

COMMITTEE REPORT

| REPORT OF | MEETING | DATE | ITEM NO |
|----------------------------------|-------------------------------|------------|---------|
| Corporate Director (Business) | Development Control Committee | 22/07/2008 | |

ADDENDUM

ITEM 5(a)- Planning Appeals Report- Land To Rear Of 243-289 Preston Road, Clayton-Le-Woods

Further legal advice has been received please see attached memo

ITEM A1 – Demolition of existing buildings and erection of 11 two storey dwellings No. 08/00465/OUTMAJ

Since the report was written a further four letters have been received. One supports the application on the grounds that the development will enhance the area and three object on the following grounds :-

Developer should finance and develop a replacement village hall

Prime site for a village hall will be lost

Loss of play space

In the report, the comments of Environmental Protection should read ...”site walkover to assess the risk of contamination”.

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PLANNING APPEALS- NOTIFICATION

PURPOSE OF REPORT

- 1 To advise Committee of the Legal advice received in respect of the recently lodged appeal at Land To Rear Of 243-289 Preston Road, Clayton-Le-Woods.
- 2 Following the previous memo to the Committee members Counsel at Kings Cambers has provided advice on the likely success at appeal.

RECOMMENDATION

- 3 That the report be noted.

CORPORATE PRIORITIES

- 4 This report relates to the following Strategic Objective: -
Ensure Chorley is a performing Organization.

FURTHER INFORMATION

- 5 Counsel has reviewed the history of this site and has provided the following advice in respect of the likelihood of success at appeal:
- 6 The LPA's decision to grant planning permission (in respect of the most recent application at the site which was approved by DC Committee subject to a Section 106 Agreement) is capable of being a material consideration in the determination of the Appeal.
- 7 Reason for Refusal 1 refers to inadequate parking provision on site. However, the parking provision for the most recent planning application (considered acceptable in policy terms) is identical to that proposed in the Appeal Application. Accordingly, on this issue, the resolved position of the LPA is inconsistent. Furthermore, there is no evidence which to conclude that the parking provision on site is inadequate. Consequently, there is no rational basis on which to conclude that planning permission should be granted for the most recent application but not the previous application, so far as parking provision is concerned.
- 8 Reason for Refusal 2 refers to overdevelopment of the site, creating a cramped form of development. However, the layout of the housing in the most recent application and the

previous application is identical. Again, therefore, there appears to be an inconsistency between the resolved position of the LPA in respect of the two applications. There is no basis to conclude that the change in house type to Plot 9/8 is so material as to cause an otherwise acceptable development to be refused planning permission. Indeed, this is not the basis of the second reason for refusal. Accordingly, the LPA's resolved position is inconsistent and/or irrational.

- 9 Accordingly the decision to grant planning permission in respect of the most recent planning application is a material consideration of significant weight. If the Appeal proceeded to determination, with the reasons for refusal as drafted, planning permission would be granted. Furthermore, on the balance of probabilities, an adverse award of costs would be made against the LPA.
- 10 Should, in the light of this Advice, the Planning Committee decide not to contest the appeal, then:
- (i) The Applicant could be persuaded to submit a new application and withdraw the appeal. If not:
 - (ii) An agreed case could be presented to the Inspector at the Planning Inquiry, given that PINS is now seised with the matter.
- 11 Withdrawing reasons for refusal has an inevitable risk of an adverse costs award attached to it. However, taking reasonably prompt action to minimise costs, whilst keeping the other side informed at all times, will minimise the risk of any adverse award of costs being made.

J E MEEK
CORPORATE DIRECTOR (BUSINESS)

| Background Papers | | | |
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| Document | Date | File | Place of Inspection |
| | | | |
| Report Author | Ext | Date | Doc ID |
| Nicola Hopkins | 5214 | 22/07/2008 | |