

## **APPLICATION REPORT – 17/00642/FUL**

**Validation Date: 3 July 2017**

**Type of Application: Full Planning**

**Proposal: Demolition of existing garage, sheds and stables and erection of a new detached house**

**Location: Land Adjacent To 46 Cross Keys Drive Cross Keys Drive Whittle-Le-Woods**

**Case Officer: Amy Smith**

**Applicant: Mr David Rothwell**

**Agent: N/A**

**Consultation expiry: 17 August 2017**

**Decision due by: 13 March 2018**

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### **UPDATE REPORT**

Members will recall that determination of this application was deferred at the Committee meeting held on 10 October 2017 in order for the applicant and officers to continue discussions regarding surrounding access to the site.

Neighbours had made representations to suggest that a parcel of land required for access to the development site was in private ownership with no formal rights of way and no permission given for the applicant, developer or future owners and occupiers to pass the land to gain access to the site.

Land Registry documents have been provided to the Local Planning Authority to confirm that the parcel of land that sits between the development site and the head of the adopted part of the cul-de-sac on Cross Keys is within private ownership and it does not appear, within this document, that there are any rights of way, other than for the free and uninterrupted right of connection to and passage of water, soil, gas and electricity.

The applicant has been unable to provide any evidence to the contrary and so it is considered that suitable access to the site cannot be gained, consequently it is recommended that the application is refused.

### **REVISED RECOMMENDATION**

It is recommended that Members refuse the application for the following reason:

The right of access to the site has not been proven and the Local Planning Authority cannot be satisfied that, on the balance of probabilities, access can be gained to the site via the route proposed.

### **PREVIOUS REPORT TO COMMITTEE (10 October 2017)**

#### **RECOMMENDATION**

1.1 Approve full planning permission.

## SITE DESCRIPTION

1.2 The application site forms a corner plot between No. 46 Cross Keys Drive to the south and No. 48 to the west, within Whittle-le-Woods. The site is bound by a Public Right of Way located between the site and No. 46 Cross Keys Drive. The site is flanked by trees to the north, east and west. The land slopes upwards to the east and there is a historic quarry face to the north. The site currently contains a stables building, garage and storage sheds.

## DESCRIPTION OF PROPOSED DEVELOPMENT

1.3 The proposal relates to the demolition of existing buildings and the erection of a two storey, 4 bedroom dwelling. The initial planning application submission was for a 5 bedroom dwelling, however, at the request of the planning officer, the proposed dwelling was reduced in scale to comply with planning policy and neighbours were re-consulted on this basis. This is explained in more detail within the Planning Considerations section below.

## RELEVANT HISTORY OF THE SITE

**Ref:** 05/00787/COU **Decision:** PERFPP **Decision Date:** 21/10/2005  
**Description:** Change of use to domestic curtilage and construction of garage building

**Ref:** 03/01356/FUL **Decision:** PERFPP **Decision Date:** 08/03/2004  
**Description:** Erection of stable block

**Ref:** 03/00414/COU **Decision:** PERFPP **Decision Date:** 22/09/2003  
**Description:** Erection of detached Stable Block

## REPRESENTATIONS

1.4 There have been objection letters received from three individuals which raise the following concerns:

- The land is classified as an agricultural small holding with no rights to erect a residential dwelling, no evidence of a change of use application has been seen or received;
- Concerns in relation to the access point crossing a Public Right of Way and a gate post being removed on No.46 Cross Keys Drive;
- The application is seeking to build on land not owned by the developer, relating to the site access point from Cross Keys Drive;
- Overlooking of Nos. 48, 50 and 52 and Carwood Farm
- Inaccuracies in the application;
- Waste collections would be impeded for Nos. 48, 50 and 52;
- Ground contamination from a previous use as disposal site for old paint product and more recently, horse manure;
- Disruption during construction of vehicles blocking private access road to No. 48 Cross Keys Drive and causing damage to the road;
- Impacts on trees surrounding the site.

1.5 No evidence of the outside storage of manure or ground contamination was noted during the case officer's site visit. To the knowledge of the case officer, the relevant Certificates have been completed by the applicant and notice served on any landowners other than themselves with an interest in the site. All other issues, where considered to be a material planning consideration, are dealt with below.

## CONSULTATIONS

1.6 Parish Council – No response received.

1.7 CIL Officers – response states that this development would be CIL Liable on approval.

- 1.8 Tree Officer Comments - responded to state that the trees in proximity to the site are of low merit apart from a group of semi mature and early mature oak trees to the west of the site boundary screening the site from neighbouring property. These trees are not within the site boundary or the landownership of the applicant and so should not be removed as part of the development. A tree protection plan can be required by planning condition.
- 1.9 Lancashire Highway Services – responded with no objections to the scheme and has recommended a planning condition be attached to require a parking layout plan to be submitted for the approval and an informative in relation to the public right of way.
- 1.10 Greater Manchester Ecology Unit – responded with no objections to the scheme and have recommended conditions for the protection of bats and birds and biodiversity enhancements.
- 1.11 Lancashire County Council Public Rights Of Way – No response received, however, Lancashire Highway Services has responded to suggest an informative be added to the decision notice to ensure that the right of way is not obstructed.
- 1.12 Environment Agency – responded to state it has no comments on the proposal.
- 1.13 Conservation Officer – response states that the proposed development will have no greater impact upon the setting of the nearby listed buildings than is currently the case. Carwood Farm and the attached cottage are grade II listed buildings, however their setting was lost many years ago when both were effectively surrounded by residential development. The proposed development will have no further impact than the existing development that surrounds the listed buildings. The proposal is considered to preserve the appearance of the listed buildings and their setting and to sustain the significance of these designated heritage assets.

