

Our Ref: Cllr D Edgerley
Your Ref:
Date: 4 December, 2012

DX 18411 Chorley 1

Dear Sir

Land to the North and West of Lucas Lane, Whittle-le-Woods

I have received to date 94 signatures to letters in identical form requesting that the Council seek a judicial review of the planning inspector's decision of 19 September, on application reference 12/2172693, which allowed the appeal. The effect of the decision was to grant permission for 135 dwellings.

As all the letters are in identical form, at least as regard the content the Council's Chief Executive has elected to treat the correspondence as a petition in accordance with the Council's Petition Scheme and referred it to me for consideration.

Please treat this correspondence as a report to you under the Scheme of my proposed action on this matter.

Following the Inspectors decision in September, the Council took advice from Counsel, on a separate appeal, but which incorporated a consideration of the Inspectors decision on the Lucas Lane appeal. The advice received was very firm. Counsel's view was that the Inspectors decision in the Lucas Lane matter was sound. The Inspector had properly considered the law on this matter and had also applied it properly to the appeal. The decision was correct and there were no grounds for appeal that were sustainable.

As a result of this advice, Chorley Council was not in a position to appeal the Inspectors decision and would have been penalised on costs significant had we done so, any appeal having no merit at law.

This first advice was considered further by separate Counsel who we asked to advise generally on potential approaches to this type of application (greenfield developments). He confirmed it provided a correct analysis of the position.

I refer to this history as it is relevant to your request. Courts are reluctant, indeed as a rule will not, grant judicial review of a decision where there is a right of appeal which either exists or has been extinguished because it has not been used. In other words, as the Council elected not to appeal, the court will not entertain a Judicial Review application from us.



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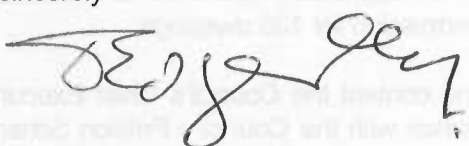
Even if we were in a position to submit a Judicial Review application, I have been advised we do not have the grounds to do so. In order to pursue Judicial Review the Council would need to demonstrate that the decision was wrong either by way of it being so unreasonable as to be outside the scope of a decision a reasonable person would make; or the decision was wrong at law. Simply disagreeing with a decision is not in itself grounds for judicial review.

Please be aware that I share your frustration in connection with this application and the Inspectors decision. This, and other recent Inspector decisions, seem wholly at odds with a localism agenda. These decisions are being taken out of the Council's hands. Even when it is for the Council to make the decision, we are having to do so within a framework set by the Inspectors. It is fair to say that all Councillors within this authority are concerned by this state of affairs.

We have contacted the Secretary of State for Communities and Local Government to express our views and I would urge you to do the same.

However, in response to your request, I have to confirm that Chorley Council will not be seeking to Judicially Review the Inspectors decision in this matter.

yours sincerely



Cllr D. Edgerley
Executive Member (LDF and Planning)

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