

29 August 2012

Dear Councillor

**DEVELOPMENT CONTROL COMMITTEE - TUESDAY, 4TH SEPTEMBER 2012**

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 printed.

**Agenda No    Item**

4.    **Planning applications to be determined**

b)    12/00619/FUL - Sunnyside 4 Common Bank Lane, Chorley (Pages 1 - 8)

**Proposal**

Erection of 1no. residential dwelling.

**Recommendation**

Permit full planning permission  
*(please note this recommendation  
has changed since the agenda  
was published)*

5.    **Proposed changes to the Constitution & Scheme of Delegation - Planning Matters (Pages 9 - 12)**

The report of the Director of Partnerships, Planning and Policy (report enclosed).

Yours sincerely



Gary Hall  
Chief Executive

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ان معلومات کا ترجمہ آپ کی اپنی زبان میں بھی کیا جاسکتا ہے۔ یہ خدمت استعمال کرنے کیلئے براہ مہربانی اس نمبر پر ٹیلیفون

01257 515823 کیجئے:

<b>Item 4b</b>	<b>12/00619/FUL</b>
<b>Case Officer</b>	<b>Helen Lowe</b>
<b>Ward</b>	<b>Chorley North West</b>
<b>Proposal</b>	<b>Erection of 1no. residential dwelling.</b>
<b>Location</b>	<b>Sunnyside 4 Common Bank Lane Chorley LancashirePR7 1NR</b>
<b>Applicant</b>	<b>Mr J Waddilove</b>
<b>Consultation expiry:</b>	<b>1 August 2012</b>
<b>Application expiry:</b>	<b>17 August 2012</b>

**MEMBERS SHOULD NOTE THAT THE RECOMMENDATION FOR THIS APPLICATION ON THE PRINTED AGENDA WAS REFUSAL - THIS HAS NOW BEEN CHANGED TO ONE OF APPROVAL.**

### **Proposal**

1. This application proposes the erection of a single dwelling to the rear of 4 Common Bank Lane Chorley. The land on which the dwelling is to be erected has been recently used as an allotment area for the occupants of no. 4 Common Bank Lane. Other land that forms part of the application site forms the rear garden of no. 4.
2. The application site is located within the settlement boundary of Chorley. To the rear (north) of the application site lies the Chorley Sewage Treatment works and to the south Common Bank Industrial Estate. The Industrial Estate is well screened by mature trees. The application property is one of a group of five dwellings located on Common Bank Lane, the adjacent property to the west having only been recently constructed (application reference 08/00863/FUL). Land to the east is undeveloped fields, with a number of mature trees immediately adjacent to the site.

### **Recommendation**

3. It is recommended that this application is granted conditional full planning approval.

### **Main Issues**

4. The main issues for consideration in respect of this planning application are:
  - Principle of the development
  - Impact on the neighbours
  - Design
  - Trees and Landscape
  - Traffic and Transport

### **Representations**

5. No letters of objection have been received
6. No letters of support have been received

### **Consultations**

7. Lancashire County Council (Highways) raise no highway objection but would however request a suitably worded condition to be included as part of any grant of permission requiring the

removal of the existing car port and parking spaces prior to the first occupation of the new property.

8. Chorley's Planning Policy Local Plan Review Policy HS6 is relevant to this application and criterion (f) requires applicants for residential development on previously undeveloped sites within settlements to demonstrate that there are no suitable allocated or previously developed sites available in the settlement before developing such sites. The applicant has not undertaken this exercise, therefore this proposal is contrary to Local Plan Policy HS6 (f). This approach is consistent with the NPPF, one of the core planning principles of which is to 'encourage the effective use of land by re-using land that has been previously developed, provided that it is not of high environmental value.'  
Core Strategy Policy 4: Housing Delivery also sets a brownfield target of at least 70% of all new housing.
9. This proposal is also contrary to the Council's Interim Policy on Private Residential Garden Development. This aims to prevent garden development in the Borough and was adopted in October 2010.
10. Chorley's Waste & Contaminated Land Officer Due to the proposed sensitive end-use (residential housing with garden) and the proximity of the development site to land that is potentially affected by contamination (sewage works), the development hereby permitted shall not commence until the applicant has submitted to and had approved in writing by the Local Planning Authority a report to identify any potential sources of contamination on the site and where appropriate, necessary remediation measures.
11. Parks and Opens Spaces Manager There would be no justification for a request for a financial contribution towards the provision of public open space in the area.

