

**Item 4a**                      **11/00764/OUT**

**Case Officer**            **Mr Niall Mellan**

**Ward**                        **Chorley North East**

**Proposal**                 **Outline application for the erection of two detached houses and a pair of semi-detached houses**

**Location**                **11 Sutton Grove Chorley PR6 8UL**

**Applicant**                **Mr A E Sumner And Mrs J Stevens**

**Consultation expiry:** **13 December 2011**

**Application expiry:**    **30 December 2011**

### **Proposal**

1. The application seeks outline planning approval for the erection of two detached dwellings and a pair of semi-detached dwellings. The application is for the principle of development only with all matters reserved.
2. The site forms a large garden area belonging to no. 11 Sutton Grove. The site is located at the end of a cul de sac within the Chorley settlement. The area contains a mixture of detached bungalows and two storey dwellings with materials mainly being red brick and concrete roof tiles.
3. An easement of the Thirlmere Aqueduct runs through the site. To the east of the site is a woodland area which defines the beginning of the Green Belt and is also a designated Biological Heritage Site. To the north are the rear gardens of the adjacent neighbours and to the west and south are residential properties.

### **Recommendation**

4. It is recommended that this application is refused outline planning permission.

### **Main Issues**

5. The main issues for consideration in respect of this planning application are:
  - Background information
  - Principle of the development
  - Density
  - Levels
  - Impact on the neighbours
  - Design
  - Traffic and Transport
  - Thirlmere Aqueduct

### **Representations**

6. Councillor Lowe objects to the application on the following grounds:
  - Impact on the visual amenity of the greenbelt. The proposed dwellings project beyond the established building line out towards the green belt and would have a significant impact on it notwithstanding the sloping nature of the cul de sac.
  - If development were allowed on this site it could make it more difficult to refuse development in the area and together they would constitute a very serious impact on the greenbelt.
  - The interim policy on development in private gardens has been strengthened since the Government declassified gardens as Brownfield land. In addition the policy has moved

significantly towards adoption as a full policy since it has been consulted on in the site allocations DPD and can now be accorded more weight.

7. To date 11 letters of objection have been received which raise the following issues:

- Garden grabbing is having a devastating affect on many areas like our estate and also has detrimental effects on our quality of life, the environment, children's health and education and everybody's general well being.
- We are concerned that with building land at a premium in urban areas, cases of 'garden grabbing' are on the rise, completely disregarding town planning and our communities interests and moreover central governments election policy commitments.
- We do not see why this mistaken development needs to be repeated, when there are hundreds of new affordable houses being built in nearby areas such as Buckshaw Village.
- We do not see why there is a need to repeat this on land which is on the edge of the estate next to open countryside and on land that currently adds considerably to the atmosphere of the open aspect of living near to the countryside. We believe that if this development goes ahead it will have an adverse effect on the amenities of local residents, including loss of light, overlooking, loss of privacy, noise and disturbance.
- It will change the character of the surroundings by removing a pleasantly wooded area and there will be a further increase in traffic to an already congested junction from the estate onto Blackburn Road. We also believe that there will be a severe impact by this proposal on nature conservation and trees in the area and on the character and appearance of an existing Conservation Area that has seen an increase in the number of deer recently.
- We also understand that there is a mains water pipe in the area that is covered by strict restrictions which prohibit planting of new trees let alone building new houses and this also covers the land near the old railway line along the boundary edge.
- Restrictions on the land due to the Thirlmere Aqueduct.
- Increase in traffic volumes and issues regarding highway safety.
- Infringement onto the privacy of gardens to adjacent bungalows.
- Scale of the proposed development which would be an increase of 40% on the cul de sac.
- Impact on the character of the area, noise, disturbance and appearance.
- Safety issue in exiting driveways with increased traffic as a result of turning an end cul de sac into a thoroughfare.
- Loss of privacy with the whole development overlooking our property which is currently mature and secluded
- Chorley Policy "Private Residential Garden Development (October 2010)" which clearly discourages development within private residential gardens.
- Inadequate drainage to service the area; a septic tank solution would not be appropriate in view of the adjacent Thirlmere aqueduct,
- Potential risk of damage to aqueduct during construction resulting in flooding of the area particularly our property
- Proposed site is adjacent to an area of environmental protection and green belt.
- The development is not in keeping with the area.
- Impacts on biological heritage site.
- Removal of trees and hedges will cause a reduction in availability of wildlife habitat.
- There is no current market need – at adjacent Ewell garden development, 5 out of 7 of these properties remain unsold more than a year after construction.
- Proposed road and associated traffic will place an unacceptable load on Thirlmere aqueduct.

