

Report of	Meeting	Date
Director Commercial Services (Introduced by the Executive Leader)	Executive Cabinet	13 February 2020

## **COWLING FARM**

### **PURPOSE OF REPORT**

1. To provide to Executive Members an update on the position as regards the delivery of the mixed-use Cowling Farm site to include specific reference to the delivery of the Gypsy and Traveller (G & T) site.

### **RECOMMENDATION(S)**

2. Members are asked to note the estimated costs for delivering a serviced G & T site which will accommodate the needs set out in 2012-2026 Local Plan, which includes any updates around these costs.
3. Members are asked to decide if the expenditure should be incurred to deliver this site and to confirm the preferred option for delivery of the G & T site.

### **EXECUTIVE SUMMARY OF REPORT**

4. The land at Cowling Farm site is in shared ownership with one parcel being owned by the Council and one by Homes England (HE). The site is allocated under the local plan for mixed use employment and housing and includes an allocation for a gypsy and traveller site.
5. To this point the approach has been to work jointly with Homes England to bring forward the site as a single development, the intention being that the housing element of the allocation will be positioned on the HE land and the gypsy and traveller site and employment on the CBC land. This approach was the most cost-effective method of delivery and enabled the Council to meet objectives under the MTFs by developing out income generating assets (the employment sites).
6. The position has changed with HE. They have now indicated they no longer wish to pursue delivery of the site jointly. This has significant implications for the Council both in terms of cost but in delivery of the gypsy and traveller site.
7. At the November 2019 Executive Cabinet meeting officers presented the feasibility work that had been completed to date which highlighted a viability gap in the delivery of employment use on the CBC parcel of land. Whilst it is recognised that housing delivery on the CBC parcel of land would likely be a more viable option, it would be subject to satisfying planning legislation and further detailed masterplanning. The report identified that to deliver the Gypsy and Traveller (G & T) allocation within the required timescales, it would be necessary to deliver in advance of and separate to bringing forward the remainder of the site. Due to the access restrictions and nature of the topography of the site, delivering the gypsy and traveller allocation would result in significant cost. The options for the positioning of the G & T allocation on the site and the costed options were presented to Members. Members acknowledged the limitations around the delivery of the employment use and requested that

further works are undertaken to review the options for reducing the costs of the delivery of the G & T allocation in advance of and separate to bringing forward the development of the remainder of the site.

8. This report presents updated high-level costed options for the delivery of the gypsy and traveller sites within the Council land which are not dependent on joint working with Homes England. Members are asked to consider the options and to decide on a preferred approach. In order to do this the report will summarise the history of the site to include: -
- a. Planning history around the need for a gypsy and traveller site;
  - b. The allocation of the Cowling Farm site;
  - c. The options appraisals undertaken to deliver the site within the allocation; and
  - d. The current position.

This information is important for members as it will put the risks of the options into context, primarily around the need to deliver within Chorley boundaries a gypsy and traveller site and the timings that are attached to the delivery of this need.

<b>Confidential report</b> Please bold as appropriate	Yes	<b>No</b>
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<b>Key Decision?</b> Please bold as appropriate	<b>Yes</b>	No
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<b>Reason</b> Please bold as appropriate	1, a change in service provision that impacts upon the service revenue budget by £100,000 or more	2, a contract worth £100,000 or more
	<b>3, a new or unprogrammed capital scheme of £100,000 or more</b>	4, Significant impact in environmental, social or physical terms in two or more wards

## REASONS FOR RECOMMENDATION(S)

### (If the recommendations are accepted)

9. To allow the progress of the delivery of the G & T allocation in line with the requirements of the 2012 – 2026 Local Plan.

## ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

10. Delay the delivery of the gypsy and traveller site to co-inside with the delivery of the remainder of the CBC and HE land. This was rejected due to the prolonged and uncertain timetable for the delivery of the wider site.

