Baines' Map (1824) does not match modern mapping but shows a route which might correspond to the claimed route. Hennet's Map (1830) and most subsequent maps consistently show the whole route as a significant feature. On one map (Cassini, 1840-43) the claimed route appears to be more important than Dawbers Lane and the Culbeck Brook is shown running under the claimed route but straight across Dawbers Lane.
10. These maps would appear to show that the claimed route existed from at least 1830 and was regarded as a route of some significance, otherwise it would probably not have been shown on such small scale maps. However, the maps do not provide a reliable indication of the status of the routes shown.

#### *Tithe Records*

11. Under the Tithe Commutation Act 1836, tithes were converted to a fixed money rent. In most areas this required detailed surveys to be carried out in order to apportion the amount of tithe payable among the landowners of a parish. Tithe documents that were prepared had the sole purpose of identifying titheable or productive land. They are statutory documents which were in the public domain but were not produced to record public rights of way, although they can sometimes be helpful in determining the existence and status of routes.
12. The Tithe Map of Euxton (1847) shows the claimed route coloured in sienna in the same manner as public roads and most other roads. On the base map used, the route is crossed by solid lines close to Points A, E and F presumably indicating the presence of gates and the Culbeck Brook is shown running across the route and then under Dawbers Lane (unlike the depiction on the Cassini map referred to above).
13. In the Award itself the route is referred to as a 'road' and not subject to payment of tithe. However, it is also described as being in private ownership and is not grouped with other roads which are specifically described as public without reference to any private owners.
14. In my view, although the tithe records confirm the existence of the route as a road of some sort in 1847, they do not indicate whether there were any public rights over it.

Appeal Decision FPS/Q2371/14A/15

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#### *Ordnance Survey (OS) Maps*

15. The earliest OS map available, a 1" to the mile map published in 1842 and used as a base for showing Estates in Lancashire, shows the whole of the claimed route in the same manner as the Cassini Map previously referred to which appears to have been based on the OS map.
16. A 6" to the mile map of 1849 shows the claimed route named as Culbeck Lane. The 25" map of 1894 also shows it named and with a separate parcel number. Lines, probably indicating gates are shown at Points A, E and F. Later large scale maps show similar information although a 1910 map does not appear to show a gate at E.
17. An OS Object Names Book of 1907 lists Culbeck Lane and in one column underneath the name is written the word 'private' but this is then crossed out. The route is described as a 'lane' whereas Runshaw Lane is described as a 'road' which is maintainable by the Rural District Council. The purpose of the Names Book was not to define the status of routes shown on maps but to record the correct names and spelling of features.
18. OS maps provide an accurate record of features which existed on the ground at the time they were surveyed but they do not purport to indicate the status of routes shown and from 1888 onwards the maps included a specific note to the effect that routes shown were not necessarily public rights of way.

#### *The 1910 Finance Act Records*

19. The 1910 Finance Act imposed a tax on the incremental value of land which was payable each time it changed hands. In order to levy the tax a comprehensive survey of all land in the UK was undertaken between 1910 and 1920. This survey was carried out by the Board of Inland Revenue under statutory powers and it was a criminal offence for any false statement to be made for the purpose of reducing liability. The existence of public rights of way over land had the effect of reducing the value of the land and hence liability for the tax; they were therefore recorded in the survey.
20. In this case the Finance Act base map shows the claimed route between Points A and E as being excluded from adjacent hereditaments and not liable for tax. However, the section from E to F is included within plot 608 for which a deduction of £5 is recorded in the Field Book in respect of a public footpath across the land. A further £5 deduction is recorded in respect of a right of road to the adjoining farm. The Field Book for plot 608 appears to have been completed by a different surveyor than those for other plots adjacent to the claimed route between Points A and E and includes a comment in respect of the route reading "*public & private? right of way*". The applicant suggests that this might indicate some doubt about the true status of the route.
21. The exclusion of the claimed route between Points A and E could be indicative of it having been regarded as a public road. However, it could also indicate that it was a shared access road that none of the adjoining landowners claimed to own and which may or may not have also carried public rights of some sort. It seems unlikely that a public vehicular road would have terminated as a cul de sac at Point E and then only continued to Runshaw Lane as a private road and public footpath.
22. On balance, it is my view that the Finance Act records are consistent with the whole of Culbeck Lane having been regarded as a private access road and a

Appeal Decision FPS/Q2371/14A/15

public footpath. However, they do not preclude the possibility that some or all of the route might have been considered to carry public vehicular rights.

