

Item 3 **11/00466/FUL**

Case Officer **Caron Taylor**

Ward **Heath Charnock And Rivington**

Proposal **Retrospective application for the building up (raising) and enlargement of two zipwire landing sites at Go Ape course (landing area for site 2 located near site 3, and landing area for site 3 located near site 4).**

Location **Go Ape Rivington Lane Rivington Bolton Lancashire**

Applicant **Go Ape**

Consultation expiry: 19 July 2011

Application expiry: 29 July 2011

Proposal

1. The proposal is a retrospective application for the building up (raising) and enlargement of two zipwire landing sites at Go Ape course (landing area for site 2 located near site 3, and landing area for site 3 located near site 4).
2. The application was deferred at August committee for a site visit. This report incorporates the comments that were on the addendum at the last committee.

Recommendation

3. It is recommended that this application is granted retrospective planning approval, however it is also recommended that Members defer the application for a site visit before determining the application.

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
 - Ecology
 - Traffic and Transport
 - Public Right of Way
 - Ministerial Statement – Planning for Growth

Representations

5. 20 letters of objection have been received, including one from The Friends of Lever Park on the following grounds:
 - Lord Leverhulme gave this area of land and open space for the people to enjoy, not to be turned into some theme park;
 - The proposal violates the Liverpool Corporation Act 1902. The public are prevented from walking in areas through the Go Ape site and this would require an amendment to the 1902 Act that cannot be implemented by the Council. The implication of the Act needs to be fully investigated;
 - Section 21, subsection (2) of the Liverpool Corporation Act 1902 states 'to secure their free and uninterrupted enjoyment by the public';
 - The applicants state on the application forms that the proposals do not require any diversion/extinguishments and/or creation of rights of way, when they should have stated that it does, as the proposal would extinguish the right of way through this part of Lever Park;
 - The application states it affects a definitive right of way;
 - It is contrary to Local Plan Policies HT13, EP2 and LT7;
 - It is contrary to the Supplementary Planning Document Trees and Development;
 - The Council have not notified English Heritage of a planning application to a Grade I or Grade II Historic Park and Garden – which is compulsory;

- The Tree Survey dated 17th May 2008 is incorrect and therefore doesn't comply with BS5853 (trees and development). 9 trees in use on the course have not had a tree survey, nor are they referred to on the site location plan;
- Failure to comply with the Council's Statement of Community Involvement which says Community Involvement must be encouraged for 'smaller development on sensitive sites';
- There has been failure to consult any local group who would object to any application;
- The size/appearance of the landing areas have a detrimental effect on the character of the park;
- If allowed to be retained it will be contrary to all the policy statement in the Local Plan which indicate the Council is committed to preserving Historic Parks and Gardens;
- The applicants state in the application there are no trees on the development site, however one of the landing areas is actually built around a tree;
- The applicant states during the construction of the course it was necessary to build two of the areas bigger than indicated. This is not true, the landing areas were enlarged 12 months later in 2011;
- The original planning application stated the lengths of the two landing zones would be 8m, these have increase to 19m and 12m. They are unsightly, on too large a scale and severely impact on the character of the area;
- The proposal is contrary to Chapter 5 Heritage (Historic Parks and Gardens) and Chapter 4 Environmental Protection – it is a Biological Heritage Site;
- It is a mess and a blot on the landscape. The landing zones are already too large with wood chips flowing everywhere and a once tranquil wood has been destroyed;
- Rivington is already gridlocked by visitor numbers and they do not wish the area to change from its unique character and protected by an Act of Parliament;
- There are numerous trees which are not indicated on the plans which now form part of the course which have not been part of any tree survey;
- An up to date plan of the course with a new environmental assessment showing the correct tree numbers should be supplied;
- United Utilities Conservation Areas are affected by the Development;
- Just because the landing zones are made from wood does not necessarily make them compatible with the landscape around them;
- They request that Committee make a site visit with regard to the sizes of the landing zones and trees in use;
- It is difficult for the public to make an accurate assessment of the development, because the 2008 tree surveys don't match with regard to tree numbers and location;
- It desecrates the beautiful countryside;
- It causes noise pollution;
- It is habitat for many wildlife creatures living in the area;
- The environmental impact of development has been considerable. Any extension and raising of the landing zones only impacts further on the woodland and increases the artificial appearance of the woodland floor;
- There is still an unresolved application for an additional zip line 10/00426/FUL. There needs to be a comprehensive review of the current position before more changes or retrospective permissions are granted;
- A precedent is set for commercial development of the park;
- Too much Green Belt has been built over already;
- The site notices were put up late – lack of community involvement;
- The submitted plans indicate a location for a landing zone at site 3, this is impossible to find because site 3 on the site location plan doesn't show a landing zone. It is impossible for any member of the public to go on site with the site map and find trees and landing zones referred to;
- Because of the sub-standard information provided, it is impossible to calculate and therefore the application must be deemed in admissible;
- Landing zone site 3 is not in the position shown on the site plan. Landing zone is 15 metres north;
- The application with regard to the landing zone at site 4 on the location plan, makes no mention that the zip wire anchor tree has been moved;
- The plans show the south and east of a landing zone for site 3, on the submitted location plan there is no identification of a landing zone at site 3;
- Section 9 of the application forms are not filled in;
- That the proposal is retrospective and therefore does not benefit from planning permission means it had not been inspected to see that it is safe to allow the public onto the site, which raises the question of whether the public and those using the activities have public and third party liability insurance to cover these activities;