## CORPORATE PRIORITIES

11. This report relates to the following Strategic Objectives:

Involving residents in improving their local area and equality of access for all	✓	A strong local economy	
Clean, safe and healthy homes and communities	✓	An ambitious council that does more to meet the needs of residents and the local area	

## BACKGROUND

12. Although this report is addressing the delivery of development at Cowling Farm, in particular the G & T allocation, which is to be delivered by July 2021, the date in which the current temporary planning permission for the site which the G & T family reside, expires, this is a matter which has a lengthy history. An understanding of this history is necessary for members to make an informed decision and balance risk. To assist a summary of the history demonstrating firstly how the gypsy and traveller site need was established, how the Cowling Farm site was allocated for the delivery of this need and the steps taken to bring the site forward is set out below.

## **PLANNING HISTORY**

13. In June 2009, 2 families moved on to land at Hut Lane, Chorley and established 2 separate but neighbouring gypsy and traveller sites. The land had been purchased by them. It was in the greenbelt and was allocated for agricultural use.
14. Following refusal of a first planning application the Council took enforcement action, serving notices requiring the use to cease and the land to be returned to its former condition. The families unsuccessfully appealed both against the refusal and notices and an Inspector upheld both decisions in March 2010.
15. A further application for planning consent was submitted in June 2011 which was prior to expiry of the compliance period. The family appealed against non-determination of this application and this appeal was considered at Inquiry and dismissed in May 2012. The appellant subsequently appealed to the High Court against the refusal of temporary permission only.
16. One family vacated the site and the result is that the provisions of the Enforcement Notice still stand so far as it relates to the land formerly occupied by that family. That land continues to be prohibited for use as a gypsy and traveller site.
17. On appeal the High Court agreed with the Appellants case, quashed the Inspectors decision and referred it back for further consideration.
18. In parallel the Council sought an injunction against all the current and former occupying families seeking to exclude them from the site. So far as is relevant, the remaining family agreed to vacate the site within three months of the decision should the redetermination of their appeal to the inspector be unsuccessful.
19. In July 2013 CBC granted a temporary permission for the remaining family to remain on the site following receipt of an application in April 2013. This temporary permission was essentially to enable the council to take the following actions:-
  - a. To complete the Local Plan process, specifically to assess the gypsy and traveller need, and to allocate a site (or sites) for the provision of any identified need; and
  - b. To arrange for or enable the delivery of any allocated site.

## **ALLOCATION OF COWLING FARM AS A GYPSY AND TRAVELLER SITE**

20. As part of the reasoning of the High Court decision it was stated that the family had evidenced their own need by seeking to and indeed commencing to reside within Chorley. However, it was necessary to undertake a detailed Gypsy and Traveller need study. This was complicated not least because at that time there was uncertainty around the guidance provided by the Government on the correct methodology to be used in assessing need. Changes to the approach were being proposed albeit not actioned, but as this would form part of the 2012 -2026 Local Plan which would run for 13 years it was felt best to get the

most up to date guidance on which to base any decisions. This uncertainty caused some delays.

21. The result of the need study was that CBC were assessed as having a need over the 2012 - 2026 local plan period of 5 permanent pitches (as defined in best practice). As stated above this need included that demonstrated by the family resident at Hut Lane.
22. As part of the development of the 2012-2026 Local Plan CBC then undertook a call for sites exercise. The purpose of this is to receive proposals from the public, landowners, developers etc with suggestions where the gypsy and traveller site provision could be met. As part of this process CBC included parcels of land in the Council's ownership for consideration. Although it would have been open to the Council to nominate land outside of its ownership, it was felt that this would have a significant impact on the deliverability of any site and it would be best to consider land already under council control.
23. The evidence indicated a requirement for an allocation of 0.4 hectares of land for the delivery of the gypsy and traveller site. Of the sites identified by the Council some were discounted as the layout or topography would not have allowed the necessary pitch provision (5 pitches) on the site. Only one of the available parcels of land would have been capable of delivering this need and that was the land at Cowling Farm. As a result, it was agreed to recommend that 0.4 hectares of the land within the mixed use allocation be provided as the permanent gypsy and traveller provision within Chorley at Cowling Farm, satisfying the identified need.