#### **Applicants Case**

12. The applicant's agent has prepared a planning statement in support of the planning application. They make the following comments:
  - Chorley's Site Allocation and Development Management Policies DPD confirms that there is still a significant requirement for additional dwellings to meet the borough's identified housing needs to 2026 and that part of this housing requirement is to be met from windfall housing development. The application proposals would not therefore result in the housing requirement for the Borough being materially exceeded;
  - The Site Allocations and Development Management Polices DPD confirms that there is insufficient previously development land to meet the Borough's housing needs by virtue of it allocating greenfield land for housing development. It is not considered necessary to demonstrate that there are no suitable allocated or previously developed sites available in Chorley Town itself, especially for a scheme which comprises a single dwelling;
  - The only potential conflict with the Local Plan is that whilst there is insufficient previously developed land within the Borough to meet its development needs, no evidence has been submitted with this application to demonstrate that there are no suitable allocated or previously developed sites available in Chorley Town itself, as required by Policy HS6(f). This requirement is not however consistent with the NPPF which is required for pre 2004 policies to be given any weight.
  - Whilst the NPPF seeks to encourage the effective re-use of previously developed land it does not preclude greenfield development. Moreover it does not require it to be demonstrated that there are no previously undeveloped sites within a settlement for a greenfield site to be granted planning permission. The key consideration is whether the development is sustainable. The requirement of policy HS6(f) would actually run contrary to this main objective of promoting sustainable development as it is considerably more onerous in a settlement such as Chorley town.

- Policy HS3 of the draft Site Allocations and Development Management Policies DPD contains a provision that on previously undeveloped sites residential development will only be permitted if the applicant can demonstrate that there are no suitable allocated or previously developed sites available for residential development in the settlement, this requirement is at odds with the NPPF and as the document is also at a relatively early stage of production and there are outstanding objections to the policy, no weight can be given to this requirement.
- The proposal conflicts with Policy HS4 of the draft Site Allocations and Development Management Policies DPD as this restricts residential development within private residential gardens to agricultural workers dwellings, replacement dwellings and building conversions. However, this policy applies a degree of restraint which is entirely at odds with the NPPF. The NPPF does not support an effective moratorium on the development of gardens and if that had been its intention then it would have been clearly stated. Instead the clear objective of the NPPF is to allow development in sustainable locations and to make effective use of land and existing infrastructure. Given that gardens comprise a significant proportion of urban land they can provide a most appropriate source of land to meet these requirements and there is no suggestion in the NPPF that garden and cannot contribute to meeting these objectives in principle.
- It is acknowledged that the Interim Policy 'Private Residential Garden Development and the draft Site Allocations and Development Management Policies DPD preclude the development of gardens but little weight, if any at all can be given to these policy documents. In this regard the Interim Policy is an informal document which has no parent policy in the Development Plan, whilst the Site Allocations DPD is in draft form and there are unresolved objections to the relevant Policy. Recent SoS appeal decisions such as at Homeland and Deans Farm in Bishop's Cleeve, Gloucestershire (ref. APP/G1630/A/11/2146206 and APP/G1630/A/11/2148635) confirm that little weight is to be given to emerging LDF documents which have yet to progress past the examination stage.

### Assessment

#### Principle of the development

13. The land on which the proposed dwelling is to be located is described as 'allotment' in the application and that it has been used for the growing of fruit and vegetables. In supporting information submitted with the application however, no argument is made that the application site should not be considered to form part of the domestic curtilage of the property and discussion on the Council's policies with regard to development on private residential gardens rests on the weight that should be attached to these policies, not that it is not applicable due to the land not being part of the private garden.
14. It appears from various aerial photographs that there have recently been glasshouses on the application site. In an application for a house extension submitted in 2006 (ref. 06/00785/FUL) the case officer describes the land as garden.
15. In accordance with the National Planning Policy Framework (NPPF) the site is considered to be previously undeveloped land (greenfield). Even if the land were considered to fall outside of the residential curtilage of the application property the land would still be considered to be previously undeveloped.
16. As the site is located within the settlement boundary the council's Interim Planning Policy on Private Residential Garden Development is relevant. The policy states that:  
Within the boundaries of settlements applications for development within private residential gardens on sites not allocated in saved Local Plan Policy HS1 will only be permitted for:
  - Agricultural workers dwellings/dependents where there is a proven need and where they need to be located in a specific location.
  - Appropriately designed and located replacement dwellings where there is no more than