6. Two further letters of objection have also been received from the Chairman of the Friends of Lever Park (Mr Robert Dootson) and are set out in full below:

7. Letter 3 August 2011 as follows:

"Having read the officers report for the meeting to be held on Tuesday 9th August 2011, we feel that you have not put all the facts in relation to the implications of ignoring the 1902 Liverpool Corporation Act before the committee members. And so therefore request that an addendum report be published on the matter.

- You have failed to inform the Councillors that a precedent was set in 1997, whereby it required an amendment to the Act being submitted to Parliament, before a proposal by North West Water could even be considered.*
- You have failed to inform the Councillors, that because the proposed Bill was blocked in Parliament the proposed "Blue Planet" plans never progressed.*
- You have failed to notify the Councillors of the possible financial costs to the Borough, should your decision to ignore the 1902 Liverpool Corporation Act go to High Court.*
- You have failed to notify the Councillors as to whether you have asked United Utilities to produce the conveyance by which Liverpool Corporation must have acquired the land.*
- You have failed to notify the Councillors that United Utilities are trustees to the Park and as such cannot make a profit from the park.*
- You may say that the Act is not of material consideration when viewing a planning application; we don't believe you should ignore anything that has been put before you that protects the land in question.*
- Your report appears not to deal with the serious implications of ignoring the Act.*
- How would members of the public respond, if they found out that all the facts had not been put before a planning committee, whose decision could cost the Borough financially?"*

8. Letter 4 August 2011 as follows:

In the officer's report for the meeting on Tuesday the 9th August 2011, within section 71 the author under advice from the Councils Head of Governance states in reference to section 21 subsection 2 the following: "it specifically grants to the owner general powers to do almost what they wish to provide that the public enjoy the park. This includes the provision of new buildings."

Section 21, subsection 2 of the 1902 Act actually says: "The Corporation shall subject to the provisions of this section permit the owner at his own expense to lay out the said lands."

The Corporation are the Trustees to the park, the actual owner when the Act was put before Parliament was Lord Leverhulme who then gave to the Town of Bolton a portion of land in the Parish of Rivington. If the Corporation are owners of the park as the report would lead us to believe, then why would the Act be worded as such "The Corporation shall subject to the provisions of this section permit the owner". The Corporation are in fact the trustees of the park and reference to ownership confirms that they are not the owners but trustees.

The Liverpool Corporation Act created a Trust for Lever Park. If United Utilities do not agree that their "ownership" is based on a gift then ask them to produce the Conveyance by which Liverpool Corporation acquired the land. They will not be able to as there was no document.

The trust is both public and charitable, and by being trustee and a decision maker on standards within the park they are allowing themselves to be in a position of conflict of interest. And also a Trustee must not profit from a position of Trust.

We hope that you will allow us to submit our correction to the interpretation of the Head of Governance advice by adding an addendum.

9. Response: The Council's Head of Governance makes the following comments to Mr Dootson's letter:

In response to the letter received 3 August:

'I am not familiar with the United Utilities application/proposal so am unable to comment upon bullet points 1 and 2. Needless to say, were the proposal to fundamentally undermine the basis of use of Lever Park i.e. fencing off large areas from the public etc then I could understand why the Act would need to be addressed although any breaches of this private Act of Parliament would not be a planning issue. I continue to be of the view that this use does not undermine the Act.

I am not clear as to the financial costs to which Mr Dootson refers in the third bullet point. If they are the costs of Judicial Review or appeal of the Council's decision, they are not a relevant planning consideration. Development Control Committee should not be put in a position where the threat of a costs order prevents them from making their decision on the planning merits of the application.