## **DEVELOPMENT HISTORY**

24. Although allocated this site is still challenging to bring forward for development. The topography of the site lends itself to a "whole site" delivery approach. Certainly, co-operation by those involved in the delivery of the different uses (employment/ housing/ gypsy and traveller site) is necessary to ensure the best and most cost-effective use of the land. Levels and drainage would, to be most cost effective, require a solution across the whole site.
25. The Council's Medium Term Financial Strategy is to become increasingly financially self-sufficient. As part of this strategy CBC seeks to deliver income generating investment to enable this good financial planning. CBC therefore sought to partner with a developer in relation to the Cowling Farm site. Preliminary negotiations were undertaken with a series of local developers which would have delivered employment units on the site which would have remained in Council ownership, and housing which would have been used to fund the balancing payments.
26. In parallel with these negotiations, CBC were also in discussions with H E involving a wider land swap arrangement. The principle behind the discussions being that HE would transfer to CBC land suitable (although not necessarily allocated) for commercial development and in turn CBC would transfer housing land in our ownership. Each parcel would be valued, and a balancing payment made to reflect any variations. These discussions included the housing element of the land at Cowling Farm. CBC were very clear with HE during these discussions that part of the allocation at that site included a gypsy and traveller site.
27. The land swap with HE was felt to be a better option for the Council, demonstrating joint working within the sector and working with a partner whose stated aim is to provide housing, not a developer who has a commercial aspect to their dealings.
28. CBC and HE worked together to bring the site forward by developing a masterplan that combined both parcels of land recognising that by having a shared approach this would

significantly reduce each parties' costs of delivery. CBC remained clear in our position that whilst the gypsy and traveller site was to be delivered by the Council it should very much be viewed as a residential / housing use and should therefore be accessed through the HE site. CBC were also considering the need for facilitating housing on our land (needed to make any employment delivery on the site viable) and access to these properties would also be required although it could be the same access.

29. As a result of the council's position the right to access our retained land from theirs over an agreed access road was included within the transfer of title. Design iterations showed such a road connection to the site boundaries.
30. Discussions with HE were protracted with changes in both personnel and priorities at HE leading to delays in progressing both the design and joint masterplan proposal. Whilst CBC could progress some design work this was largely stalled until HE confirmed their site layout and importantly the cross-boundary access point.
31. It is important for members to recognise that for CBC to bring this site forward without the involvement of HE is extremely challenging. This is both in terms of the practical implications of any development works but also, importantly financially. The jointly appointed consultants who were developing the masterplan on behalf of CBC and HE identified the benefit of bringing forward both sites within a single planning application, which would offer significant cost savings on earthworks, drainage and service connections.
32. Although HE had continued to engage with CBC, confirming their commitment to a joint approach, CBC have been considering options to bring our land forward for development independently for some time. This recognises the need to ensure that the gypsy and traveller site is brought forward without any unreasonable delay and that the latest temporary permission expires in summer 2021. Site investigations and options proposals have been worked up and presented to Cabinet, demonstrating how the gypsy and traveller site and indeed the whole of the retained land could be accessed without reference to the HE land.
33. These options have demonstrated the viability of the site is limited particularly should employment uses be delivered on it. The options also clearly demonstrate the physical challenges in delivering this site which were previously highlighted in this report.
34. HE have now confirmed that they do not wish to work jointly with CBC on this site and have specifically stated they would resist attempts by CBC to access the gypsy and traveller site through the housing land. Legally this is an empty threat the council have reserved a right of access and in any event when the road access is adopted, HE will not be able to restrict access to the council land. However, practically this is a significant restriction to the Council's position. The greater the delay in delivering the gypsy and traveller site at Cowling Farm the greater the risk that any application for a permanent permission at Hut Lane is granted, undermining both the 2012-2026 Local Plan allocation and the Council's position on green belt land.

## **CURRENT POSITION**

### **Homes England**

35. At the end of October 2019 Homes England wrote to the council confirming that they were intending to submit their outline planning application within a few weeks. A planning application has not been submitted by HE for their Cowling site.
36. The council wrote to HE in November 2019 expressing their concerns on the constraints on delivering the G & T allocation that was being imposed as a result of them not allowing

access from their land to the G & T site. Their response received in January 2020 does not provide any confirmation that an agreement could be made to facilitate this.