- Two storey properties overlooking neighbouring garden areas.
- Two storey dwellings will be out of character of the surrounding properties.
- Four dwellings on land represents significantly greater building density than surrounding area.
- Will create a precedent for future garden development in the area.
- Restrictive covenant on land stating that land cannot be built on.
- References to newspaper article which states the Council opposes garden grabbing.
- The proposed development extends beyond the established boundary.
- Aqueduct is designed to take in the drainage of groundwater around it. Drainage pipes in the surrounding area feed local groundwater into the aqueduct. Developing dwellings, garages and driveways close to the porous aqueduct will lead to vehicle oil spillage going directly into aqueduct.
- Will lead to parking problems on the turning bay at end of cul de sac.
- The dwellings will ruin the panoramic views of the beautiful countryside.
- The Aqueduct is a vital national secure asset supplying a major portion of fresh drinking water to Manchester.
- Failure to disclose relevant risk assessments relating to the potential damage/contamination of a vital asset either during construction or during lifetime of development.
- Object to the failure of the applicant to demonstrate how the development serves the public good, satisfies the priorities of local housing needs in this location, guarantees the safeguarding of a vital national asset.
- By what legal authority has the easement now become 10m.
- Development for housing/heavy plan moving should not be allowed over and adjacent to a legally established easement.
- Committee should be aware that a much greater width than 10m may be required to replace the existing brick Aqueduct with pipelines of up to four steel pipes side running in parallel side-by-side, as used elsewhere in the Aqueduct.
- Is the depth of the Aqueduct under the current surface of the applicant's garden?
- Is the Committee satisfied that the depth of such an excavation, together with the necessary space required by heavy lifting equipment and other heavy plant adjacent to the excavation?
- Chorley Council could be potentially liable for compensation if excavation of the aqueduct necessitated the demolition of one of the houses.
- Aqueduct serves much more of an important role than that of access and right of way.
- The authority prevented encroachment to the Aqueduct at the Whelmar development of the mid 1970's.
- Pipe of raw sewage to run directly over the Aqueduct. Since the Aqueduct is a porous brick structure that allows that allows the entry of ground water, any leakage into Manchester's drinking water may have serious consequences.
- A consideration is required to the depth to which excavation for sewage conduits across the easement.
- Consideration into how far above the top of the brick tunnel would these sewage conduits pass.
- Lack of evidence which would be obtained from test-drillings, to indicate the nature of the existing infill over the Aqueduct, and consequently the precautions that would be necessary to excavate directly over the Aqueduct and to pass raw sewage conduit over the Aqueduct.
- Lack of technical feasibility linking the planned development to the existing sewage system.

- Should the development cause damage to the Thirlmere Aqueduct either during the construction or over the lifetime of the development has the Committee established where legal liability rests.
- The applicant has failed to understand that their proposal seeks to sweep aside both legal and material safeguards put in place by society over many generations to protect key national secure assets and thus the public.
- Request a committee site visit.

