

## **DEVELOPMENT CONTROL COMMITTEE**

TUESDAY, 18TH JULY 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 report that provides an update of events that have taken place since the agenda was printed.

**Agenda No    Item**

7        **ADDENDUM**

| (Pages 81 - 86)

GARY HALL  
CHIEF EXECUTIVE

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C O M M I T T E E R E P O R T		
REPORT OF	MEETING	DATE
Director (Customer and Digital)	Development Control Committee	18 July 2017

ADDENDUM
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**ITEM 3a -16/01021/OUT- Higher Healey Farm, Higher House Lane, Heapey Chorley, PR6 9BT**

**The application has been withdrawn from the agenda in order to allow the applicant the opportunity to properly consider the access issues raised by the objector.**

Representations have been submitted today by Mr Paul Wane, the owner of Higher Healey Farm Cottage, in the form of Counsel opinion regarding access rights. A copy of this opinion has been provided although the plans that have been referred to have not been provided.

It is stated that the applicants do not have, and will not be given, a private right of way to provide for the access as set out in the application, and this is a material consideration that must carry significant weight in the decision making process.

It is acknowledged that if the Council were to conclude that the scheme is in accordance with the development plan, then the presumption in favour of granting permission contained in NPPF paragraph 14 comes into play.

However, this is not an irrebuttable presumption. The presumption in favour of granting permission can be rebutted where material considerations indicate that permission should be refused. In the Counsel's opinion, the very significant weight that must be attached to the failure of the proposed access route is sufficient to rebut the presumption.

The applicant's solicitor has responded to the Counsel's opinion (set out below), however this does not constitute in itself evidence of the prescriptive right and it is not for the Local Planning Authority, in considering an application for planning consent, to make a finding on whether such a right exists. As the matter currently stands there is at best a potential prescriptive right in favour of the applicant. It is for the applicant to prove this right exists and this Committee is not the correct forum for this adjudication.

The applicant's solicitor has reviewed their client's title (LA880006) and has advised as follows:

- 1) *This is your title number for your Property. I enclose a reduced copy of your title plan. The land tinted blue on the title plan has the benefit of certain rights granted by a Conveyance dated 10<sup>th</sup> January 1972 made between (1) Lancashire Concrete Products Limited and (2) John Hamer Boardman. These rights are reproduced at entry number 2 of the Property Register of your title. They include a legal right of way over the road shown coloured*

*yellow on the plan annexed to the 1972 Conveyance between the points marked B and C. The road coloured yellow on the 1972 plan has been reproduced on the Land Registry Title Plan and is shown hatched in blue. Your Property benefits from a legal right of way over the area shown hatched blue.*

- 2) *In addition to the right of way above, you have also used an alternative route which is over the property owned by Mr Paul Wane. From my review of some of the title information provided by you it would appear that that access has been in existence since approximately 1979.*
- 3) *Rights of Way over another party's land can be gained through long use or what is also known as Prescription. Broadly, a right of way may be acquired by Prescription where:*
  - a. *The right has been exercised in a manner that is capable of existing as an easement; and*
  - b. *The use has been without force, without secrecy and without permission.*
- 4) *To be established by Prescription the right has to have been enjoyed for at least 20 years – this is known as the doctrine of lost modern grant. In essence, if you are able to assert 20 years use without force, without secrecy and without permission (i.e. use as of right) you would be able to establish a right of way over the current route by Prescription.*
- 5) *As I understand it, you can establish that your property has exercised a right of way over the alternative access forming part of Mr Wane's property for over 20 years – by yourself and previous owners. This right has been exercised openly and without permission. As such you would be able to assert a right of way over the alternative access by Prescription.*

**Members are also advised of the following:**

An objection has been received from the Wildlife Trust for Lancashire, Manchester North and North Merseyside commenting that as ancient woodland is an irreplaceable habitat, any adverse effect on it may be considered significant. They recommend refusal of this application in the form in which it has been submitted and suggest mitigation measures if the application is approved.

The Council's ecological advisor has stated that the representation from the Wildlife Trust does not change their view.

In particular they comment that it is stated that "*Natural England has recently identified Temple Wood as Ancient Woodland*" but this is not in fact the case. They have identified its *potential* to be Ancient Woodland but this has not yet been confirmed. It is the view of the Council's advisor that the site, although a valuable area of broadleaved woodland, is unlikely to be Ancient.

The woodland may well qualify as a Biological Heritage Site irrespective of whether it is Ancient, but the level of harm to the woodland that may be caused by the installation of the passing place is not substantive. No significant trees or important areas of ground flora will be lost, and the harm that will be caused through the loss of a length of hedgerow and some ground and field level vegetation is capable of being mitigated through new planting and woodland management. Only something

approximating 0.1% of the woodland area will be directly affected by the planned works, and any small level of increased use of the trackway that may occur to serve one additional dwelling will not cause any significant increase in indirect disturbance to the woodland.