### G & T Allocation Delivery Options

37. At the November 2019 Executive Cabinet meeting four possible delivery options for the G & T allocation, and where appropriate the high-level costs to deliver each of these options were presented. These options are summarised below:

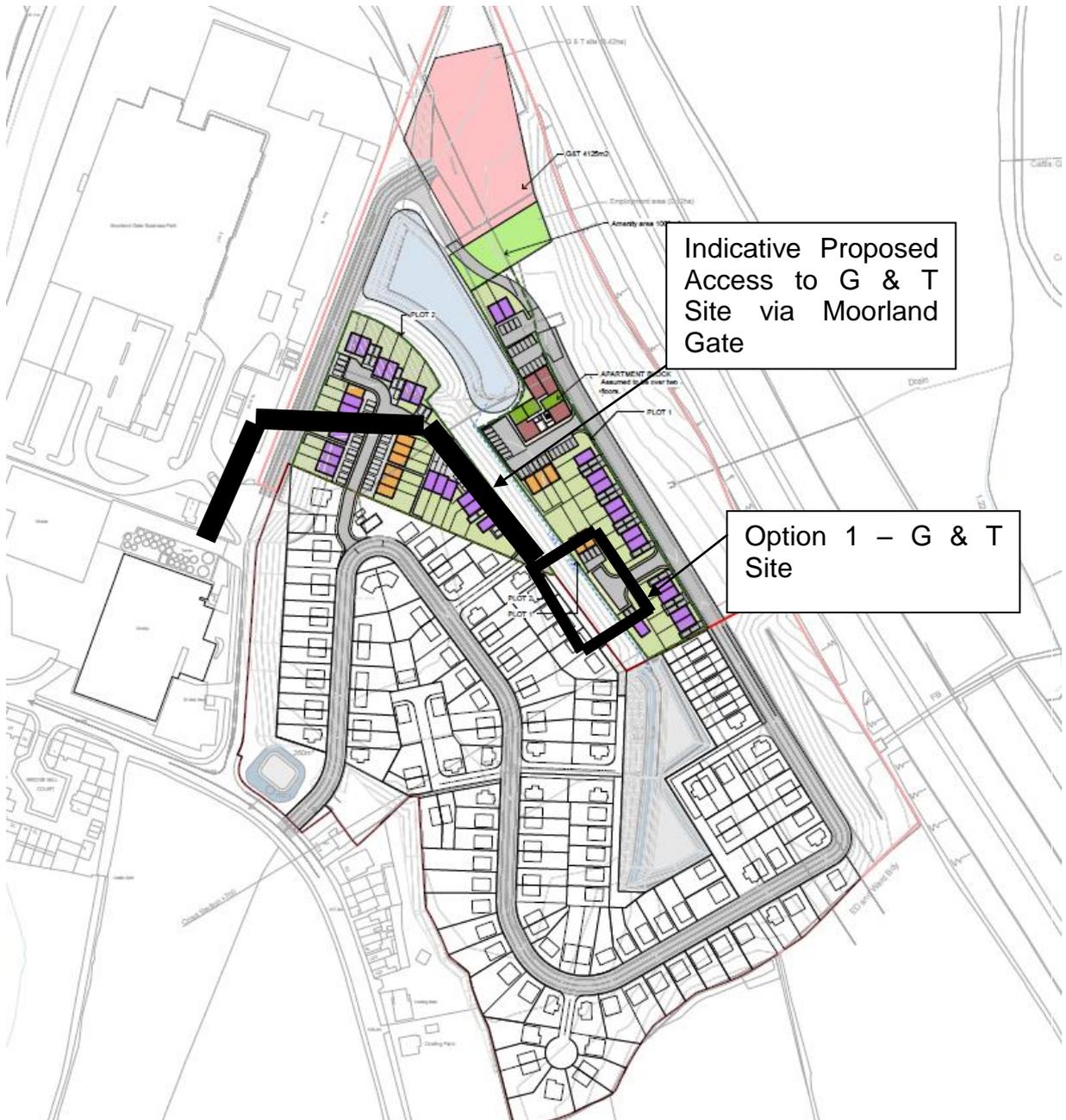


Figure 1 – Location of G & T Site Option 1 (NTS)