one for one replacement.

- The conversion and extension of buildings, provided they are not allocated for, currently used for, or their last use was for, employment uses and the conversion would have significant urban regeneration benefits.

17. Chorley Council has also prepared a Site Allocations and Development Management Policies Development Plan Document (DPD) as part of preparing the Local Development Framework. This has recently been out to public consultation, but an examination in public has not yet taken place. The emerging DPD contains a policy on Private Residential Garden Development (ref. HS4).
18. The erection of the dwelling as proposed does not fall within any of the appropriate forms of development in private residential gardens as defined in both the Interim and emerging policies. However, the applicant has put forward a number of reasons as to why they consider that the interim policy should not apply (see paragraph 12)
19. With regard to the Council's policies on private residential garden development, it is acknowledged that only limited weight can be attached to both the interim policy and the emerging Site Allocations and Development Management DPD. The interim policy has been adopted in order to address growing concerns regarding the impact of such developments across the Borough, such as compromised privacy, reduced garden size, impact on daylight and sun light traffic generation and changes to the character of the surrounding area.
20. The NPPF also states that the local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens. The NPPF states that planning decisions should respond to local character and history and add to the quality of the area. The purpose of restricting garden development in the Borough is to ensure that the amenity and character of the local area is maintained and enhanced.
21. It should also be noted that Chorley's housing commitment can in the short term currently be met from sources other than Greenfield sites. The 2010 Central Lancashire Strategic Housing Land Availability Assessment indicates that Chorley has a 5 year deliverable housing supply, so there is no need to release such sites for housing development. Land with potential for housing is also identified for the 6-10 year and 11-15 year periods. The May 2012 Five Year Housing Supply 5.5 Statement for Chorley also updates this position. This indicates a 5.89 year deliverable housing supply for the period April 2012-March 2012. Therefore there is a five year supply with an additional buffer of 5% as required by the NPPF in Chorley. This site is located within Chorley Town as defined within the Core Strategy which will be the focus for growth within Chorley.
22. Therefore, the Borough's future housing requirements can be met from existing housing allocations, previously developed sites and safeguarded land, which are Greenfield land.
23. Policy HS6 (f) of the Local Plan Review also requires any application for residential development on garden or previously undeveloped land, irrespective of size, to include details which demonstrate to the Council that there are no suitable allocated or previously developed sites which are available in the settlement of Chorley, as defined in the Local Plan Review, that could accommodate the dwellings being proposed. The applicant has failed to submit any such assessment with the application and as such fails to comply with policy HS6. It is not accepted that this policy does not accord with the NPPF, as the NPPF seeks to encourage the re-use of previously developed land and therefore weight can be attached to this policy. However, the presumption in favour of sustainable development that underlies the NPPF should be accorded considerable weight, nor does the NPPF preclude the development of previously undeveloped land.
24. Additionally there have been a number of other applications and appeal decisions recently in local and wider area that have demonstrated that there are no plots of previously developed

land available for the erection of a single dwelling.

25. One of the core principles of the NPPF is that development should be focused in locations that are sustainable. It is considered that the site is located in a relatively sustainable location with easy access to public transport, amenities such as a supermarket and public house nearby and the means to access other amenities easily. The NPPF also states that development in sustainable locations should be approved without delay.
26. The Council's interim policy and emerging policy on r It is also accepted, particularly given the sustainability credentials of the site, that the release of this small, effectively windfall site, would not prejudice the overall delivery of housing elsewhere in the Borough. Residential garden development recognises that beyond the criteria listed within the policy, garden development may be permitted in exceptional circumstances, subject to material considerations, providing that it can be demonstrated that the proposed development would be in keeping with the character of the local area. The impact of the proposal on the character of the area is discussed below in paragraphs 28 and 29.