#### *The Definitive Map*

23. In the parish survey carried out in 1951 in connection with the preparation of the first Definitive Map, the claimed route was marked 'CRF' on the survey map. This term was an abbreviation for 'Carriage Road Footpath', meaning a route which the public were entitled to use with vehicles but which was mainly used as a footpath. Although this term had originally been proposed in connection with the 1949 National Parks and Access to the Countryside Act it was subsequently withdrawn and it was suggested that such routes should be described as RUPPs (Roads used as Public Paths). On the accompanying survey card the route is described as 'Accommodation Road', a term normally taken to mean a private access road which may or may not also carry public rights of some sort.
24. When the Draft Definitive Map was placed on deposit in 1955 the claimed route was included as a public footpath and not as a RUPP. The Draft Map was placed on public deposit to allow objections and representations to be made and any consequent amendments were put on the Provisional Map which was published in 1960. This also included the claimed route as a public footpath and was itself subject to objections from landowners and occupiers. No representations were made regarding the claimed route and it was shown on the first Definitive Map as a public footpath.
25. When the Definitive Map was reviewed in 1975 no change was made in respect of the claimed route.
26. There is no evidence of any express dedication of the claimed route as a public right of way of any sort.
27. In 1991, an application was made to upgrade the route now claimed as a Restricted Byway to the status of Byway Open to all Traffic (BOAT) but this was rejected in 1995.

#### *Other documents*

28. In 1929 responsibility for district highways passed to county councils, however, the claimed route was not shown as a publicly maintainable highway of any sort on the handover map prepared for the area. Later highway records include reference to the fact that the route is a public footpath.
29. An article in the London Gazette in 1883 relating to the designation of areas infected by foot and mouth disease refers to part of Culbeck Lane as the boundary of one of the areas. This further confirms the existence of the route at the time but not the existence of public vehicular rights over it.
30. A copy of a hand drawn plan dated 1899 relating to a mortgage from Major Anderton to the Queen Anne's Bounty submitted by the applicant shows an area shaded red on either side of part of the claimed route but the route itself is uncoloured. There is no key to the plan but, if ownership of the land shaded red was to be transferred and the route was excluded from the transfer, this might suggest that it was thought to be a public route of some sort or simply that it was not in the same ownership as the adjoining land.

Appeal Decision FPS/Q2371/14A/15

31. Various legal title documents referred to on behalf of objectors indicate that people acquiring properties adjacent to the claimed route had private rights to use it and were required to share the cost of maintaining it. This could suggest that the route was private or simply that it had not been adopted for maintenance purposes and that public rights, other than footpath, had not been recorded.
32. An aerial photograph taken in the 1960s shows that most of the route existed at that time and was probably wide enough to carry vehicular traffic.

#### *Conclusions regarding Documentary Evidence*

33. It would appear from early commercial and OS maps that the claimed route has existed since 1830 and possibly earlier. It also appears from the manner in which the route was shown, particularly on small scale maps, that it was a route of some significance and formed part of the local network linking at both ends to other routes. The early maps do not however indicate what, if any, public rights existed over the route.
34. Tithe records and 1910 Finance Act records are in my view generally consistent with the route having been regarded as either a public vehicular route or a private vehicular route with lesser public rights over it. However, the manner in which the northernmost section of the route is dealt with in the Finance Act records clearly suggests that this section was not regarded as a public vehicular route. It seems unlikely that the status of the route would in fact not have been the same throughout its length.
35. Although there appears to have been some doubt at the time of the 1951 parish survey regarding the status of the route, it was made clear in subsequent versions of the definitive map that the route was a public footpath and no objection seems to have been raised to this. Highway records would also seem to confirm that the route was regarded as being a public footpath.
36. Other documentary evidence does not assist in determining the status of the route.
37. Overall, it is my view that on the balance of probability the documentary evidence that is available does not indicate the existence of public rights other than as a footpath over the claimed route.

#### **Statutory Dedication**

##### *Evidence of public use*

38. A limited amount of evidence has been submitted relating to use of the claimed route by the public. This consists of evidence forms and statements made by people familiar with the route from the 1940s to the present. Much of the evidence in support of the claim is provided by people who have owned or occupied properties along the route and may have had private rights to use some or all of it. Generally people stated that they had used the route and had seen others using it but first hand evidence of regular use as of right by members of the public other than as a footpath is very limited.
39. On the other hand a number of statutory declarations submitted by other people who also claim to have been familiar with the route over a long period state that it never carried public rights other than as a footpath.

Appeal Decision FPS/Q2371/14A/15

40. There is also some evidence that the route has been blocked or obstructed at different times in so far as vehicular use was concerned by gates, fencing, concrete slabs, ditches and a trailer. It appears that such obstructions may have been present intermittently at least since around 1970.

*Conclusions regarding statutory dedication*

41. Overall, it is my view that the available evidence of public use of the claimed route other than on foot is insufficient to raise a presumption, in accordance with the provisions of the 1980 Act, that it has been dedicated as a public right of way of any higher status than footpath. In addition, there is evidence that landowners have taken action over a considerable period of time that indicates their lack of intention to dedicate the route as a public right of way of a higher status than footpath.