<b>Deliverability</b>	Option 1 could be delivered independent of any other development on the Chorley land
<b>Constraints / Benefits</b>	Delivery of Option 1 would prevent any access to the Chorley land from the Homes England site, preventing any potential future residential

	access on to the Chorley land, via the current proposed access. Estimated development costs lower than option 2.
<b>Approximate Cost of Delivery</b>	£920,000
<b>Approximate Annual Borrowing Costs</b>	£37k

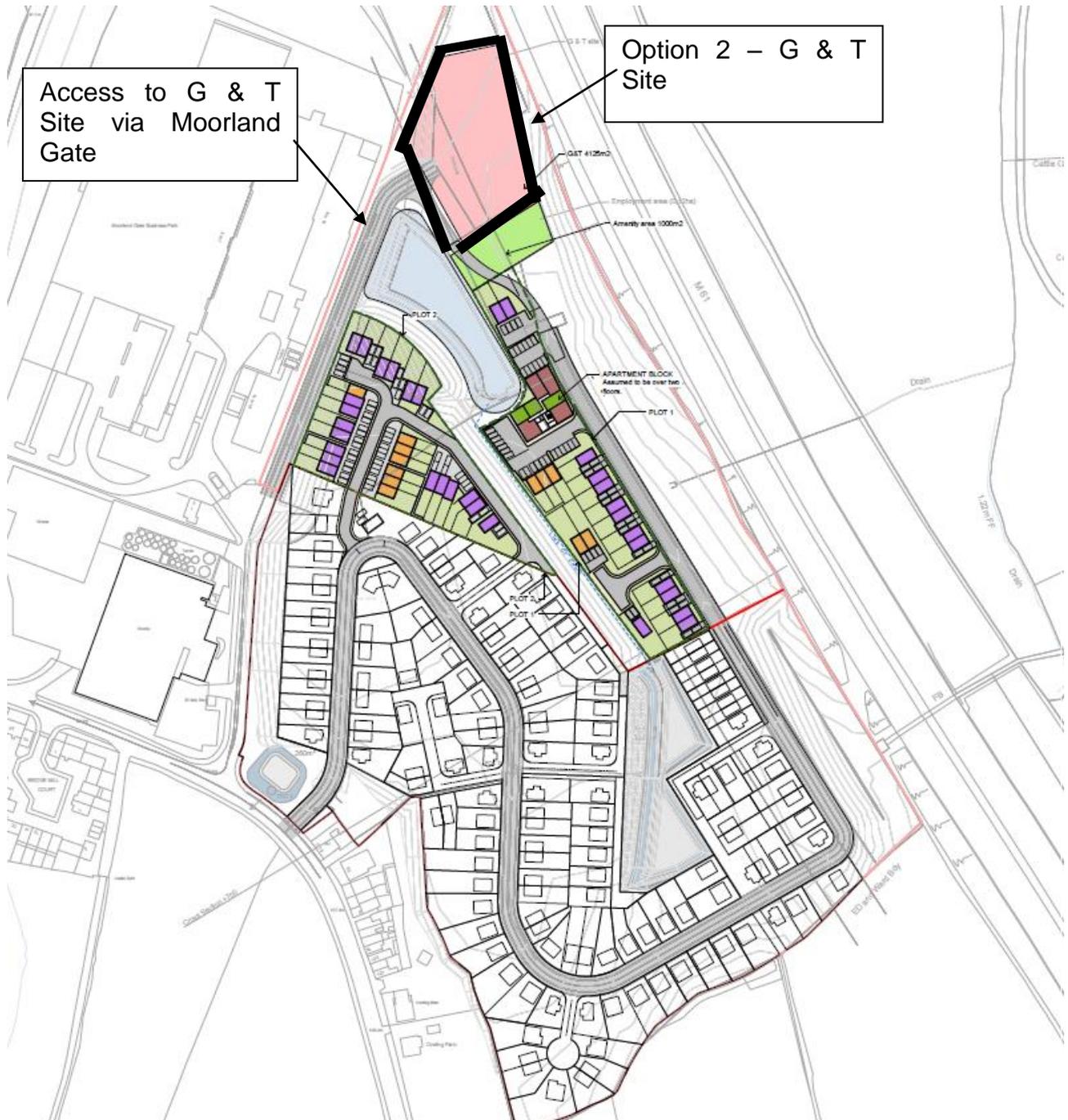


Figure 2 – Location of G & T Site – Option 2 (NTS)

<b>Deliverability</b>	Option 2 could be delivered independent of any other development on the Chorley land
<b>Constraints / Benefits</b>	Delivery of Option 2 would not prevent any future residential development on the site.