As regards bullet points 4 and 5, neither are matters for the Committee. I am not clear as to the relevance of the conveyance, it would not be usual practice for this to be sought and as ownership of the site has been established it would not be necessary for the purposes of making a decision on the application. As regards 5, this is certainly not a planning consideration and is a matter of civil enforcement against United Utilities were this to be the case and they were demonstrably receiving a profit.

The remaining 3 bullet points can also be taken together. The Act, as a private act, is not a material consideration and the breach of it, if any, is to be enforced separately to the planning process.

10. In response to the letter received 4 August:

It is maintained that the Act is not a material planning consideration for the Development Control Committee.

To confirm, the corporation are, as Mr Dootson rightly states, the Trustees within the Act. Trustees own property for the purposes set out in the trust, in this case the Act. It is not incorrect therefore to describe United Utilities, who I understand to be the successors in title to Liverpool Corporation, as the owner. It is correct to say that the term "owner" has a separate definition within the Act. In this application the distinction matters little.

The Act contains at section 21(2): *"The Corporation shall subject to the provisions of this section permit the owner at his own expense to lay out the said lands....."* This wording contains the directive "shall" leaving the Trustees no discretion to refuse permission to the owner if the proposals comply with the terms of the Act. In this application, as has previously been advised, the proposal is compliant with the Act.

11. One letter of support have been received on the following grounds:

- They state they are not connected to the business other than as a user, but they have recently been involved with projects to try and revitalise Chorley. There is no doubt the town is going through a tough time for traders so anything that attracts people to the area and increases business should be encouraged. Go Ape is a brilliant facility that has opened up Rivington and appears to be very popular. Go Ape is good for the town and good for Rivington. If the trees were being damaged, they'd show it but a simple stroll round the area shows that Go Ape are looking after things just fine.

12. Councillor Perks has objected to the application:

"I wish to lodge my objection to the granting of the above planning application and list the following reasons:

- *The proposal potential is at odds with the sentiment of the Liverpool Corporation Act 1902. Lord Leverhulme gave this area of land and open space for the people to enjoy (section 21 subsection 2).*
- *Having been involved with the campaign to prevent the act from being altered by United Utilities some years ago the decision to grant this application previously goes against elements in the current act that afford protection from developments such as Go Ape. In my view the current development prevents the public from walking in areas through the Go Ape site and this does require an amendment to the 1902 Act.*
- *There are significant parking problem resulting from the current development, this application is designed to increase usage, which will increase the parking problems.*
- *In my opinion to allow will set a precedent for commercial development of the park contrary to the aims of the current act of parliament. Development of this kind is against Green Belt policy*
- *The original application saw the removal of tress, the damage caused by this has been detriment to the local wildlife. Concerns expressed by previous opponents have been borne out in that in addition to the removal of more trees than originally planned for, the under storey has been considerably damaged , undergrowth has been trampled and damaged.*
- *The owners of the site have demonstrated contempt for planning*
- *Regulations by exceeding permitted boundaries and heights and not submitting planning applications. Chorley Council as the local planning authority should have used its enforcement procedures to correct this.*
- *I support the objection raised by the Lancashire Gardens Trust. (taken from the report below)*
 - *"Environmental Impact Assessment – not required and they ask why not, as any alteration will affect the surroundings of the Grade II Lever Park;*
 - *PPS5 (HE9.1) states: There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost,*

heritage assets cannot be replaced and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting;

- *PPS 5 ANNEX 2 under Terminology states 'setting' is the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral;*
- *There are two heritage assets in consideration here, Lever Park and Great House Barn, both Grade II. The setting around them is important. Chorley's conservation policy states: We take our responsibility for listed buildings very seriously. We encourage and enable the enhancement of the borough's heritage;*
- *Surely the incremental development of commercial activities surrounding both the Barn and Lever Park represent a threat to the setting of these important places, which people come to visit because of their beauty. Their beauty should not be compromised further."*

I submit my objection based as a local resident of Chorley, borough councillor and county councillor".

13. Rivington Parish Council object to the application on the following grounds:

- If planning permission is granted it will be contrary to the provisions and restrictions contained within the 1902 Liverpool Corporation Act. The Land Registry records clearly show that the area is subject to the terms of this Act of Parliament that states that everyone should be allowed free and uninterrupted use of the area; there is a definitive right of way;
- This application also contravenes the policies for Rivington and the Lever Park area as referred to in the Chorley Borough Council Local Plan Review adopted in 2003 and, in particular, the sections relating to Leisure and Tourism LT7 and Historic Parks and Gardens HT13;
- Planning regulations were not followed correctly in the initial Planning Application 08/00553/FUL. The original plans were granted under delegated powers by Chorley Council with a lack of community involvement. Therefore any subsequent applications are inappropriate;
- Go Ape is an experienced company, with many other operating sites throughout the country. This company should not have underestimated the size of the zip wires needed for the Rivington course and should have estimated the extent of the course at the outset. Inadequate information has been provided in many ways, demonstrated by the lack of calculation of the car parking spaces needed;
- The Rivington Parish Councillors strongly object to the drip feeding for yet another planning application, retrospective or otherwise, within Rivington's Go Ape site.

