

## **APPLICATION REPORT – 21/00839/FUL**

**Validation Date: 8 July 2021**

**Ward: Clayton West And Cuerden**

**Type of Application: Full Planning**

**Proposal: Excavation of a trench and the installation of separate surface and foul water drains between Shady Lane and the River Lostock to serve a residential development off Nell Lane**

**Location: Cuerden Valley Park Shady Lane Cuerden Bamber Bridge**

**Case Officer: Mr Iain Crossland**

**Applicant: Leith Planning Ltd**

**Agent: Paige Linley, The Leith Group**

**Consultation expiry: 13 August 2021**

**Decision due by: 2 September 2021**

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### **RECOMMENDATION**

1. It is recommended that planning permission is granted subject to conditions.

### **SITE DESCRIPTION**

2. The application site is located on the eastern side of Shady Lane, Cuerden and is undeveloped greenfield land located within the Green Belt. The site is designated within the Chorley Local Plan 2012-2026 as falling within a Valley Park. There is a Biological Heritage site near to the application site, however, the proposal does not fall within this area. The application site stretches across the Cuerden Valley Park, from the eastern side of Shady Lane, opposite Cuerden Cottage, and crossing the Park from west to east, passing through an area of protected woodland (ref. TPO 14 1950, W24) before crossing an open field, then diverting to the south east to avoid a large area of protected woodland (ref. TPO 14 1950, W30), passing through a further two fields and heading in a north east direction to connect with the River Lostock and an existing foul sewer. The character of the area is that of urban rural fringe, whilst more specifically Shady Lane is characterised by a stone wall, trees and woodland to the east.

### **DESCRIPTION OF PROPOSED DEVELOPMENT**

3. The application seeks planning permission for the excavation of a trench and the installation of separate surface and foul water drains between Shady Lane and the River Lostock in order to facilitate the wider residential development proposed on Nell Lane. The residential development to which the pipeline would relate (ref. 20/00377/FULMAJ) was refused planning permission by Chorley Council in October 2020, however, the application was granted on appeal by the Planning Inspector on 25 November 2021.

4. Some trees and a small section of hedgerow would need to be removed to accommodate the development, and it is proposed they are replaced with extensive and suitable new tree planting as identified on landscape mitigation plans submitted in support of the application. It is noted that a similar planning application (ref. 20/00023/FUL) was refused due to the proposal resulting

in the loss of trees that were considered to make a valuable contribution to the character of the landscape, and that the benefits of the proposal did not outweigh the harm caused by this loss, contrary to the provisions of BNE1 and BNE10 of the Chorley Local Plan 2012-2026.

5. The proposed development differs in that a mature beech tree adjacent to the Shady Lane would be retained, and an extensive area of new trees are proposed to be planted in mitigation of the tree loss proposed. It is also the case that the development would serve an approved housing development, which did not benefit from an associated planning permission at the time the previous application was considered, although it is acknowledged that the site was allocated for development and did benefit from planning permission for a residential development.

## REPRESENTATIONS

6. Representations have been received from 189 individuals, along with petitions citing the following grounds of objection:

- Adverse impact on character of Shady Lane
- Inappropriate development in the Green Belt
- The pipeline is unnecessary as there are other drainage options available to any developer of the site.
- Adverse impact on wildlife, ecology and biodiversity.
- Drainage impacts from the Nell Lane development on the capacity of the River Lostock.
- Adverse impact on the landscape character through loss of trees.
- Mitigation planting would not make up for the loss of trees.
- Lack of information in relation to tree mitigation planting and tree protection.
- Lack of local amenities to support further housing.
- Impact on housing development on highway safety.
- The Cuerden Valley Park have a duty to protect the park and should not allow the development to proceed.
- Cuerden Valley Park should not be seeking to profit from this development.
- The Council should not be engaging with the applicants for the associated housing development at Nell Lane.
- The application undermines the democratic process as the housing application was refused by Chorley Council.
- No need for further housing.
- Part of the boundary wall would need to be removed to facilitate development.