	<p>The site offers an independent access for the G &amp; T site, which is a requirement of LCC Highways.</p> <p>The site will offer minimal disruption for the G &amp; T family in the event of any future development.</p> <p>Estimated development costs are higher than option 1.</p>
<b>Approximate Cost of Delivery</b>	£1,032 million
<b>Approximate Annual Borrowing Costs</b>	£40k

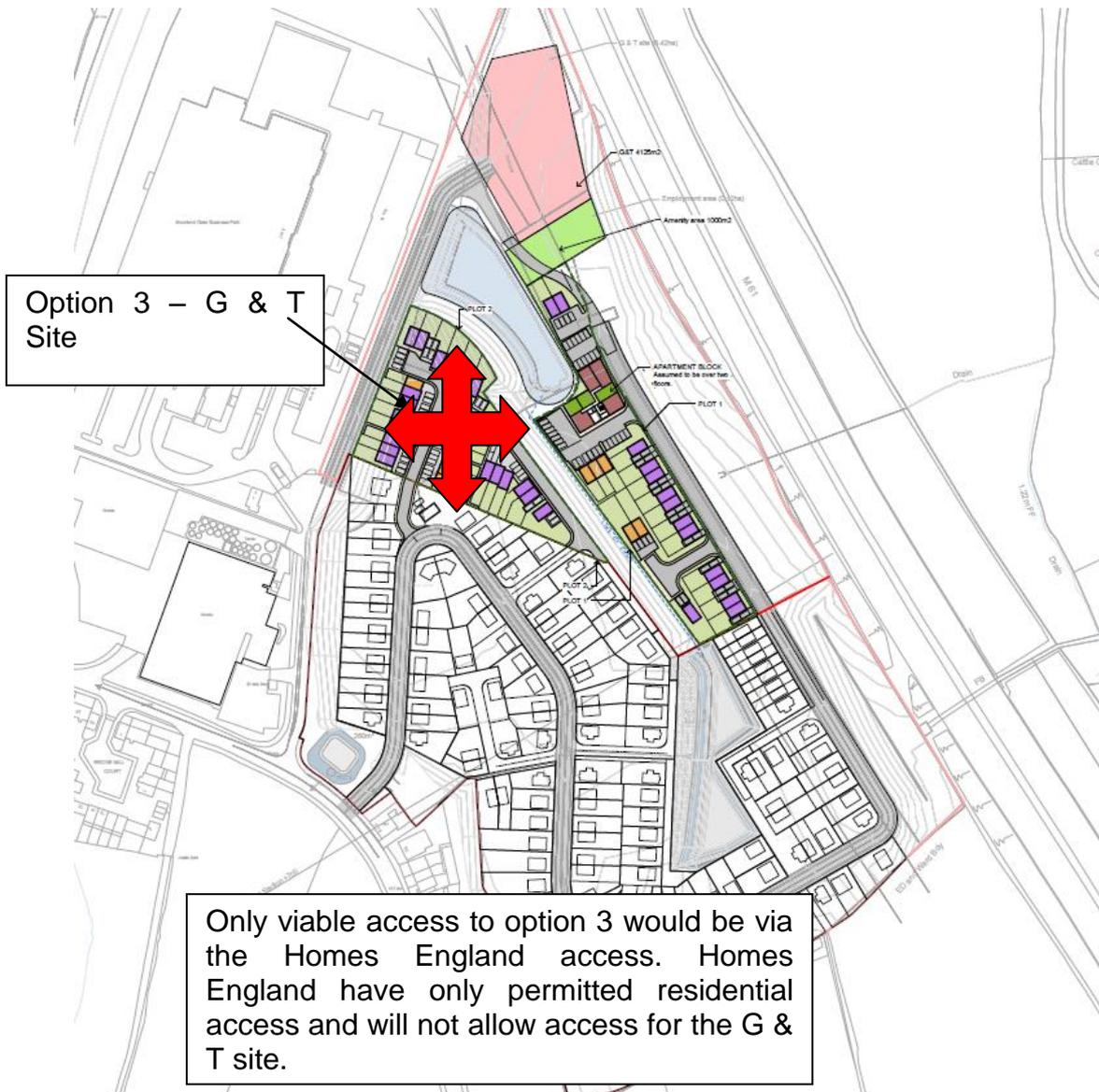


Figure 3 - Location of G & T Site – Option 3 (NTS)

<b>Deliverability</b>	Option 3 could not be delivered due to no viable access.
<b>Constraints / Benefits</b>	Gaining access from Moorland Gate would not be practicable. Homes England will not permit access to the G & T site from their residential access.



	attenuation ponds, this would increase the costs. The G & T family have expressed a preference not to be situated adjacent to the Moorland Gate Business Park.
<b>Approximate Cost of Delivery</b>	Not currently calculated due to constraints.

38. At the request of Members Officers have reviewed the options to look at options to reduce the cost of delivering each option. Officers have undertaken a review of Options 1, 2 and 4. Option 3 has not been progressed at this stage as without any agreement from HE to provide access from their site it is not viable. The review of Option 1 looks at the cost savings that could be achieved on this option if HE allowed access to the G & T site via their site.

#### Option 1 Review

39. Officers have looked at reducing the scope of works associated with delivering option 1 and 2 via access from Moorland Gate, this has included the reduction in specification of the road that will access the G & T site. Whilst this is likely to provide a reduction in costs it would not benefit the future development of the wider site and any access required from this access road. The reduction in specification is likely to present issues with drainage and would likely result in higher maintenance costs in the future.

40. The review of option 1 has included a review of the option to access the G & T site from the HE site. Whilst this option provides a shorter access the cut to fill ratio is adjusted which results in a larger fill requirement, therefore not providing a significant cost saving. Costs associated with services and drainage remain high. These could be reduced by facilitating the service connections through the HE site, which would be subject to agreement from HE.