8. 1 letter of support has been received from the applicant which raises the following:

- Reference to recent appeal decision for 26 Lancaster Lane (APP/D2320/A/10/2142561). The Inspector considered the question of whether the principle of development was acceptable having regard to current local and national housing policies. In this case the site was a garden and Chorley Council applied its Interim Planning Policy on Private Residential Garden Development. The Inspector found that the principle of development was acceptable, despite the Interim Policy. In particular I would point out paragraph 9 where, in reference to the Interim Planning Policy on Private Residential Garden Development, the Inspector states: *"Nonetheless this change in policy does not preclude development where it would accord with the development plan and satisfy the housing policy objectives set out in PPS3. Whilst the interim policy is put forward by the Council as an example of localism being put into practice, it is not part of the development plan and must be given significantly less weight than that afforded to the LP and PPS3. Consequently, notwithstanding the conflict with the interim policy, I conclude that the principle of the proposal is acceptable having regard to current local and national housing policies and in particular to the provisions of LP Policy HS6 and the guidance in PPS3."*
- This recent statement by the Inspector, made in an appeal against a decision by Chorley Council, directly contradicts the recommendation to 11 Sutton Grove not being acceptable because it is contrary to the interim policy.
- The Inspector allowed an application for an award of costs by the applicant, since he considered that the Council had behaved unreasonably and caused the applicant to incur unnecessary expense in the appeal process by giving undue weight to its Interim Policy on Private Residential Garden Development.
- In paragraph 4 of his Costs Decision he referred to an earlier appeal relating to garden land development in Whittle-le-Woods (APP/D2320/A/10/2130056) in which the Inspector had concluded that the Interim Policy goes further than the revised PPS3, is not a part of the development plan, has not been subject to independent scrutiny and should therefore be afforded only limited weight.
- I therefore request that you reconsider your recommendation in the light of this information and recommend approval of our application.
- I also request that, regardless of the recommendation you make, you include this email from me in your submission to the DC Committee and ensure that the committee members are fully aware of the Inspector's findings quoted above when they make their decision.
- I believe that in view of these findings by the Inspector it is reasonable to conclude that a refusal of our application on the grounds that it is contrary to the Interim Planning Policy on Private Residential Garden Development would be very likely to be overturned at appeal, so such a refusal should not be made. Furthermore this would cause the Council to incur unnecessary costs (quite possibly including the costs of the appellant) which, since the outcome is reasonably foreseeable, would not be an acceptable use of public funds.

- The view from the existing cul-de-sac in the direction of the proposed buildings is quite limited between 11 and 13 Sutton Grove and would not be strongly affected by the visibility of the roofs of the new buildings which would be to the left of the cul-de-sac, largely hidden by 11 Sutton Grove.
- Revised plans have been submitted which accommodate the 10m easement request. The latest submission is fully compliant with the standard conditions for works adjacent to pipelines as specified by United Utilities. The conclusion that "it is likely that the development would have a harmful effect to the Aqueduct and its maintenance" is therefore now unwarranted.

### **Officer Comments on Applicant's Letter**

9. The applicant refers to the appeal decision for 26 Lancaster Lane (APP/D2320/A/2142561) - in particular the inspector's findings on the interim garden grab policy, and the fact that an award of costs was made to the appellant on the basis that undue weight was given that policy.
10. However, the inspector also reported (paragraph 4 of the costs decision letter) that the Council failed to amend its approach during the 26 Lancaster Lane appeal in the light of an appeal decision issued 24 November for the Royle & The Coppice, Whittle-le-Woods (APP/D2320/A/10/2130056), and in response to an assessment submitted as part of the appellants appeal submission (for the 26 Lancaster Lane appeal) on whether alternative brownfield sites were available. He also noted that the Council did not refer to Local Plan policy HS6 in the reasons for refusal in relation to the 26 Lancaster Lane appeal (paragraph 5). In awarding partial costs, the inspector found that the Council behaved unreasonably in relying on its interim policy and failed to review development in the context of the Local Plan and PPS3.