**Common Law**

42. An inference that a way has been dedicated for public use may be drawn at common law where the actions of landowners (or lack of action) indicate that they intended a way to be dedicated as a highway and where the public have accepted it.
43. In this case, although there is some evidence of public use of the claimed route there is no substantive evidence of action by landowners to indicate an intention to dedicate it as a public right of way other than a footpath and indeed some evidence to suggest that they had no such intention. It would therefore not be reasonable to infer that the route has been dedicated as a higher status public right of way.

**The 2006 Act**

44. As mentioned before, this act extinguished rights of way for MPVs subject to certain exceptions. In this case none of the exceptions apply so, if any rights for MPVs had been established along the claimed route they would have been extinguished as a result of the 2006 Act.

**Conclusion**

45. Having regard to these and all other matters raised in the written representations I conclude that the evidence that is available does not show that on the balance of probability the claimed route is a public right of way of a status higher than footpath. The appeal should therefore be dismissed.

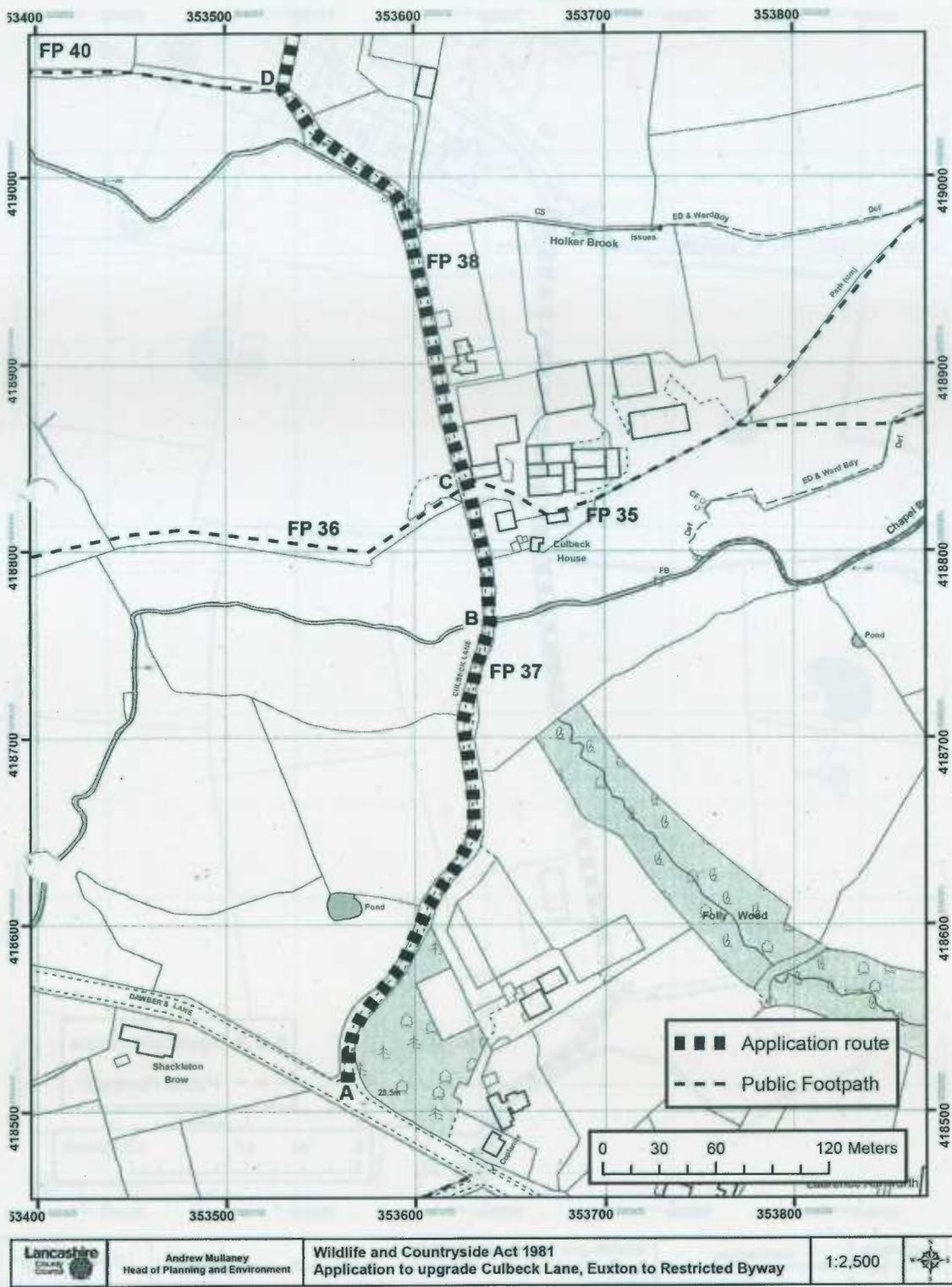
**Formal Decision**

46. I dismiss the appeal.

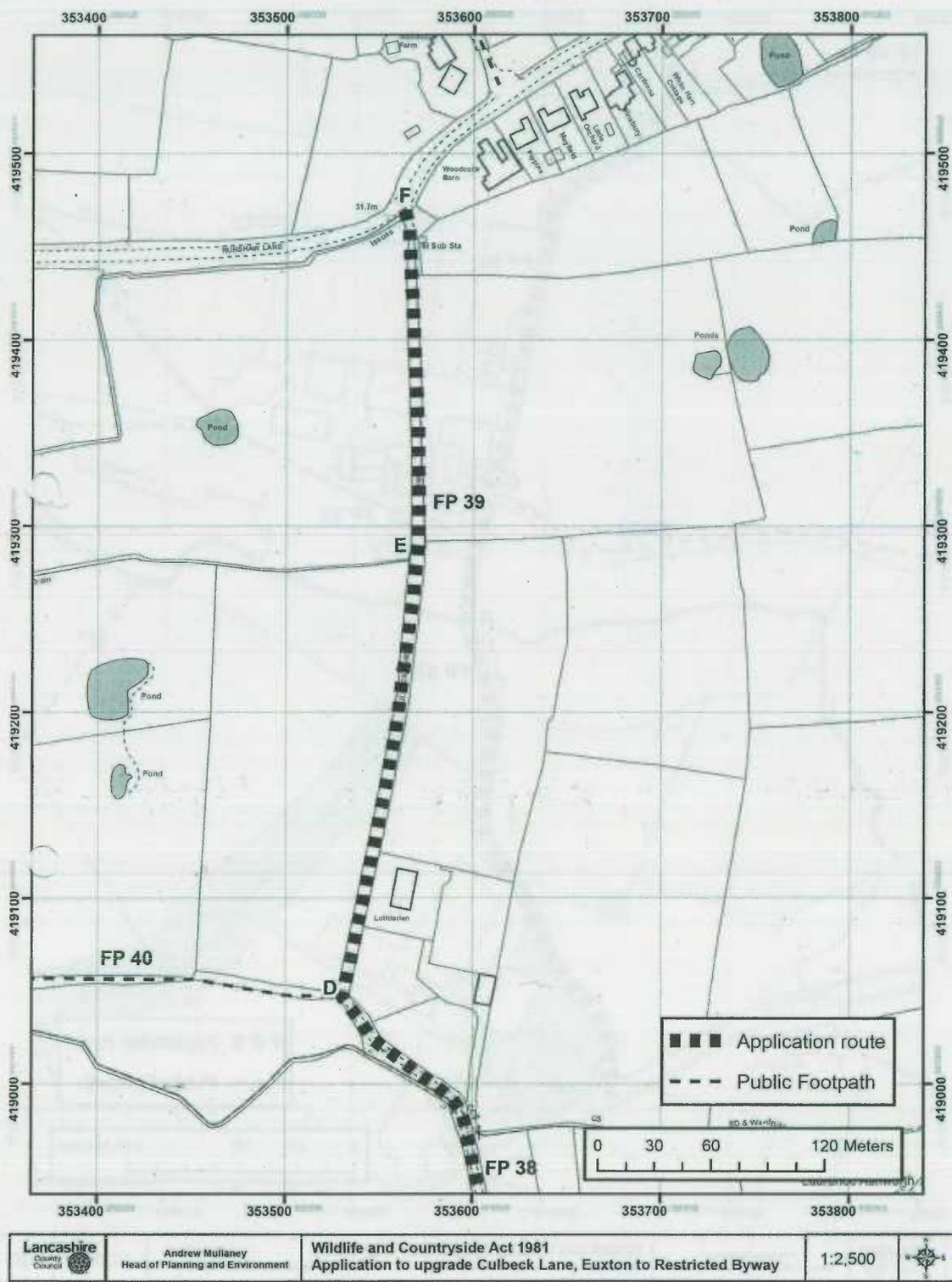
*Barney Grimshaw*

Inspector

Appeal Decision FPS/Q2371/14A/15



Appeal Decision FPS/Q2371/14A/15





The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

## Our Complaints Procedures

### **Complaints**

We try hard to ensure that everyone involved in the rights of way process is satisfied with the service they receive from us. Applications and orders to amend the rights of way network can raise strong feelings and it is inevitable that someone will be disappointed with the decision. This can sometimes lead to a complaint, either about the decision itself or the way in which the case was handled.

Sometimes complaints arise due to misunderstandings about how the system for deciding application appeals and orders works. When this happens we will try to explain things as clearly as possible. Sometimes the objectors, applicant, the authority or another interested party may have difficulty accepting a decision simply because they disagree with it.

Although we cannot re-open a case to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how long an order making authority took to submit an order to the Secretary of State) in which case we will explain why and suggest who may be able to deal with the complaint instead.

### **How we investigate complaints**

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Customer Quality Team to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the system for deciding rights of way appeals and orders and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

### **What we will do if we have made a mistake**

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. However, the law does not allow us to amend or change the decision.