#### Option 4 Review

41. Officers have looked at the cost and wider site delivery implications of delivering option 4. A summary of the review is provided below:

<b>Deliverability</b>	Option 4 could be delivered independent of any other development on the Chorley land
<b>Constraints / Benefits</b>	Positioning of the G & T site in this location could potentially reduce the number of residential properties that could be developed on the CBC site, if the Council choose to proceed with residential development on this site. The G & T family have expressed a preference not to be situated adjacent to the Moorland Gate Business Park.
<b>Approximate Cost of Delivery</b>	£886,633.42 (see Appendix 1 for breakdown)
<b>Approximate Annual Borrowing Costs</b>	£35k per annum

42. Whilst this option does offer a cost saving against the other presented options, the costs associated are still significant due to the required earthworks and service connections that would be required to deliver the site.

#### Funding

43. A request has recently been made for Community Infrastructure Levy (CIL) funding to assist with the delivery of the G & T site infrastructure, the feedback received from the Policy Officer is summarised below and confirms that the scheme is not eligible for CIL funding.

44. There are 2 considerations around the CIL funding request:

1. The request made was for an allocation of CIL funds for an independent access to the G & T site
2. The use of the CIL funds for delivery of the G & T allocation.

CIL is to be applied to:

Reg59(1)

“...funding the provision, improvement, replacement, operation, or maintenance of infrastructure to support the development of its area”.

Infrastructure is identified as:

The Planning Act 2008 Section 216(2) Application

(2) “infrastructure” includes—

- (a) roads and other transport facilities,
- (b) flood defences,
- (c) schools and other educational facilities,
- (d) medical facilities,
- (e) sporting and recreational facilities,
- (f) open spaces

**Infrastructure** has to be physical items that are required for the operation of the area, and not simply contribute to its wellbeing.