### **Consultations**

11. **Lancashire County Council (Ecology)** – no comment.
12. **The Environment Agency** – no comment.
13. **United Utilities** – The amended plan is in compliance with the 10m easement therefore United Utilities have no formal objection. Due to the criticality of the Thirlmere Aqueduct United Utilities insist that the developer adheres to the Standard Conditions for Works Adjacent to Pipelines. The exact location and depth will need to be determined prior to works. If planning permission is granted it must be clearly stated to any future developer the conditions (Standard Conditions for Works Adjacent to Pipelines) and requirement to contact United Utilities prior to any works. The aqueduct is approx. 3m wide and 3m deep (from invert to soffit) and is constructed of mass concrete without re-enforcement and was constructed in 1890-94.
14. **Chorley's Building Control** has made comments regarding the Thirlmere Aqueduct: As plots 2 and 3 will be adjacent to the easement a possible solution may be the use of bored piles, but this would have to be put forward by a Structural Engineer as a designed solution. The use of bored piles, close together so as to act as a possible retaining structure, may be possible but it could be difficult to achieve. There would always be the danger that sideways movement of the aqueduct could take place due to the subsoil removal during piling. These plots are possibly not a viable proposition on cost grounds alone. The prospect of damage occurring would be one big problem. The cost of Insurance against such damage may be prohibitive let alone implementing any design.

15. **Lancashire County Council (Highways) – No objection.** Vehicular access will be by means of a private driveway with access via the end of the turning head arrangement. The turning head is 5.5m wide and is of suitable size to permit private access. Also, the development will have little material impact in terms of additional traffic on the highway. Therefore, based on the information I would have no overriding highway objection to the proposed development in principle.
16. **Chorley’s Waste & Contaminated Land Officer – No objection.** One request for a condition on gas protection, and one recommendation for desk study report.
17. **Chorley’s Planning Policy - Object** to the application. This proposal is in a private residential garden and as such is contrary to the Council’s Interim Policy on Private Residential Garden Development and Policy HS4 of the LDF Site Allocations and Development Management Policies OPD (SADMP). This aims to prevent garden development in the Borough and was adopted in October 2010. This proposal is located within the designated Chorley settlement. Criterion f) of Policy HS6 of the Local Plan requires applicants for residential proposals on undeveloped sites within settlements to demonstrate that there are no suitable allocated or previously developed sites available in the settlement before developing such sites. The applicant has not undertaken this exercise and therefore this proposal is contrary to Local Plan Policy HS6 f).
18. Members of the Committee should note that:
  - The interim policy was adopted 14 Oct 2010
  - The decision notice refusing 26 Lancaster Lane was issued 4 Nov 2010
  - The appeal decision for 26 Lancaster Lane was issued 16 Mar 2011
  - The LDF Site Allocations & Development Management DPD (preferred option paper) was published Sep 2011, with public consultation ending 18 Nov 2011. Policy HS4 details a policy restricting development in private residential gardens. Policy HS4 has been the subject of both supporting and objecting representations. The DPD is of course at the preferred option stage, and as such it remains the case that limited weight can be applied to this policy.

## **Assessment**

### Principle of the development

19. The site is considered to be a domestic garden belonging to no. 11 Sutton Grove. The site appears to be regularly maintained and there are examples of typical garden paraphernalia including children’s play equipment, seats, a trampoline and various outbuildings.
20. In accordance with changes to PPS3, the site is classed as Greenfield land as gardens are now no longer considered to be previously developed land. The presumption in favour of residential development in gardens has therefore been removed.
21. PPS3 requires Local Authorities to apply the principles of ‘plan, monitor and manage’ in order to assess and demonstrate a rolling 5 year supply. Chorley Council has a 5 year supply which can be met from existing housing allocations, previously developed sites and safeguarded land so there is no reason to release gardens for housing development.
22. As the site is located within the settlement the Council’s Interim Planning Policy on Private Residential Garden Development and Policy HS4 SADMP are relevant which have been produced in response to these changes to PPS3. The Policy reads as follows:  
*Within the boundaries of settlements, applications for development within private residential gardens on sites not allocated in saved Local Plan Policy HS1 will only be permitted for:*

- *agricultural workers dwellings/dependents where there is a proven need and where they need to be located in a specific location.*
- *appropriately designed and located replacement dwellings where there is no more than a one for one replacement.*
- *The conversion and extension of buildings, provided they are not allocated for, currently used for, or their last use was for, employment uses, and the conversion would have significant urban regeneration benefits.*

23. The erection of the four dwellings as proposed does not fall within any of the appropriate forms of development in private residential gardens and as such, it is the Council's view that the principle of the development is not considered acceptable.