**Taking it further**

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Ombudsman, who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

**Frequently asked questions**

*"Why can't the decision be reviewed if a mistake has happened?"* – The law does not allow us to do this because a decision is a legal document that can only be reviewed following a successful High Court challenge.

*"If you cannot change a decision, what is the point of complaining?"* – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve.

*"How can Inspectors know about local feeling or issues if they don't live in the area?"* – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

*"I wrote to you with my views, why didn't the Inspector mention this?"* – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

*"How long will I have to wait for a reply to my complaint?"* – We will aim to send a full reply within 20 working days. In some cases where the issues raised are complex, a more detailed investigation will be needed, often requiring the views of those involved with the case. This may mean that we cannot reply to you as quickly as we would like.

**Further information**

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us').

**Contacting us****Website**

<https://www.gov.uk/guidance/object-to-a-public-right-of-way-order>

**General Enquiries**

Phone: 0303 444 5000

E-mail: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

**Complaints and Queries in England:**

Please refer to our website:

<https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure> or write to:

Customer Quality Unit  
The Planning Inspectorate  
4D Hawk  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
Phone: 0303 444 5884

**Cardiff Office**

The Planning Inspectorate  
Room 1-004  
Cathays Park  
Cardiff CF1 3NQ  
Phone: 0292 082 3866  
E-mail: [Wales@pins.gsi.gov.uk](mailto:Wales@pins.gsi.gov.uk)

**Parliamentary and Health Service Ombudsman**

Millbank Tower, Millbank  
London SW1P 4QP

Complaints Helpline: 0345 015 4033  
Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)



The Planning Inspectorate  
Yr Arolygiaeth Gynllunio

## Challenging a Decision in the High Court

**Important Note** - This leaflet is intended for guidance only. It should be noted that there are different procedures involved for statutory challenges and judicial reviews and they follow different timetables. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

### **Challenging a decision**

Once a decision is issued we have no power to amend or change it. Decisions are therefore final unless successfully challenged in the High Court. We can only reconsider a decision if a challenge is successful and the decision is returned to us for re-determination.

### **Grounds for challenging the decision**

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful, you would have to show that the Inspector had misinterpreted the law or that some relevant criteria had not been met. If, in relation to an order decision, a mistake has been made, and the Court considers it might have affected the decision, it will quash the decision and return the case to us for re-determination or it will quash the order completely. If the Court considers a mistake has been made on a Schedule 14 Appeal or Direction, it will quash the decision and return the case to us for re-determination.

### **Different order types**

The Act under which the order decision has been **confirmed** will specify the conditions under which it can be challenged, and is thus a statutory right to challenge a confirmed order - often referred to as a Part 8 claim as it is brought under Part 8 of the Civil Procedure Rules 1998. There is no statutory right to challenge where an order is '**not confirmed**'; in these circumstances a judicial review under Part 54 of the Civil Procedure Rules 1998 of the decision not to confirm may be applied for. Both scenarios are set out in more detail below.

### **Challenges to confirmed orders made under the Wildlife and Countryside Act 1981**

Any person aggrieved by the confirmed order can make an application to the High Court under paragraph 12 of Schedule 15 to the 1981 Act on the grounds i) that the order is not within the power of section 53 or 54; or ii) that any of the requirements of the Schedule have not been complied with. If the challenge is successful, the court will either quash the order or the decision. The Inspectorate will only be asked to re-determine the case if the decision only is quashed.

**Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.**

### ***Challenges to confirmed orders made under the Town and Country Planning Act 1990 and the Highways Act 1980***

Any person aggrieved by the confirmed order can make an application to the High Court under paragraph 287, in the case of an order made under the 1990 Act, or paragraph 2 of Schedule 2 in the case of an order made under the 1980 Act, on the grounds that i) the order is not within the powers of the Act; or ii) that any of the requirements of the Act or regulations made under it have not been complied with. If the challenge is successful, the court will either quash the order or the decision. The Inspectorate will only be asked to re-determine the case if the decision only is quashed.

**Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of publication of the notice of confirmation - this period cannot be extended.**

### ***Challenges to orders which are not confirmed and all Schedule 14 Appeal and Direction decisions***

If an order made under any of the Acts is not confirmed, an aggrieved person can only challenge the decision by applying for a judicial review to the Administrative Court for a court order to quash the decision, the matter will then go back to the Inspectorate to re-determine. This also applies to an aggrieved person to a Schedule 14 Appeal or Direction decision as there is no statutory right to challenge.