14. A letter of objection has been received from the Open Spaces Society on the following grounds:

- The proposal will have an adverse effect on people's enjoyment of the historic Lever Park under the Liverpool Corporation Act 1902, Section 21(2), the public has 'free and uninterrupted enjoyment' throughout the park. Clearly the development will conflict with that provision, since the Go Ape development will be noisy and intrusive;
- The planning application states that the development will affect a definitive right of way. In fact, it affects an area where the public has a right of access generally. Presumably the intention is to prevent the public from walking through the Go Ape site, but that would require an amendment of the 1902 Act and cannot be implemented by the Planning Authority;
- The application is unacceptable and they trust it will be rejected.

15. A letter of objection has been received from the Chorley and District Natural History Society on the following grounds:

- The political argument about whether or not such a development should ever have been allowed has been made by the Friends of Lever Park. They support their views. They agree that there is a parking problem in the locality. The expansion being applied for is clearly designed to increase usage, which will exacerbate the parking problems;
- They objected to the original application on the grounds that the mature woodland was to be damaged to the detriment of local wildlife. Their fears have been borne out in that in addition to the removal of more trees than originally planned for, the understorey has been damaged – possibly beyond restoration. There is no attempt to confine users to the pathways. As a result a wide area of undergrowth has been unnecessarily trampled;
- The owners of the site have clearly demonstrated their contempt for planning procedures by deliberately exceeding permitted boundaries and heights. They urge the present application is rejected.

16. An objection has been received from the Lancashire Gardens Trust:

- The application states: Environmental Impact Assessment – not required and they ask why not, as any alteration will affect the surroundings of the Grade II Lever Park;

- PPS5 (HE9.1) states:
There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost, heritage assets cannot be replaced and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting;
- PPS 5 ANNEX 2 under Terminology states 'setting' is the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance_or may be neutral;
- There are two heritage assets in consideration here, Lever Park and Great House Barn, both Grade II. The setting around them is important. Chorley's conservation policy states:
We take our responsibility for listed buildings very seriously. We encourage and enable the enhancement of the borough's heritage;
- Surely the incremental development of commercial activities surrounding both the Barn and Lever Park represent a threat to the setting of these important places, which people come to visit because of their beauty. Their beauty should not be compromised further.

Consultations

17. Chorley's Conservation Officer

States that the application site lies within Lever Park, which is a Grade II Registered Park & Garden. Registered Parks and Gardens are 'designated heritage assets' as defined by Annex 1 of PPS5. Accordingly this application is judged in terms of its impact upon the significance of that designated heritage asset or its setting.

18. The application site falls outside of the designed landscape areas of Lever Park and sits within an area of woodland on the western side of Rivington Lane on the eastern shores of the Lower Rivington Reservoir.
19. The application site is approximately 190m from Great House Barn and Visitor Centre, which are also designated heritage assets as defined by Annex 1 of PPS5, being both grade II listed buildings. Furthermore the works are screened by trees and the level of the land to such an extent that the development is not visible from the Listed Buildings. The works are therefore also considered in terms of their impact upon the significance of these designated heritage assets, the listed buildings.
20. It is the Conservation Officers considered opinion that, given the distance between these designated heritage assets and the application site, plus the difference in the levels and the screening by trees, the works will have no impact upon the significance of either the listed buildings or their setting.
21. Given the location of the works within the area of woodland it is also their opinion that whilst care must be taken to determine that the compound effect of additional works undertaken over time do not overwhelm their setting, that situation is some considerable way off in this case and that the works have no impact upon the significance of the Registered Park and Garden or its setting. Furthermore it is their view that these works are, when compared to the area of woodland in which they sit, of such negligible scale as to be of no consequence to the character or significance of the park.
22. Consequently they consider the application to be acceptable.

23. Lancashire County Council (Ecology)

State that whilst the applicant has not submitted the results of an ecological assessment in support of this application, it is their opinion there is little to be gained by requiring a survey at this stage and they are satisfied that sufficient information has been submitted to enable determination of this application. Having said that, as the application is retrospective, it is obviously difficult to establish whether or not there have been any additional impacts on biodiversity (over and above those of the proposals as originally approved).