7. An objection has been received from Cllr Mark Clifford, which states as follows:

*I wish to object to planning application 21/00839/FUL and request as Ward Councillor that it comes before planning committee on the grounds of serious detrimental environmental impact on a designated and mapped Wildlife Corridor and especially regarding the surface water drainage into the River Lostock which will result in the loss of riparian habitat through excess water flow downstream of the pipe. The planning statement does not take in effect of what happens to all of the surface water drainage and I take great exception to the statement as follows. 1.5 The site lies within Flood Zone 1 and therefore has a less than 1 in 1,000 annual probability of flooding. The River Lostock is now flooding multiple times a year due to climate change and actually the natural riparian habitat is being destroyed, this is before adding more water to a river in flood. I would like the opportunity to bring evidence before the planning committee of bridges within the park being damaged because of flood water and damage to the surrounding environment. This application is ill thought out and does not mention there is already existing foul and surface water connections neighbouring the housing site this application has been prepared for, which drains to the West and not through Cuerden Valley Park. In short this application is only here to save a developer money by using an alternative drainage route but will result in the loss of vital natural habitat for generations to come.*

## CONSULTATIONS

8. Clayton le Woods Parish Council: Have commented that previous objections remain in relation to loss of amenity, loss of natural habitat e.g. trees and hedgerows, disturbance/displacement of local wildlife.
9. Environment Agency: Have no objection, and request that an informative be attached to any grant of planning permission outlining that a permit will be required for works near the River Lostock.
10. Greater Manchester Ecology Unit: Recommend conditions.
11. United Utilities: Have no objection.
12. Lancashire County Council Archaeology Service: Have commented that the proposed development site is considered to have negligible archaeological potential.
13. Lancashire Wildlife Trust: No comments have been received.

## PLANNING CONSIDERATIONS

### Principle of development

14. The application site is located within the Green Belt. National guidance on Green Belt is contained in Chapter 13 of the Framework which states:
  15. *137. 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.*
  16. *138. Green Belt serves five purposes:*
    - a) *to check the unrestricted sprawl of large built-up areas;*
    - b) *to prevent neighbouring towns merging into one another;*
    - c) *to assist in safeguarding the countryside from encroachment;*
    - d) *to preserve the setting and special character of historic towns; and*
    - e) *to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.*
  17. *147. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.*
  18. *148. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.*
19. The Framework sets out a number of other exceptions to inappropriate development in the Green Belt. Paragraph 150 of the Framework states that:
  20. *Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:*
    - a) *mineral extraction;*
    - b) *engineering operations;*
    - c) *local transport infrastructure which can demonstrate a requirement for a Green Belt location;*
    - d) *the re-use of buildings provided that the buildings are of permanent and substantial construction;*
    - e) *material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and*

f) *development brought forward under a Community Right to Build Order or Neighbourhood Development Order.*

21. The proposed development is classed as an engineering operation. As such the development can be considered in relation to paragraph 150.b) of the Framework. This sets out that engineering operations are not necessarily inappropriate development within Green Belt locations providing that they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt.

22. The trench would be excavated and re-filled following installation of the pipelines and a condition could be attached to any grant of planning permission for the method of excavation, infilling and restoration/landscaping details to be agreed with the Council prior to the commencement of the development. The pipelines would be imperceptible once the land has been restored. It is considered, therefore, that the proposal would preserve the openness of the Green Belt and would not conflict with any of the above listed purposes of including land within it. As such, the proposal is not considered to represent inappropriate development in the Green Belt.

#### Impact on ecology and trees

23. Paragraph 174 of the Framework states that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes and minimising impacts on and providing net gains for biodiversity.

24. Policy BNE1 of the Chorley Local Plan 2012 – 2026 requires that proposals do not have a detrimental impact on important natural habitats and landscape features such as historic landscapes, mature trees, hedgerows, ponds and watercourses. In some circumstances where on balance it is considered acceptable to remove one or more of these features then mitigation measures to replace the feature/s will be required either on or off-site.

25. Policy BNE9 of the Chorley Local Plan 2012 – 2026 explains that biodiversity, geological heritage and ecological network resources will be protected, conserved, restored and enhanced.

26. Policy BNE10 of the Chorley Local Plan 2012 – 2026 states:

*“Development proposals which would result in the loss of trees and/or involve inappropriate works to trees which contribute positively to the character and appearance of a Conservation Area will not be permitted. The removal of such trees will only be permitted in exceptional circumstances and where consent is granted, replacement trees will be required to be planted.*

*Proposals that would result in the loss of trees, woodland areas or hedgerows which make a valuable contribution to the character of the landscape, a building, a settlement or the setting thereof will not be permitted.*

*Replacement planting will be required where it is considered that the benefit of the development outweighs the loss of some trees or hedgerows. Tree planting will be required as part of new development proposals and an associated maintenance scheme. Tree Preservation Orders will be used to protect trees of landscape or townscape significance.”*

27. With regards to the ecological impacts of the development it is noted that the application is supported by an ecological assessment and a bat and bird nesting report. These have been reviewed by the Council's ecology advisors (Greater Manchester Ecology Unit) who advise that the reports appear to have used reasonable efforts to survey the habitats on site and make an assessment of their suitability to support protected/species of principal importance (NERC 2006 [Natural Environment & Rural Communities Act]).