**For applications for judicial review, the Claim form must be filed with the Administrative Court promptly and in any event not later than 3 months after the date of the decision (for orders made under the Highways Act 1980 or the Wildlife and Countryside Act 1981) or 6 weeks (for orders made under the Town and Country Planning Act 1990), unless the Court extends this period.**

### ***Who should be named as Defendant in the claim form?***

In order cases the Inspector is usually appointed on behalf of the Secretary of State for Environment, Food and Rural Affairs to confirm an order made by a local authority. In Schedule 14 appeal cases the Inspector is acting as the Secretary of State. The claim form for all types of proceedings should therefore be issued against the Secretary of State for Environment, Food and Rural Affairs and served upon: The Government Legal Department, One Kemble Street, London, WC2B 4TS. For telephone queries, please call the Government Legal Department on 020 7210 3000. Email: [thetreasury solicitor@governmentlegal.gov.uk](mailto:thetreasury solicitor@governmentlegal.gov.uk)

### ***Interested parties***

Interested parties can find out whether a case has been challenged by contacting the Administrative Court. If you do not know the name of the likely claimant, you will need to provide the Court with the date of the decision and the full title of the order or appeal (including the name of the relevant local authority). The more information you can provide, the easier it will be for the Court to identify it. If a person wants to become a formal party to the Court proceedings then they can make representations to the Court under Part 19 of the Civil Court Procedure Rules 1998 (see overleaf). Should you wish to become a formal party you may wish to seek legal assistance or ask the court for guidance. To be a party to a judicial review a person would have to have a sufficient interest.

## Frequently asked questions

*"Who can make a challenge?"* – In principle, a person must have a sufficient interest (sometimes called standing) in the decision to be able to bring a challenge. This can include statutory objectors, applicants, interested parties as well as the relevant local authority.

*"Who is notified of the challenge?"* – In Part 8 statutory claims, the claimant will serve proceedings on the named defendants. In Judicial Review claims the claimant will serve proceedings on the persons the challenge is against and anyone else they have identified as an interested party. The Planning Inspectorate will not notify anyone of the challenge. The claimant would be expected to identify and include the Council as an interested party. If the defendant and any interested party are aware that another party should be made aware of the proceedings as an interested party they should include the details of that party in the acknowledgment of service.

*"How much is it likely to cost me?"* – A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though. It is usual for the costs of a successful party to be paid by the losing party, therefore if the challenge fails you will usually be ordered to pay the defendant's costs as well as having to cover your own. If the challenge is successful, the defendant may be ordered to pay your reasonable legal costs. However, the court ultimately has the power to issue whatever costs it sees fit.

*"How long will it take?"* – This can vary considerably.

*"Do I need to get legal advice?"* – You do not have to be legally represented in Court but it is advisable to do so, as you may have to deal with complex points of law.

*"Will a successful challenge reverse the order decision?"* – Not necessarily. The Court will either quash the order or quash the decision. Where the decision is quashed, we will be required to re-determine the order. However, an Inspector may come to the same decision again, but for different or expanded reasons. Where the order is quashed, jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

*"Will a successful challenge reverse the appeal decision?"*

Yes. We will be required to re-determine the appeal. However, an Inspector may come to the same decision again, but for different or expanded reasons.

*"If the decision is re-determined will it be by the same Inspector?"*

The same Inspector will be used unless there is a good reason not to do so.

*"What can I do if my challenge fails?"* – The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

*"What happens if the order is quashed?"* – Jurisdiction will pass back to the Order Making Authority. They will need to decide whether to make a new order.

*"What can I do if I am not listed as an interested party on the challenge but want to be involved?"* – You can contact the Administrative Court and ask to be listed as an interested party (see Part 54.1(2) of the Civil Procedure Rules 1998 for the definition of an interested party).

*"Can the Planning Inspectorate or the Department for Environment, Food and Rural Affairs, provide me with advice about making a challenge?"* – Neither the Planning Inspectorate nor the Department for Environment, Food and Rural Affairs can advise you on a challenge or on becoming a formal party – you should seek advice from your own legal adviser.

*"Where will I find the claim forms?"*

The forms are available on the Administrative Court's website at [www.justice.gov.uk/courts/procedure-rules/civil/forms](http://www.justice.gov.uk/courts/procedure-rules/civil/forms). The Part 8 Claim form is number N208 and the form for making a Judicial Review is N461. Guidance notes for claimants are also available.

*"Where do I send the completed claim forms?"*

They need to be filed with the Administrative Court at The Royal Courts of Justice, Queen's Bench Division, Strand, London, WC2A 2LL. They also need to be served on The Government Legal Department, One Kemble Street, London, WC2B 4TS.

**Further Information**

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen’s Bench Division, Strand, London WC2A 2LL, telephone 020 7947 6000. Information can also be found on their website at [www.justice.gov.uk/courts/rcj-rolls-building/administrative-court](http://www.justice.gov.uk/courts/rcj-rolls-building/administrative-court). Please see the attached flow charts setting out the main steps to be followed for both the statutory and judicial review procedures (please note that these charts do not contain the specific timelines for submitting evidence).

**Inspection of order documents**

We normally keep most case files for one year after the decision is issued, after which they are destroyed. You can inspect order documents at our Bristol office, by contacting the case officer dealing with the case, or our General Enquiries number to make an appointment (see ‘Contacting us’). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey, it may be more convenient to arrange to view the documents at the offices of the relevant local authority.