24. Policy HS6 (f) of the Local Plan Review also requires any application for residential development on garden or Greenfield land, irrespective of size, to include details which demonstrate to the Council that there are no suitable allocated or previously developed sites which are available in the settlement of Chorley, as defined in the Local Plan Review, that could accommodate the dwellings being proposed. The agent advises that an assessment of other sites is presently being prepared.

#### Density

25. The application site measures approximately 0.17ha and so the density of development results in approximately 24 dwellings per ha. PPS3 no longer prescribes a set density per hectare and it is considered that the dwellings would be easily accommodated on the site. The resultant gardens would also be sufficient to serve the properties so the density of the development is considered to be satisfactory in this case.

#### Ecology

26. The site adjoins a biological heritage site to the east. Plots 3 and 4 will be erected fairly close to this biological site, however it is envisaged that there will be no significant adverse impacts to it as a result of the development. LCC Ecology have been consulted on the application will provide further advice on this in due course.

27. It is noted that various trees and shrubs will be removed as part of the development, however this would not have any significant impacts on protected species. None of the trees are worthy of a TPO.

#### Levels

28. Ground levels drop significantly from west to east at the site. However the indicative layout shows that the proposed dwellings will face each other 'side-on' with gardens to the rear. It is envisaged that the dwellings could be designed so there are no habitable room windows on the side elevations and as such the level differences at the site will not result in the interface distances having to be increased. This would be assessed further during reserved matters stage.

#### Impact on the neighbours

29. The closest neighbour is no. 11 which is a bungalow in the applicants' ownership to the west. This contains a side ground floor sunroom which will face the proposed dwellings. In terms of neighbour amenity, this sunroom will overlook the front garden and the side elevation of the closest proposed dwelling. This will not cause significant harm to the future occupiers of this dwelling as potential overlooking will be to non-amenity areas.

30. In terms of the amenity of no. 11, due to the relationship between this existing dwelling and proposed dwelling at plot 1, there will be no significant loss of light and it is envisaged that the new dwelling can be designed so as there is no overlooking from its side elevation.
31. The rear of the proposed dwellings will face the garden of no. 78. Plot 1 as annotated on the site plan, will be 16m from the boundary it faces which complies with the Council's interface distances. Plot 2 will be a minimum of 6m from part of the boundary it faces. The garden of no. 78 is significantly long and the amenity area associated with it is adjacent to the dwelling. A large part towards the rear of this neighbour's garden is used for the planting of vegetation. The element of the garden which plot 2 will be closest to is not considered an amenity area and therefore there will be no significant harm caused to the living conditions of this neighbour in terms of overlooking.

#### Impact on the character of the area

32. As this application is in outline with all matters reserved, the final design and access requirements of the dwellings will not be assessed until reserved matters stage. It is noted that there are both bungalows and two storey dwellings within the streetscene. The agent's Design and Access Statement and site plan sets out the indicative parameters which illustrates that the detached dwellings will have a footprint of 6m by 9m and the semi-detached dwellings will have a footprint of 5.5m by 9m, with both house types having a ridge height of 7.0m to 7.5m.
33. The cul de sac has a defined limit of buildings that was restricted by the limits of the Thirlmere Aqueduct and this defines the existing character of the locality. The proposed development seeks to extend the built form of the area out towards the open countryside and Green Belt. There is no evidence of how this development contributes to the improvement of the character of the area and in fact harms the positive character due to its layout, relationship to other dwellings and projection into the open area beyond the dwellings and towards the Green Belt.
34. As the site adjoins the Green Belt the impact on the visual amenity of the Green Belt must be considered. The east of the site adjoins a large woodland area which defines the beginning of land designated as Green Belt. PPG2 states that "*the visual amenities of the Green Belt should not be injured by proposals for development within or conspicuous from the Green Belt which, although they would not prejudice the purposes of including land in Green Belts, might be visually detrimental by reason of their siting, materials or design.*" Whilst it is appreciated that the levels drop from the end of the cul de sac towards the east edge of the site, it is considered that the new dwellings would be visible from cul de sac having a negative impact on the views across the Green Belt. It is therefore the Council's opinion that the proposed dwellings by reason of their siting would be detrimental to the visual amenity of the Green Belt.