#### Impact on the neighbours

27. The proposed development would be single storey only, with a number of windows facing the adjacent property to the north east (no. 3A Common Bank Lane). There is a 1.8-2m hedge along the boundary that would provide a good degree of screening and the proposed dwelling would be a minimum 8m from the boundary with no. 3A. It is not considered that the proposed dwelling would cause any undue harm to the occupants of the adjacent dwelling or the occupants of the existing dwelling. The proposed dwelling would be overlooked by the existing dwelling on the application site, however, the distances meet the Councils interface standards (10m from first floor habitable windows to boundary) and it is considered that the occupants of the new dwelling would have an acceptable level of amenity.

#### Design

28. The design and appearance of the dwelling proposed is considered to be in keeping with the dwelling at no. 4 Common Bank Lane. Although the application site is located in close proximity to the sewage treatment works and Common Bank Lane Industrial Estate, the immediate area has a semi-rural feel. The proposed dwelling would not be infilling a gap between other dwellings, however it would lie between the existing dwelling and the sewage works and in that respect would have a very limited impact upon the openness of the area. It would also be screened to some degree by the existing dwelling on the site.
29. Due to the unusual location of the site adjacent to the sewage works and in close proximity to the industrial estate it is considered that the general character of the area would remain unchanged and the impact on the street scene would be negligible.

#### Trees and Landscape

30. There are a number of mature trees bounding the south west of the application site and an arboricultural report has been submitted with the application. None of these trees are protected by a tree preservation order and are outside of the application site (and ownership of the applicant but are shown as belonging to the same applicant in 2006). The arboricultural report recommends a number of protection measures to protect the trees during the construction of the dwelling, such as protective fencing, hand excavation and no storage of materials. The majority of the development would take place outside of the root protection area. The trees in question make a valuable contribution to the character of the area and their retention is desirable, however it is considered that it has been demonstrated that they can be adequately protected during the course of the works. It is not considered necessary to protect the trees with a tree preservation order.

#### Traffic and Transport

31. No objections are raised by LCC Highways and there is adequate space on the site to accommodate a sufficient level of parking for the existing and proposed dwelling.

**Overall Conclusion**

32. The proposal does not comply with the Council's interim and emerging policies on development in private residential gardens. The applicant has also failed to demonstrate that there are no other suitable previously developed sites. However, members must be mindful of the weight that can be attached to these policies and recent appeal decisions. The application site is located in a sustainable location, Chorley Town Centre, which the Core Strategy identifies as the focus for growth. Due its unique relationship to the nearby sewage works and industrial estate the proposal would have a negligible impact on the character of the area.
33. It is also accepted, particularly given the sustainability credentials of the site, that the release of this small, effectively windfall site, would not prejudice the overall delivery of housing elsewhere in the Borough and would not harm the overall vision of the Core Strategy. The proposal is accordingly recommended for approval.

**Planning Policies**

National Planning Policies:  
NPPF

Adopted Chorley Borough Local Plan Review  
Policies: GN1, GN5, HS4, HS6, HS21, TR4

Central Lancashire Core Strategy  
Policy 4: Housing Delivery Policy 5: Housing Density, Policy 17: Design of New Buildings

Sites for Chorley- Preferred Option Paper Site Allocations and Development Management Policies  
Development Plan Document  
HS4

**Planning History**

06/00785/FUL Single storey rear and side extension Approved 6th September 2006

**Recommendation: Permit Full Planning Permission  
Conditions**

1. The proposed development must be begun not later than three years from the date of this permission.  
*Reason: Required to be imposed by Section 51 of the Planning and Compulsory Purchase Act 2004.*
2. The approved plans are:
 

Plan Ref.	Received On:	Title:
JW-1001	18 June 2012	Existing and proposed site layout
JW-1002	18 June 2012	Proposed plans and elevations
JW-1003	18 June 2012	Location plan

*Reason: To define the permission and in the interests of the proper development of the site.*
3. During the construction period, all trees to be retained shall be protected by 1.2 metre high fencing as specified in paragraph 8.2.2 of British Standard BS5837:2005 at a distance from the tree trunk equivalent to the outermost limit of the branch spread, or at a distance from the tree trunk equal to half the height of the tree (whichever is further from the tree trunk), or as may be first agreed in writing with the Local Planning Authority. No construction materials, spoil, rubbish, vehicles or equipment shall be stored or tipped within the area(s) so fenced. All excavations within the area so fenced



shall be carried out by hand.