**CONTACT INFORMATION****The Planning Inspectorate****Rights of Way Section**

Mrs Annie Owen  
 Rights of Way Section Manager  
 The Planning Inspectorate  
 3G Hawk Wing  
 Temple Quay House  
 2 The Square  
 Temple Quay  
 Bristol BS1 6PN

Phone: 0303 444 5466

E-mail: [annie.owen@pins.gsi.gov.uk](mailto:annie.owen@pins.gsi.gov.uk)

Information: <https://www.gov.uk/guidance/object-to-a-public-right-of-way-order>

**General Enquiries**

Phone: 0303 444 5000

E-mail: [rightsofway2@pins.gsi.gov.uk](mailto:rightsofway2@pins.gsi.gov.uk)

**Welsh Office**

The Planning Inspectorate  
 Crown Buildings  
 Cathays Park  
 Cardiff CF10 3NQ  
 Phone: 0292 082 3866  
 E-mail: [Wales@pins.gsi.gov.uk](mailto:Wales@pins.gsi.gov.uk)

**Complaints**

Please refer to our website:

<https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure>

Phone: 0303 444 5884

**The Government Legal Department**

One Kemble Street  
 London  
 WC2B 4TS  
 Phone: 020 7210 3000  
 Website:  
<https://www.gov.uk/government/organisations/government-legal-department>

**Administrative Court**

Royal Courts of Justice  
 Queen's Bench Division  
 Strand  
 London  
 WC2A 2LL  
 Phone: 020 7947 6655  
 Website:  
[www.justice.gov.uk/courts/rcj-rolls-building/administrative-court](http://www.justice.gov.uk/courts/rcj-rolls-building/administrative-court)  
 Email for enquiries:  
[administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk](mailto:administrativecourtoffice.generaloffice@hmcts.x.gsi.gov.uk)

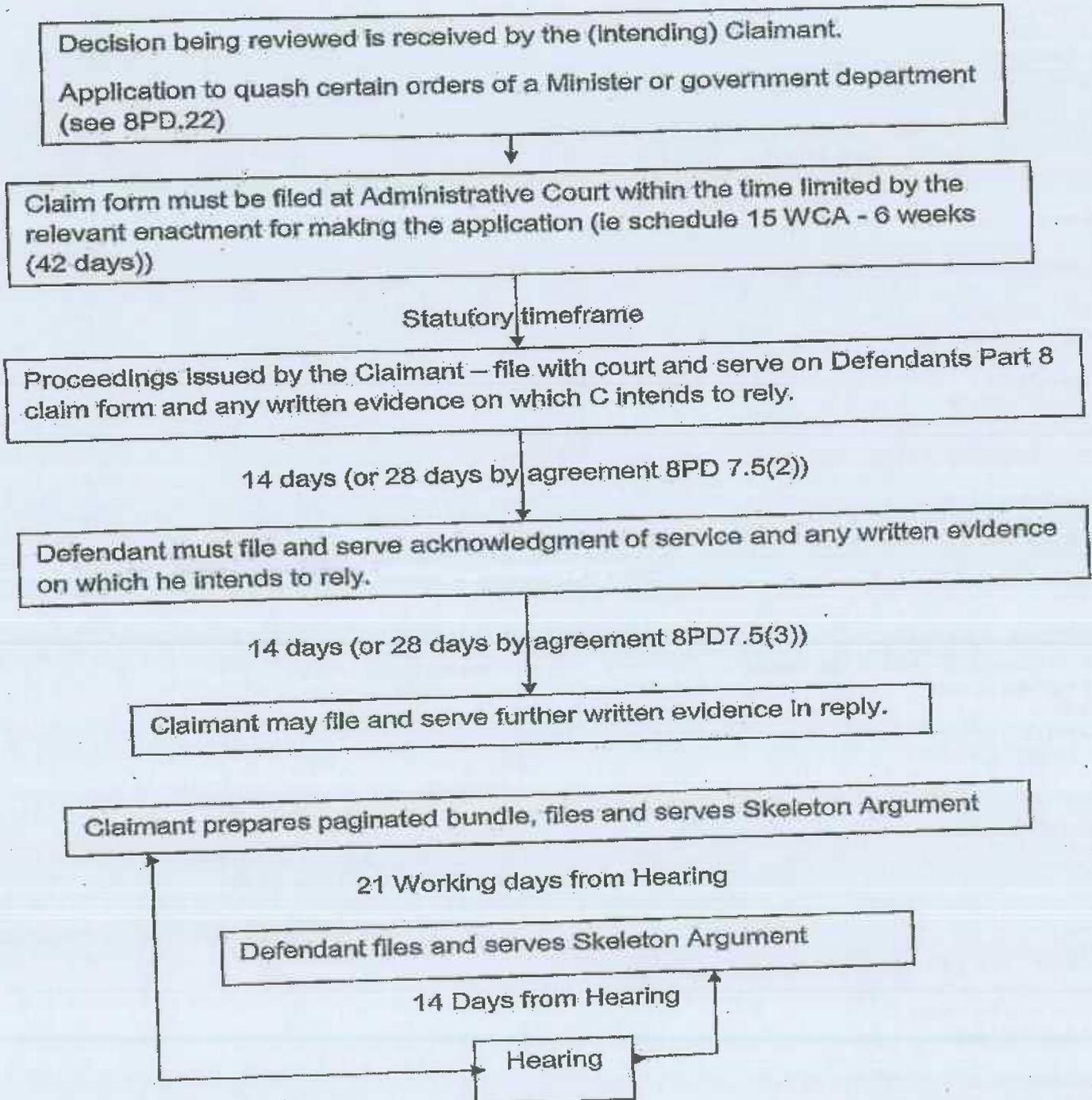
**Parliamentary and Health Service Ombudsman**