The Government guidance states:

“Developer payments contribute to the provision of infrastructure or refurbishment of existing provision to support the additional burden new development makes on both local and strategic infrastructure.”

In this respect, CIL is logically applied to Education / Community Space / Health Care facilities etc. as more development introduces more residents, which in turn creates the need for additional schools / community facilities / health care / green spaces etc.

“to be used to fund a wide range of infrastructure, including transport, flood defences, schools, hospitals, and other health and social care facilities (for further details, see section 216(2) of the Planning Act 2008, and regulation 59, as amended by the 2012 and 2013 Regulations). This definition allows the levy to be used to fund a very broad range of facilities such as play areas, open spaces, parks and green spaces, cultural and sports facilities, healthcare facilities, academies and free schools, district heating schemes and police stations and other community safety facilities. This flexibility gives local areas the opportunity to choose what infrastructure they need to deliver their relevant plan. Charging authorities may not use the levy to fund affordable housing.”

CIL is to be used to pay towards infrastructure which has increased in demand / requirements due to the increased population brought about by development. Local authorities must spend the levy on infrastructure needed to support the development of their area, and they will decide what infrastructure is needed. The levy is intended to focus on the provision of new infrastructure and should not be used to remedy pre-existing deficiencies in infrastructure provision unless those deficiencies will be made more severe by new development. The levy can be used to increase the capacity of existing infrastructure or to repair failing existing infrastructure, if that is necessary to support development.

A Gypsy and Traveller Site is not an additional burden that was caused by new development. Additionally, whilst infrastructure is defined as including roads and other transport facilities, it does not include access to development sites that are not part of a necessary infrastructure as it is part of a site development.

It is not considered that an independent access to a G & T site or provision of a gypsy and traveller site is suitable infrastructure within the above definition for the reasons above and because:

1. The independent access to a G & T site is not required for the operation of the area;
2. The provision of a G & T site is not on the list of infrastructure and is not suitable because its creation is not to counteract the impact of development within an area.

## IMPLICATIONS OF REPORT

45. In this instance there are 2 risks to address, firstly the risk of non-compliance with the Council's allocations under the 2012 – 2026 Local Plan and secondly the financial cost of any such compliance. All other risks flow from these.
46. Allocations in the 2012 -2026 Local Plan should wherever possible be followed. The risk of going behind such an allocation, particularly as CBC hold the dual role of local planning authority could be to set a precedent which could be relied on to undermine the purpose of the Local Plan. Whilst departures from allocations can be accepted, they must be backed with a comprehensive evidence base to show why such a departure is both reasonable and necessary.
47. This report has implications in the following areas and the relevant Directors' comments are included:

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

## COMMENTS OF THE STATUTORY FINANCE OFFICER

48. The financial implications, if the council chose to borrow to fund these works, are outlined in the report. Further financial analysis will be undertaken when the final option to be taken forward is approved.

## COMMENTS OF THE MONITORING OFFICER

49. The conduct of the Council has been reasonable in terms of balancing the needs of the residents both at Cowling Farm, Hut Lane and those at the gypsy and traveller site, and those of the wider residents of the borough occasioned by the financial cost of delivering the site at Cowling Farm. It must be recognised however that should the gypsy and traveller site not be delivered in a timely fashion then there is a significant risk that an application for a permanent permission for the site to remain at Hut Lane would be successful. As stated in the report this would undermine the current local plan and the Council's position on development in the green belt.
50. Although this is not a determinative consideration, it must be recognised that the decision of the Council not to provide a gypsy and traveller site at Cowling Farm is challengeable if the consequence is the continued occupation of the Hut Lane site on either temporary or permanent basis beyond July 2021 (the expiry of the temporary permission). As stated, the

Council have multiple duties in relation to this matter balancing the requirements of the local plan, protection of the green belt, interests of parties and financial cost. The Council are obliged to act reasonably in this balancing exercise and attach appropriate weight to each factor.

MARK LESTER  
DIRECTOR OF COMMERCIAL SERVICES

<b>Report Author</b>	<b>Ext</b>	<b>Date</b>
Rachel Salter / Chris Moister	5332	29/01/2020