*Reason: To safeguard the trees to be retained and in accordance with Policy No. EP9 of the Adopted Chorley Borough Local Plan Review.*

4. No development shall take place until a desktop study and site walkover has been carried out to identify any potential sources of land contamination associated with this development site, and approved in writing by the Local Planning Authority. If the potential contamination is confirmed further studies by the developer to assess the risks and identify and appraise the options for remediation will be required.

*Reason: To protect the environment and to prevent harm to human health by ensuring that the land is remediated to an appropriate standard and in accordance with the NPPF.*

5. The development hereby permitted shall not commence until full details of the colour, form and texture of all hard ground- surfacing materials (notwithstanding any such detail shown on previously submitted plans and specification) have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in conformity with the approved details.

*Reason: To ensure a satisfactory form of development in the interest of the visual amenity of the area and to prevent an undue increase in surface water runoff in accordance with Policy Nos. GN5 and HS4, of the Adopted Chorley Borough Local Plan Review.*

6. The development hereby permitted shall not commence until full details of the colour, form and texture of all hard ground- surfacing materials (notwithstanding any such detail shown on previously submitted plans and specification) have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in conformity with the approved details.

*Reason: To ensure a satisfactory form of development in the interest of the visual amenity of the area and to prevent an undue increase in surface water runoff and in accordance with Policy Nos. GN5 and HS4 of the Adopted Chorley Borough Local Plan Review.*

7. Before the development hereby permitted is first occupied, the car parking areas shall be surfaced or paved, drained and marked out all in accordance with the approved plan. The car parking areas shall not thereafter be used for any purpose other than the parking of and manoeuvring of vehicles.

*Reason: To ensure adequate on site provision of car parking and manoeuvring areas and in accordance with Policy No. TR4 of the Adopted Chorley Borough Local Plan Review.*

8. The development hereby permitted shall not commence until samples of all external facing materials to the proposed building(s) (notwithstanding any details shown on previously submitted plan(s) and specification) have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out using the approved external facing materials.

*Reason: To ensure that the materials used are visually appropriate to the locality and in accordance with Policy Nos. GN5 and HS4 of the Adopted Chorley Borough Local Plan Review.*

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Report of	Meeting	Date
Director of Partnerships, Planning & Policy	Development Control Committee	4 September 2012

**PROPOSED CHANGES TO THE CONSTITUTION & SCHEME OF DELEGATION – SECTION 73 APPLICATIONS**

**PURPOSE OF REPORT**

- To seek appropriate changes to the Council’s constitution and scheme of delegation in relation to the determination of section 73 applications.

**RECOMMENDATION(S)**

- That the Development Control Committee request and authorise the Council’s Head of Governance to prepare a report to Full Council, detailing appropriate changes to the Council’s constitution to achieve the objectives set out in this report.

**EXECUTIVE SUMMARY OF REPORT**

- The Executive Member for Planning has asked officers to review the scope of the constitution and scheme of delegation with regard to section 73 applications – these are applications more commonly known as those dealing with variations to conditions. It is considered that such applications may be more expediently dealt with under delegated powers.

<b>Confidential report</b> Please bold as appropriate	Yes	No
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**CORPORATE PRIORITIES**

- This report relates to the following Strategic Objectives:

Strong Family Support		Education and Jobs	
Being Healthy		Pride in Quality Homes and Clean Neighbourhoods	
Safe Respectful Communities		Quality Community Services and Spaces	
Vibrant Local Economy		Thriving Town Centre, Local Attractions and Villages	
A Council that is a consistently Top Performing Organisation and Delivers Excellent Value for Money			X

**BACKGROUND**

- In 2009, the Government made changes to the planning system in response to the economic downturn, including the ability to extend the time limits of and make minor material

amendments to existing permissions, notably though the use of section 73 applications. Guidance on such matters is contained in the DCLG document *Greater Flexibility for Planning Permissions* (October 2010).