28. The survey was conducted in March, which is recognised as suboptimal for some of the surveys, as acknowledged in the report for water vole. It is noted that the Council's ecological advisors have no objections to the proposal and are satisfied that planning conditions can mitigate any harm caused to ecological receptors by the approval of the proposed development.

29. The additional information that was provided in relation to the suitability of the habitat to support roosting bats is now out of date. As tree roosts are difficult to locate and may change over time it is recommended, in line with good practice, that a pre-commencement survey is required by condition before any tree felling occurs.

30. It is considered that the report's recommendations at Chapter 3 section 3.2 should be implemented in full in relation to the reinstatement of the habitats and the avoidance of causing Himalayan balsam (Indian balsam) to spread (section 3.2.1). Reinstatement should be agreed in writing with the Local Planning Authority to include planting specification and locations – if not within the easement of the sewer, and it is recommended that this be secured by conditioned.

31. The use of reasonable avoidance measures to ensure that great crested newt (Habitats Regulations 2017) are not disturbed or injured during the works (section 3.2.2) should be secured by condition.

32. A pre-commencement survey for water vole to include 100m centred on the final location and working area of the outfall onto the River Lostock (section 3.2.3) should be agreed with the applicant and it is recommended that this be secured via a pre-commencement condition.

33. Bird breeding and vegetation clearance including trees, shrubs and undergrowth (eg bramble) should be avoided during the nesting season (March – August inclusive) (section 3.2.5) unless it can be demonstrated that no breeding activity is present. It is recommended that this be secured condition.

34. It is also recommended that any grant of planning permission should be supported by a condition requiring the provision of a CEMP (Construction Environmental Management Plan).

35. It is not considered that any geological heritage sites / geodiversity features would be harmed by the proposed development. It is therefore considered that the proposal complies with policy BNE9 of the Chorley Local Plan 2012 – 2026.

36. With regards to trees, an Arboricultural Implication Assessment (AIA) has been submitted in support of the proposed development. Forty six individual trees, four groups, one hedge and one woodland have been assessed in response to the proposed development. This identifies that the route of the pipeline would incur a small loss of trees that are identified as of lesser quality and landscape significance. The AIA considers that provided that the works take place in accordance with the method statements provided and replanting undertaken once development is complete, the works would not be detrimental to the retained trees and the overall arboricultural population would remain stable.

37. The Council's tree officer has considered the AIA and the affected trees and estimates that the works would result in the loss of approximately 50 mature and semi-mature trees plus numerous young trees and a section of hedgerow around 20m long. The Council's tree officer disagreed with the AIA in relation to the categorisation of the beech tree identified as T1 adjacent to Shady Lane as being category U. This tree is of some significance to public amenity and is considered to have a longer lifespan than that suggested by the survey. The applicant has subsequently agreed to retain this tree, which the Council considers to be of importance along Shady Lane. This was previously identified for removal.

38. It is noted that the tree mitigation plan proposes the planting of 20 heavy standard trees in the area close to Shady Lane and the creation of a new 1788 square metre woodland between the pipeline and Ice House Woods. This is a significant level of replanting that would exceed the level of identified losses.

39. The Council's tree officer has noted the level of tree planting and considers that while none of the trees proposed for removal are exceptional specimens some do have high amenity value, in particular the trees within the Woodland TPO adjacent Shady Lane. All retained trees should be protected by appropriate exclusion zones and ground protection in line with BS 5837:2012.

40. The proposed tree felling would be most notable from public vantage points along Shady Lane. However, the trees that are identified for removal in this location are young trees of low value. Notwithstanding this there would be some impact on the appearance of the lane as this section would be more open and less green for a period of time before new vegetation regenerated and the new trees became established.