LCC Highways have clarified their response for the avoidance of doubt. They comment that following an initial highways assessment of the proposal, the applicant was requested to provide two passing places along the section of the access track between Higher House Lane and Higher Healey Cottage, which is approximately 130m in length, however, the proposal was further assessed and it was noted that only the first half of the access from its junction with Higher House Lane needs to be provided with passing place as this section was narrower in width ranging from 4.0m – 4.5m. The other half of the access track from its midpoint to Higher Healey Cottage was considered adequate as its width ranges from 4.5m – 12.0m. It was, therefore, considered that a single passing place located approximately 20.0m from Higher House Lane should be adequate to allow vehicles from opposing traffic to safely pass each other. LCC Highways are, therefore, satisfied with the applicant's submission in relation to the passing place.

**If the application is approved the following additional conditions are recommended:**

During the construction period, all trees to be retained shall be protected in accordance with British Standard BS 5837:2012 or any subsequent amendment to the British Standards.

*Reason: To safeguard the trees to be retained.*

The construction of the passing place located within the root protection area of the adjacent trees shall be undertaken using a 'no-dig' cellular confinement system method of construction or alternative method of construction which has first been submitted to and agreed in writing by the Local Planning Authority.

*Reason: To ensure the continued protection of the high quality tree on/ adjacent to the site.*

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**ITEM 3b-16/00601/FUL– Drinkhouse Farm, Drinkhouse Road, Croston, Leyland, PR26 9JH**

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

32 objections have been received from 23 properties. The reasons for objection are set out in the report.

Croston Parish Council would ask whether consideration could be given to amending the proposals to allow retention of the Farmhouse as part of the development. The incorporation of an existing building was achieved within the Rectory Farm development in the village.

The farmhouse is now to be retained.

A further objection has been received on the following grounds:

- The proposed development is inappropriate development in the Green Belt & is therefore by definition "harmful" to the Green Belt.

- The site is not “previously” developed land & therefore the proposed development would encroach on the countryside “further harming” the Green Belt.
- Although the site is outside the Croston conservation area its development would be detrimental to the conservation area and the setting of Croston.
- Introducing built development onto a green-field site within the Green Belt would result in a loss of openness in the Green Belt contrary to planning policy.
- The proposed development would have an adverse impact on the area in landscape/visual terms in breach of planning policy.
- Alleged highway benefits have not been properly made out & therefore would not be sufficient to outweigh the harm to the Green Belt and other adverse impacts.
- The applicant alleges a need for a capital receipt to fund improvements to the existing agricultural operation. This does not in any way constitute “very special circumstances” sufficient to justify inappropriate development in the Green Belt.
- The Lancashire Archaeological Advisory Service have also confirmed in their letter of 17/8/16 that this proposed development would result in “total loss of historic fabric”.
- There is no justification for housing on an unallocated site as Chorley Council can demonstrate an adequate and deliverable housing land supply to at least 2020.

**ITEM 3c-17/00413/FULMAJ– Chorley Rugby Union Club, Chancery Road, Astley Village, Chorley, PR7 1XP**

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

One letter of objection has been received setting out the following issues:

- This change is unnecessary and unfair to the existing residents. The development has been sold to residents and the existing community to provide a much needed sports facility that would be available to members of the public;
- The sports development has been going on for a number of years and progress appears to have stalled, with completion seeming nowhere near;
- Persimmon promised the local community of Chorley that if they built houses on the land of the previous sports facility then they would complete the new build; ensuring that Chorley had adequate rugby and sports facilities. This change would leave the community without these facilities for even longer;
- The change to the original agreement does not benefit the residents of Chancery Fields, as the current structure is being used by youths for ASB overnight;
- This change does not benefit the wider local community, as it is a large derelict building that is an eye sore;
- This change also does not benefit the residents of Chorley, as there is currently no Rugby Union facility in the town. The town did previously have an adequate Rugby Union facility until Persimmon built houses on the site, apparently guaranteeing that they would complete the new structure;
- The new changes only benefit Persimmon. What guarantees are going to be offered in the unilateral undertaking that Persimmon cannot appeal and changes the terms in 2 years’ time?;

- There has been no consultation with local residents and has left residents frustrated, as it appears that this has been attempted to be passed without their knowledge or consultation. It also appears that if this is passed that Chorley Council are not acting in the best interests of local residents ensuring that developers are sticking to the terms of their contracts and putting companies ahead of the needs of local sports.

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