6. Section 73 of the Town and Country Planning Act 1990 (as amended) allows applications to be made for permission to develop without complying with a condition(s) previously imposed on a planning permission. The local planning authority can grant such permission unconditionally, or apply different conditions, or they can refuse. The original planning permission continues to subsist whatever the outcome of the section 73 application. It is not permitted to use a section 73 application to extend the life of a permission if the time limit of the consent has already expired and no development has begun.
7. Section 73 applications are commonly referred to as “variations to conditions” and generally seek to change the original development in some way that is considered minor in nature. In many cases, such applications are for relatively minor matters e.g. a change of materials, variations to boundary treatments, landscaping schemes, etc, but they can also address changes to layout, changes to finished floor levels (FFLs), changes of house types, re-positioning of access roads, and changes to opening hours for example. If granted, a section 73 application will modify conditions attached to an existing planning permission where the principle of the development has already been determined.
8. Members will be aware that many factors influence the scope of the scheme of delegation, and an appropriate balance needs to be struck between transparency/openness and efficiency. Factors include:
  - the deployment of significant resources (production costs including officer time, printing costs, agenda processing, meeting time);
  - whether applications are in accordance with policy;
  - whether there are contrary comments to the officer recommendation, and the nature of those comments;
  - the need for and impact upon an applicant/agent/objector/supporter to attend or speak at the committee and the notification costs of informing such parties that an application is to be considered at a committee.

## **CURRENT POSITION**

9. Under the terms of the current constitution and scheme of delegation, the power to determine section 73 applications lies with the Development Control Committee. Applications for major commercial, industrial and residential applications with certain size thresholds are expressly excluded from the scheme of delegation to officers if the officer recommendation is contrary to comments from either a local resident, a town or parish council or any other outside body or organisation that has been consulted; and for certain categories, applications may only be determined after consultation with the Chair and Vice Chair (Responsibility for Functions Appendix 2, pages 2 and 23-24).
10. Given this position, when a section 73 application is submitted for a “major” scheme, they are routinely reported to the Committee as they meet the size thresholds. Since the power was introduced in 2009, approximately 34 applications under section 73 (including minor material amendments) have been received, and approximately 23 were pursuant to major schemes, representing 68%.

## **PROPOSED CHANGES**

11. It is considered that section 73 applications could be more efficiently determined after consultation with the Chair and Vice Chair of the committee. Members should note that under the current constitution, this would generally occur anyway if the officer is minded to

make a decision that is contrary to a written comment received from a local resident, a town or parish council, or any other outside body or organisation that has been consulted.

12. By amending the scheme of delegation to ensure all section 73 applications are only determined after consultation with the Chair and Vice Chair, then a more efficient determination could be made. Should the Chair and Vice Chair agree with the officer recommendation, the section 73 application could be determined under officer delegated powers.
13. Should the committee agree, such changes must be made by way of a report to Full Council, and the authority given to the Head of Governance to prepare such a report.

**IMPLICATIONS OF REPORT**

14. This report has implications in the following areas and the relevant Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	
Legal	X	Integrated Impact Assessment required?	
No significant implications in this area		Policy and Communications	

**COMMENTS OF THE STATUTORY FINANCE OFFICER**

15. The proposed changes will result in a more efficient determination of planning applications by the Council and should be welcomed.

**COMMENTS OF THE MONITORING OFFICER**

16. Such a delegation is desirable as this will allow for improved processing of minor, non-controversial requests. In the event that the Chair and/or Vice Chair are unhappy with any proposed change to conditions, they can decline to exercise the delegation and the matter can be referred to the Development Control Committee for their consideration.

LESLEY-ANN FENTON  
 DIRECTOR OF PLANNING, PARTNERSHIPS AND POLICY

Report Author	Ext	Date	Doc ID
Jennifer Moore Head of Planning	5571	24 August 2012	

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