24. It seems unlikely that the raising of the landing areas would have any additional impact on biodiversity, over and above the impact of the footprint of the landing areas itself. Indeed, the 'log pile' construction of the raised areas appears to have created log pile/dead wood habitats for species such as invertebrates, amphibians and small mammals. The raised construction is thus likely to be of greater biodiversity value than a landing zone flush with the woodland floor.
25. The County Ecologist states an increase in the footprint of the landing zones could potentially result in additional losses of ground flora and/or prevent the establishment of new trees in these areas. The submitted photographs clearly show the whole area around the landing zones as devoid of vegetation (although understorey/ground cover can be seen in the background) and this might be interpreted as an impact of the Go Ape course/construction of the landing zone areas. The photographs are somewhat

misleading however, as in reality it is more likely that the area is devoid of ground flora not as a result of the Go Ape course but due to its location in an area of shady beech plantation woodland where the ground flora is both shaded out by the dense canopy and suppressed by the thick layer of leaf litter and beech mast (as this takes longer to decay than the leaves of other tree species). Indeed, the extent to which ground flora has been suppressed over a wider area by the even-aged beech planting becomes clear when viewed in person, and cannot therefore be directly attributed to the increased landing zone footprint.

26. Having reviewed the submitted information, and visited the site, it is their opinion that the increase in the footprint of the landing zones will not have resulted in significant impacts on biodiversity and there is no requirement for mitigation or compensation. The proposals are in accordance with the requirements of biodiversity planning policy and guidance (i.e. PPS9, ODPM 06/2005, RSS EM1).
27. On a more general note, the County Ecologist states it seems that the woodland as a whole in this area would benefit from some further positive management. The relatively even-aged nature of the beech trees means that there is little age or structural diversity within the woodland, and the areas under a closed beech canopy are clearly suppressed. Whilst some trees have been felled, further selective thinning of the beech trees (or indeed a rolling programme of removal) and replacement with locally appropriate native species would help to reduce the detrimental effects of beech by allowing more light to the woodland floor and reducing the quantity of beech litter. It would also facilitate the establishment of woodland of greater age, structural and species diversity. It is also apparent that Himalayan Balsam is prevalent in several areas within the woodland and towards the shore. This species is likely to have a detrimental effect on the more valuable areas of woodland in the longer term. A programme of control or eradication would therefore be beneficial.
28. It is accepted that a programme of woodland management and removal of Himalayan Balsam may be beneficial but they may not be an option at this time, but they will be brought to the attention of United Utilities although they do not directly concern this application.
29. **Chorley's Arboricultural Officer**
The extending of the landing bases for the zip lines will make little or no difference to the surrounding trees.
30. Although the base of one of the pines is enclosed by the end of the landing zone, the influence upon its root zone will be minor due to a couple of factors. The first is that the woodchip used as a landing cushion is porous and so will let through air and water, the second is that it doesn't actually cover a large percentage of the root plate and so should cause the tree no extra hardship.
31. Given this, from an arboricultural standpoint the application is acceptable.
32. **LCC Public Rights of Way Officer**
State they understand this is a retrospective application for structures that are already in position and in use. They have no comments to make with respect to this application.
33. **Chorley Planning Policy**
Have no observations to make on the application.

Applicants Case

34. The landing areas contain wood peel that allows customers to land in a safe manner. It is critical that customers land within these areas, and they are constructed once the zip line is up, ensuring they provide as safe and as comfortable landing as possible.
35. During the construction of the course, it was necessary to build two of the landing areas bigger than indicated on the original planning application. The reason for this was that when the zip lines were put up, the topography of the area mean that people descending the zip lines spent a large percentage of the zip very low to the ground. This had two effects:
 - The zip lines had a potentially bigger impact on the other users in the park with people zipping lower than intended;
 - It had an impact on the landings, making it more likely for customers to land before the wood peel area, potentially affecting the safety mechanisms in place.To solve the second issues, the landing sites were lengthened, allowing customers to land properly in the wood peel. To minimise the lengthening of the landing sites, and in order to help solve the first problem, the zip line and landing sites were raised – giving more clearance from the ground.
36. The landing zones are raised using wood, topped up with soil and this is then covered by wood peel. The soil is retained by driving stakes into the banked earth, with wooden planks between these stakes.