Parliamentary and health Service Ombudsman  
 Millbank Tower, Millbank  
 London SW1P 4QP

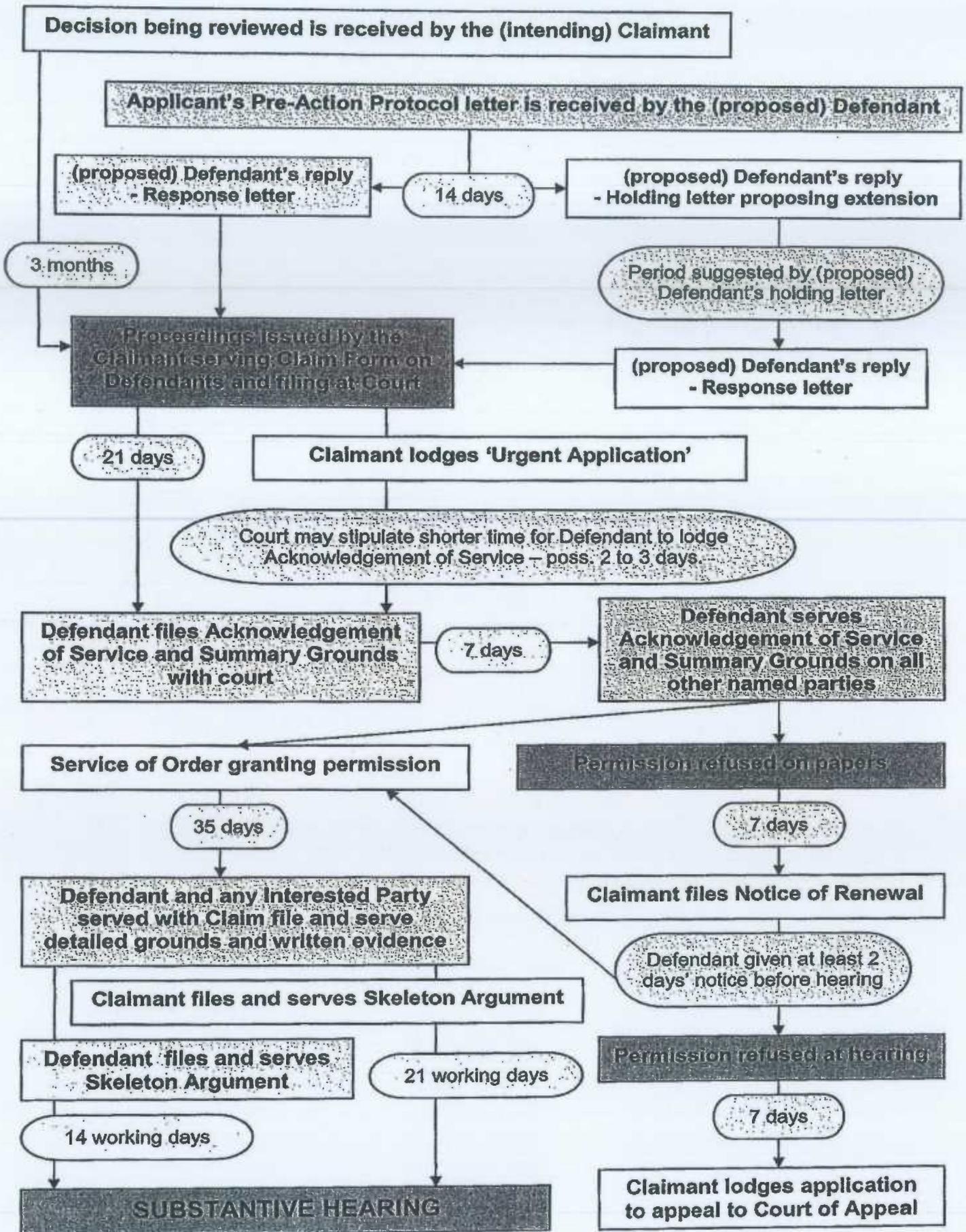
Complaints Helpline: 0345 015 4033

Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

**Timetable for Part 8 Claims**



**Timetable for Judicial Review**



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