#### Traffic and Transport

35. The application is in outline form and the details of the access will be assessed at reserved matters. However LLC Highways were still consulted to advise on potential highway issues of the development. They have advised that the turning head is 5.5m wide and is of suitable size to permit a private access. Also, the development will have little material impact in terms of additional traffic on the highway. They have raised no objections at this stage.

#### Thirlmere Aqueduct

36. The Thirlmere Aqueduct is part of a water supply system built by the Manchester Corporation Water Works between 1890 and 1925. The aqueduct was constructed to carry large

volumes of water from the Thirlmere Reservoir to Manchester. The Aqueduct runs through the application site between plots 3 and 4. United Utilities have control over the Aqueduct and have objected to the proposed development. They have advised that the critical Aqueduct supplies hundreds of thousands of customers and they will not permit development in close proximity to it and that a diversion is not feasible.

37. United Utilities directed the Council to a distribution manual which deals with standard conditions for works adjacent to pipelines. This states that the easement width shall be 10m, measured 5m each side from the centreline of the pipeline. The agent had shown an easement of 6.4m wide which fell short of the required width advised by United Utilities. However an amended plan now shows an easement of 10m.
38. The previous owner of the land has submitted evidence that development on the land has always been restricted from the 1970's due to conditions and reservations under the grant of the easement. The owner has also raised concerns about the construction of the dwellings and the impact of construction and sewers on the aqueduct in the short term and also long term.

#### Section 106 Agreement

39. The development will result in a further four dwellings at the site and as such there is a requirement of a commuted sum of £5,516 for the provision or upgrading of equipped play areas, casual / informal play space and playing fields within the area. The open space officer has confirmed that an existing play space on Heapey Road could benefit from investment. A letter has been sent to the agent informing him of this and our legal department are drafting a S106 agreement to secure payment. If the planning application was to be approved, it should be subject to the signing of this legal agreement.

#### **Overall Conclusion**

40. Given the site comprises of garden land, it is the Council's view that the provision of a pair of semi-detached properties and a pair of detached dwellings on the land is contrary to the Interim Policy on Private Residential Garden Development and no exceptional circumstances have been submitted in support of the proposal by the applicant. It is also considered that the proposal will have a negative impact on the visual amenity of the Green Belt. The Council is not satisfied that the proposal will not impact on the Thirlmere Aqueduct which runs through the site. The issues raised by the neighbours have been taken into account and on balance it is recommended to Committee that the application is refused.

#### **Planning Policies**

##### National Planning Policies:

PPS1, PPS3

##### Adopted Chorley Borough Local Plan Review

Policies: GN1, GN5, HS4, HS6, HS21, TR4

Supplementary Planning Guidance:

- Design Guidance
- Interim Policy on Private Residential Garden Development

#### **Planning History**

None relevant

## **Recommendation: Refuse Full Planning Permission**

### **Reasons**

- 1. The proposed dwellings will be on land which forms the garden curtilage associated with 11 Sutton Grove and the land is not allocated for housing in the Adopted Chorley Borough Local Plan Review. In response to recent changes to Planning Policy Statement 3 (PPS3), the Council has prepared an Interim Policy on Private Residential Garden Development and included Policy HS4 within the Site Allocations and Development Management DPD which seeks to resist residential development taking place on private garden land unless certain criteria are met or there are exceptional circumstances. In this case, the proposed dwellings do not meet one of the three criteria listed in the Policy nor are there considered to be exceptional circumstances that weigh in favour of approving the development and as such the proposed development is contrary to the Council's Interim Policy on Private Residential Garden Development and Policy HS4.**
- 2. The site is located on the edge of the settlement where it adjoins land to the east which is designated as Green Belt as defined in the Adopted Chorley Local Plan Review. PPG2 states that the visual amenities of the Green Belt should not be injured by development conspicuous from the Green Belt. The proposed two storey dwellings, by reasons of their siting would have a detrimental impact on the visual amenities of the Green Belt as the properties will take development up to the Green Belt boundary. The proposal is therefore contrary to PPG2.**