Assessment

37. This assessment deals with the retrospective planning application for the two landing zones only.

38. Principle of the development

The application site is in the Green Belt which is covered by Planning Policy Guidance Note 2 (PPG2) and is reiterated by Local Plan Policy DC1. These state that essential facilities for outdoor sport and recreation, which preserve the openness of the Green Belt and do not conflict with the purposes of including land in it, are appropriate development. The Go Ape course is considered outdoor recreation and the raised landing zones are required essential for the operation of the course. The landing zones are therefore considered acceptable in principle in line with PPG2 and policy DC1.

39. Policy LT7 covers Historic Parks and Gardens. This states that development and restoration proposal which would enhance the attraction of Lever Park and Terraced Gardens at Rivington will be permitted provided a number of criteria are met.

40. Criterion (a) requires that the special character and appearance of the park or garden and any important landscape features within it are protected. The two landing zones the subjects of this application are not within designated areas of Lever Park. Given their size and scale in the context of the park as a whole it is not considered that they impact on the special character and appearance of the park or result in the loss of any important features within it.

41. Criterion (b) requires compliance with Policy HT13 and this is discussed later under the Historic Park and Garden Section. In relation to criterion (c) - that the proposals are compatible with the character and appearance of the area and the Council's policies relating to the Green Belt - the latter has already found to be satisfied above. The former is discussed under the design section below.

42. Criterion (d) - access is available by a choice of means of transport other than the private car - is not directly relevant to this application as the two landing zones in themselves are for use on the wider Go Ape course.

43. In terms of criterion (e) – the site has adequate access and the traffic generated can be safely accommodated on the local highway network - the changes to the landing zones will not allow more people to participate in the Go Ape course than at present and therefore it is not considered the application is contrary to it.

44. Therefore the proposal is considered to comply with Policy LT12 subject to the proposal being compatible with the character and appearance of the area, under criterion (c) and policy HT13 being satisfied.

45. Impact on the neighbours

The landing zones are located within the Go Ape course itself. The nearest residential property is Great House Cottage adjacent to Great House Barn and is over 200m from the nearest landing zone the subject of this application. It is not considered the changes to the landing zones from that previously approved will have detrimental impact on this property and they are not visible from it.

46. Design

The landing zones have been increased in length and height from that approved. The landing zones have soil topped with bark shavings, this mixture is retained by logs and planks which raise up and lengthen them. In design terms, the visual impact of these elevated landing zones is considered acceptable, they are constructed of materials which are easily removed from the land and are appropriate to the woodland setting and therefore are considered compatible with the character and appearance of the area. Policy LT12 is also therefore considered to be met.

47. Trees and Landscape

Policy EP9 of the Local Plan covers trees and woodlands. The Council's Arboricultural Officer has been consulted on the application and has inspected the two landing zones the subject of this application.

48. He advises that the extending of the landing bases for the zip lines will make little or no difference to the surrounding trees. He acknowledges that the base of one of the pines is enclosed by the end of the landing zone, but advises that the influence upon its root zone will be minor as the woodchip used as a landing cushion is porous and so will let through air and water and that it doesn't actually cover a large percentage of the root plate. As a result the landing zone should cause the tree no extra hardship and he finds the application acceptable. The retrospective changes to the two landing zones are therefore considered acceptable in relation to Policy EP9.

49. Ecology

Policy EP2 of the Local Plan covers County Heritage Sites and Local Nature Reserves. The two landing zones are within a Biological Heritage Site (BHS). The County Ecologist has been consulted on the application and visited the site. Their advice deals with the raising of the landing zones and their increase in footprint separately.

50. With regard to the raising of the two zones they advise that it seems unlikely that raising of the landing areas would have any additional impact on biodiversity, over and above the impact of the footprint of the landing areas itself [as previously approved]. They advise that the 'log pile' construction of the raised areas appears to have created log pile/dead wood habitats for species such as invertebrates, amphibians and small mammals. The raised construction is therefore likely to be of greater biodiversity value than a landing zone flush with the woodland floor. It is not therefore considered this aspect will have an adverse effect on the BHS.

51. With regard to the increase in the footprint of the landing zones the County Ecologist advises that this could potentially result in additional losses of ground flora and/or prevent the establishment of new trees in these areas. The submitted photographs clearly show the whole area around the landing zones as devoid of vegetation (although understorey/ground cover can be seen in the background) and this might be interpreted as an impact of the Go Ape course/construction of the landing zone areas. They advise the photographs are somewhat misleading however, as in reality it is more likely that the area is devoid of ground flora not as a result of the Go Ape course but due to its location in an area of shady beech plantation woodland where the ground flora is both shaded out by the dense canopy and suppressed by the thick layer of leaf litter and beech mast (as this takes longer to decay than the leaves of other tree species). Indeed, the extent to which ground flora has been suppressed over a wider area by the even-aged beech planting becomes clear when viewed in person, and cannot therefore be directly attributed to the increased landing zone footprint.