41. This proposed development of the pipe has been submitted to facilitate the delivery of a housing development of 115 units that now benefits from planning permission (ref. 20/00377/FULMAJ). The delivery of the approved housing is a significant benefit to be considered in the balance in respect of losing trees that would be replaced in significant numbers, whilst considering the modest impact of a temporary loss of amenity along Shady Lane. It is also noted that 30% of the approved dwellings would provide affordable housing, which adds further weight. On balance it is considered that the loss of the trees identified for removal is outweighed by the significant benefits of the proposal in supporting the delivery of 115 dwellings, 30% of which would be affordable units.

42. Policy BNE10 of the Chorley Local Plan 2012 – 2026 states that replacement planting will be required where it is considered that the benefit of the development outweighs the loss of some trees or hedgerows. Significant replacement tree planting is proposed on site near to Shady Lane and in the form of a new woodland.

43. It is, therefore, considered that the benefits of the proposal outweigh the harm caused through the loss of trees. The proposal, therefore, complies with policies BNE10 and BNE1 of the Chorley Local Plan 2012 – 2026 with regards to loss of trees.

#### Mineral safeguarding

44. The application site crosses two Mineral Safeguarding Areas (MSA) to which policy M2 of the Joint Lancashire M&W Local Plan, Site Allocation and Development Management Policies – Part One 2013 applies. Policy M2 explains that planning permission will not be supported for any form of development that is incompatible by reason of scale, proximity and permanence with working the minerals unless the applicant can demonstrate one of a number of criteria apply.

45. When taking into account Lancashire County Council's guidance document, entitled 'Guidance Note on Policy M2 – Safeguarding Minerals (Minerals Safeguarding Areas)', one of the questions to ask when making a planning decision on a non-minerals development within an MSA is 'is prior extraction practicable?' and the document explains that prior extraction is unlikely to be practicable for small developments, and significant levels are unlikely on any development proposal less than 5ha.

46. Sterilisation, both on the development site and proximal to the development, is likely to be the main consideration for small sites, which have just as much potential to sterilise a mineral resource as a large development. The application site covers an area of just 0.275 hectares and so is a small site. The route of the pipelines would sever the MSA and so would potentially sterilise a much larger area of the resource. However, once reasonable buffer zones are placed around features such as roads, existing buildings, the River Lostock, the existing sewer pipeline etc. the actual area of workable mineral resource becomes so small it is extremely unlikely to be economically viable to extract any minerals in this part of the MSA. This is explained in the guidance document that states *"small ribbons or isolated occurrences of mineral resource are unlikely to be economic to work and so sterilisation may not be an issue. Likewise, if the surrounding area is developed to such an extent that it makes the potential extraction of minerals uneconomic it can be considered that the mineral resource is already sterilised; for example if the area contains scattered houses, or fields broken up by roads, that reduce the amount of free land potentially developable for a quarry."*

47. In light of the above, it is considered there is no conflict with policy M2 of the Joint Lancashire M&W Local Plan, Site Allocation and Development Management Policies – Part One (2013).

#### Drainage and flood risk

48. The proposal is designed to take surface water from a proposed housing development at the Nell Lane site, to the River Lostock, whilst foul water would be conveyed to an existing foul water sewer. The impact of surface water upon the River Lostock was assessed and considered under planning permission 20/00377/FULMAJ, whilst the details of the discharge rates would be controlled by the surface water drainage conditions attached to that consent.

49. This proposal for the pipelines would not involve the installation of any substantial areas of hardstanding. It is proposed that the surface would be reinstated to its current condition once the pipelines have been installed. It is, therefore, considered that the proposal itself would not increase the risk of flooding either on or off-site.

#### Community Infrastructure Levy

50. The proposal is not a CIL chargeable development.

#### Other matters

51. *The pipeline is unnecessary as there are other drainage options available to any developer of the site:* This is not a matter that can be considered in the assessment of the application.

52. *Lack of information in relation to tree mitigation planting and tree protection:* A tree mitigation plan and protection plan have been submitted in support of the application, the implementation of which shall be secured by condition.

53. *Lack of local amenities to support further housing:* This is not a matter that can be considered in the assessment of the application.

54. *Impact on housing development on highway safety:* This is not a matter that can be considered in the assessment of the application.

55. *The Cuerden Valley Park have a duty to protect park and should not allow the development to proceed:* This is not a matter that can be considered in the assessment of the application.

56. *Cuerden Valley Park should not be seeking to profit from this development:* This is not a matter that can be considered in the assessment of the application.