52. Having reviewed the submitted information, and visited the site, they advise it is their opinion that the increase in the footprint of the landing zones will not have resulted in significant impacts on biodiversity and there is no requirement for mitigation or compensation. They consider the proposals are in accordance with the requirements of biodiversity planning policy and guidance (i.e. PPS9, ODPM Circular 06/2005 and RSS Policy EM1). It is therefore considered that the enlargement of the floor area of the landing zones is not contrary to policy EP2.

53. Historic Park and Garden

The landing zones are within Lever Park which is registered Grade II Park covered by Policy HT13 of the Local Plan: Historic Parks and Gardens. PPS5: Planning for the Historic Environment is also relevant.

54. A resident has contacted English Heritage regarding the application and they have confirmed that since Lever Park is a Grade II registered landscape the Council are not obliged to consult English Heritage on such development applications, as they are only statutory consultees on grade I and II* parks and gardens (the Council was copied in to their response). They advise that Garden History Society, are consultees on all grades of park and garden and they have been consulted on the application.

55. The Garden History Society were consulted on the application as required but have not responded.

56. Lancashire Gardens Trust has objected to the application as detailed in the representations section above. They state there are two heritage assets in consideration Lever Park and Great House Barn, both Grade II. The setting around them is important. Chorley's conservation policy states: *'We take our responsibility for listed buildings very seriously. We encourage and enable the enhancement of the borough's heritage'*. They comment that incremental development of commercial activities surrounding both the Barn and Lever Park represent a threat to the setting of these important places, which people come to visit because of their beauty. Their beauty should not be compromised further.

57. The Council's Conservation Officer has reviewed their comments. He advises, that in his opinion *'the development is so far removed from the designated heritage assets as to have no impact upon their setting. The development site is out of view of the designated heritage assets, obscured by trees. Furthermore the works are outside the designed landscape areas of Lever Park and are set within natural self seeded woodland and is of such small scale as to have very limited impact upon the character of Lever Park. As the designated heritage assets and the development site cannot be seen one from the other he fails to see how 'their beauty' could in any way be compromised'*.

58. Taking into account the above objection it is not considered changes to the landing zones the subject of this application have an unacceptable impact on the setting of Lever Park. In addition the listed Great House Barn, Great House Cottage and the building housing the Information Centre are some 200m away from the nearest landing zone, are not visible from it and visitors pass a car park in front of the Barn

before they reach the nearest landing zone. Therefore it is not considered the changes to the landing zones impact on the setting of the listed buildings.

59. In terms of Policy HT13 it is not considered the changes to the landing zones would lead to the loss of, or cause harm to, the historic character or setting of any part of a Park of Garden of Special Historic Interest, given their limited size in the context of the Park as a whole and their location within it, i.e. not within a designed part of the Park. The changes to the two zones would not block an historic path or route, the proposal is therefore considered to comply with Policy HT13.
60. As it is considered that the proposal complies with HT13 the proposal also therefore complies with Policy LT7 as detailed at paragraph 37 above.
61. Traffic and Transport
The changes to the two landing zones do not permit more participants on to the course, and therefore there is no increase in demand for parking as a result of them. Parking issues raised in relation to the Go Ape course are being looked into separately and further proposals are expected.
62. Public Right of Way
Bridleway 15 (Rivington) is a right of way shown on the definitive map and runs parallel with the Go Ape course to its west. It is not considered the changes to the two landing zones will impact on the setting of this Bridleway and they do not obstruct it in any way. Lancashire County Council Public Rights of Way Officer has been consulted on the application and makes no comments on it. The application is therefore considered to comply with policy LT10 of the Local Plan which covers public rights of way.
63. The issue of the right of way raised by objectors in relation to the Lever Park Act is a separate issue, the rights they refer to are not a public right of way shown on the definitive map. The Lever Park Act is discussed at the end of this report.
64. Response to Objections Not Already Covered
This application is not accompanied by a tree survey, however it is considered that there is enough information available to the authority to make a decision on the retrospective changes to the two landing zones.
65. The two landing zones are not within the conservation areas on the edge of the reservoir that United Utilities have created (these are not planning conservation areas as defined in the local plan).
66. There is an undetermined application with the Council for an additional zip wire but this is a separate issue to the two landing zones.
67. The site notices have been displayed for the required 21 days.
68. The applicants are criticised for their description of where the landing zones are in the application submission. However, the Council have described the location of the two landing zones in its consultation on the application.
69. The application is only for the change to the two landing zones themselves, it is not in relation to anchor trees. Section 9 (materials) on the application is filled in and refers readers to the statement accompanying the application in terms of materials.
70. In terms of noise pollution, at the time of the original application it was noted that Rivington is an area of countryside people enjoy, but it is considered that the area is large enough to accommodate a whole range of activities that people may wish to pursue in this type of environment. In addition, it is to be located in an area close to the existing Barn and car park, rather than it being located in some of the more isolated areas.
71. Section 38(6) of the Planning and Compulsory Act 2004 expressly requires an application be determined in accordance with the development plan unless material considerations suggest otherwise.
72. There are no matters raised by either consultees or objectors that would outweigh the acceptability of this application when assessed against the development plan.

Ministerial Statement – Planning for Growth

73. This was made in March 2011 and gives the Governments clear expectation that the answer to development and growth should wherever possible be 'yes'. The growth agenda also means a need for a range of leisure activities to support the increased development expected. Local Authorities should place particular weight on the potential economic benefits offered by an application

Overall Conclusion

74. The changes to the landing areas are considered acceptable for the reasons set out above and the retrospective application is recommended for approval subject to a condition that the use of the course ceases for a period of one year within 10 years of its completion the landing zones the subject of this approved shall be removed and the area restored to its former condition. However, it is recommended that Members defer the application to make a site visit before determining the application.

Other Matters

Lever Park Act

75. Section 38(6) of the Planning and Compulsory Act 2004 expressly requires an application be determined in accordance with the development plan unless material considerations suggest otherwise and that the Planning Acts were of course prepared after the Lever Park Act.
76. The advice of the Council's Head of Governance has been sought as to whether the application breaches the provisions of the Liverpool Corporation Act 1902.
77. *'Firstly, prior to considering the Act I can confirm that as local planning authority, the duty as a committee is to consider the planning merits of the application. You are not required to consider whether the proposed development can take place due to restrictions on the legal title to the land.'*
78. *'However, due to past history on this matter I am fully aware of the position of the Friends of Lever Park in relation to the Go-Ape site. They oppose this development and seek to rely on the wording at section 21 (2) of the Act "desirable in order to secure their free and uninterrupted enjoyment by the public" to support their position that the application should be refused. The group suggest that this development will prevent their "free and uninterrupted enjoyment".'*
79. *'I do not agree with this interpretation, even with the restrictive extract provided. If members of the committee consider the full provisions of this subsection it specifically grants to the owner general powers to do almost what they wish to provide that the public enjoy the park. This includes the provision of new buildings.'*
80. *'To confirm therefore, my advice is that this development / application does not contravene the Act, indeed, given that it may open Lever Park up for the enjoyment of a different category of the public it would appear to be in line with its requirements.'*
81. *'To be absolutely clear however, the committee do not need to have regard to the Act when considering the planning application. It is a private act and is not a material planning consideration'.*

Other Non Material Considerations

82. With regard to the point raised by objectors that the application has not been consulted on by the applicants in line with the Council's Statement of Community Involvement, this is something the Council encourages but it cannot refuse to deal with an application that has not been subject to it. In respect of the landing zones, they are already on the site and therefore the scope to change them through consultation is limited and they are the subject of an existing complaint to the Council. It is therefore considered expedient to progress the application as soon as possible.
83. The Lancashire Gardens Trust questions why the application is not subject to an Environmental Impact Assessment. The landing zones are not Schedule 1 development. It is not considered the changes to the two landing zones have a significant impact on the environment by virtue of their nature, size or location. They are not above the threshold set out in Schedule 2 or in a defined 'sensitive area' in the regulations.
84. The issue of public liability insurance is not a matter for the Council as Planning Authority in determining the application.

Planning Policies

National Planning Policies:

PPG2, PPS5, PPS9

Adopted Chorley Borough Local Plan Review

Policies: DC1, EP2, EP9, HT13, LT7

Planning History

08/00553/FUL - Proposed high wire adventure course with associated equipment, cabin and shelter, and extension to existing carpark. Permitted July 2008.

10/00426/FUL - Addition of additional zip line to Go Ape course (at site 4 within course) with associated landing area. Application undetermined.

**Recommendation: Permit Full Planning Permission
Conditions**

1. Where the use of the course hereby approved ceases for period of one year within 10 years of its substantial completion the landing zones hereby permitted shall be removed and the area restored to its former condition.

Reason: To avoid a proliferation of structures in the Green Belt for which there is not a continuing need and in accordance with Policy No. DC1 of the adopted Chorley Local Plan Review and PPG2.