57. *The Council should not be engaging with the applicant's for the associated housing development at Nell Lane:* This is not a matter that can be considered in the assessment of the application.

58. *The application undermines the democratic process as the housing application was refused by Chorley Council:* The Council must deal with the application and determine it on its merits.

59. *No need for further housing:* This is not a matter that can be considered in the assessment of the application.

60. *Part of the boundary wall would need to be removed to facilitate development:* It is recommended that a condition be attached to any grant of planning permission requiring details of any rebuilding and repairs to the wall adjacent to the east side of Shady Lane that may be required, due to the contribution that this boundary make to the character of the lane.

#### **CONCLUSION**

61. The development would not have an adverse impact on the openness of the Green Belt or landscape character. There would be no ecological impacts that could not be mitigated and the loss of trees and resultant impact on public amenity would be outweighed by the benefits of the housing development that would be facilitated by the proposed development. It is, therefore, recommended that the application is approved subject to conditions and the implementation of the proposed tree planting works.

## RELEVANT HISTORY OF THE SITE

- Ref:** 75/00106/TPO      **Decision:** PERTPO      **Decision Date:** 3 April 1975  
**Description:** Fell trees
- Ref:** 90/01014/TPO      **Decision:** PERTRE      **Decision Date:** 8 January 1991  
**Description:** Woodland management to trees covered by TPOs LCC No.14 (1950) and CBC TPO No.13 (Clayton-le-Woods) 1984
- Ref:** 91/00913/TPO      **Decision:** PERTRE      **Decision Date:** 10 December 1991  
**Description:** Management of woodland covered by LCC TPO NO.14 (Clayton-le-Woods) 1950
- Ref:** 92/00677/FUL      **Decision:** PERFFP      **Decision Date:** 23 October 1992  
**Description:** New foul and surface water sewers (approx 1333 metres) and erection of prefabricated building to house control equipment to serve existing premises
- Ref:** 93/00442/TPO      **Decision:** PERTRE      **Decision Date:** 6 August 1993  
**Description:** Woodland management on trees covered by TPOs Nos 1 and 13 (1984)
- Ref:** 93/00443/TPO      **Decision:** PERTRE      **Decision Date:** 6 August 1993  
**Description:** Woodland management on trees covered by TPOs Nos 1 and 13 (1984) Clayton le Woods/Cuerden
- Ref:** 97/00455/TPO      **Decision:** PERTRE      **Decision Date:** 12 August 1997  
**Description:** Woodland management to trees covered by T.P.O. Nos 14 1950 (Clayton -le-Woods), No 1 1984 (Clayton Brook), No 13 1984 (Clayton-le-Woods)
- Ref:** 98/00264/TPO      **Decision:** PERTRE      **Decision Date:** 2 June 1998  
**Description:** Felling of sycamore tree and pruning of 1 sycamore and 1 willow tree covered by T.P.O. No 14 (Clayton Le Woods) 1950
- Ref:** 04/00056/HDG      **Decision:** PERHDG      **Decision Date:** 1 March 2004  
**Description:** Removal of hedgerows marked A-B and C-D
- Ref:** 14/01216/TPO      **Decision:** PERTRE      **Decision Date:** 20 January 2015  
**Description:** Works to trees covered by TPO 14 (1950) \_ TPO 8 (2013) as per the submitted 'Cuerden Valley Park Tree Inspection Plans and Schedules August 2014'
- Ref:** 19/00937/FUL      **Decision:** PERFFP      **Decision Date:** 6 March 2020  
**Description:** Installation of 4no. pole mounted CCTV cameras and solar panels at car parks across Cuerden Valley Park to facilitate the provision of a car park management system
- Ref:** 19/00938/ADV      **Decision:** PERADV      **Decision Date:** 6 March 2020  
**Description:** Application for advertisement consent for the display of 28no. non-illuminated car park signs for car parks across Cuerden Valley Park (including 10no. signs at Berkeley Drive car park, 6no. signs at Factory Lane car park, 7no. signs at Town Brow car park and 5 no. signs at Back Lane car park)
- Ref:** 20/00023/FUL      **Decision:** REFFPP      **Decision Date:** 22 June 2020  
**Description:** Excavation of a trench and the installation of separate surface and foul water drains between Shady Lane and the River Lostock to serve a residential development on land off Nell Lane

**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