The proposed development is therefore considered to be in conformity with S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, S.12 of the National Planning Policy Framework, policy 16 of the Core Strategy and policy BNE8 of the Adopted Chorley Local Plan 2012 - 2026.

- 1.14 The Coal Authority – responded with standing advice. This involves a requirement for the Council to include an informative on the planning decision.

## **PLANNING CONSIDERATIONS**

### **Principle of the development**

- 1.15 The site lies partially within the settlement area of Whittle-Le-Woods but the majority is located on allocated safeguarded land, as defined in policy BNE3 'Areas of Land Safeguarded for Future Development Needs' of the Chorley Local Plan 2012-2026. This application site forms part of a wider parcel known as 'West of M61, Whittle-Le-Woods', BNE3.10. Policy BNE3 states that development other than that permissible in the Green Belt or Area of Other Open Countryside (under Policy BNE2) will not be permitted on Safeguarded Land.
- 1.16 Policy BNE3 is in accordance with paragraph 85 of the National Planning Policy Framework (the Framework) which states that local planning authorities should "where necessary, identify in their plans, areas of safeguarded land between the urban area and the Green Belt, in order to meet longer term development needs stretching well beyond the plan period" and "make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development."
- 1.17 The policy was adopted in July 2015 and the Inspector for the Chorley Local Plan (Oct 2013) concluded that safeguarded land serves an important planning purpose of ensuring the longevity of the Green Belt boundaries.

- 1.18 The proposed development does not meet the requirements of BNE2 because it is not needed for agriculture or forestry, or other rural uses, and nor does it involve the rehabilitation and re-use of existing rural buildings. Therefore, policy BNE3 requires this proposal to be assessed as though it were located within the Green Belt.
- 1.19 Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 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.
- 1.20 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.
- 1.21 Paragraph 89 of the Framework states that a local planning authority should regard the construction of new buildings as inappropriate in Green Belt. There are exceptions to this, as follows:
- buildings for agriculture and forestry;
  - provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;
  - the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
  - the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
  - limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan; or
  - limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
- 1.22 Policy BNE5 of the Local Plan reflects paragraph 89 of the Framework in allowing the reuse, infilling or redevelopment of previously developed sites in the Green Belt, as follows:
- 1.23 The reuse, infilling or redevelopment of previously developed sites in the Green Belt, will be permitted providing the following criteria are met:
- In the case of re-use
- a) The proposal does not have a materially greater impact than the existing use on the openness of the Green Belt and the purposes of including land in it;
  - b) The development respects the character of the landscape and has regard to the need to integrate the development with its surroundings, and will not be of significant detriment to features of historical or ecological importance.
- In the case of infill:
- c) The proposal does not lead to a major increase in the developed portion of the site, resulting in a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
- In the case of redevelopment:
- d) The appearance of the site as a whole is maintained or enhanced and that all proposals, including those for partial redevelopment, are put forward in the context of a comprehensive plan for the site as a whole.
- 1.24 The construction of the new dwelling will constitute inappropriate development unless one of the exceptions in the Framework is engaged. To benefit from the relevant exception in the case of this site, the applicant must demonstrate that the construction of the new buildings constitute:

- The partial or complete redevelopment of previously developed land;
- Which would not have a greater impact on the “openness” of the Green Belt; and
- Which would not have a greater impact on the purposes of including land in the Green Belt.

1.25 The Framework contains a definition of previously developed land which includes land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings. The application site includes a number of existing buildings in use as stables and garage/storage buildings. It is considered that the proposed development falls within the definition of previously developed land.

1.26 Whilst the test for sites such as this relates to the impact on openness it is important to note that the Framework contains no specific definition of ‘openness’.

1.27 In terms of scale, the starting point is what exists on the site at the present time. Whether the proposed dwelling has a greater impact on openness is a subjective judgment which is considered further below. Objective criteria could include the volume of the existing buildings, the footprint of the existing building and the height of the existing buildings although it is important to note that the Framework does not include such an allowance or capacity test.

1.28 The proposed dwelling would have a volume of approximately 25 cubic metres larger than that of the existing buildings to be demolished. The floor area of built development would be reduced by 75 square metres. On balance therefore it is considered that the proposal would have no greater impact upon the openness than what currently exists. The proposal is therefore considered to comply with the policies relating to Green Belt and therefore also complies with policy BNE3.

### **Other Issues**

1.29 As explained above, part of the site is located within the settlement area of Whittle-le-Woods for which Policy V2 of the Local Plan applies. Policy V2 states that “*Within the settlement areas excluded from the Green Belt, and identified on the Policies Map, there is a presumption in favour of appropriate sustainable development, subject to material planning considerations and the other Policies and Proposals within this Plan*”. The supporting text for Policy V2 explains that development proposals will be judged by their compatibility with existing surrounding development and their ability to satisfy material planning criteria. This includes factors such as access, parking, servicing, design and amenity, which includes an assessment of noise, emissions, disturbance because of anti-social hours of operation and traffic generation. Consideration of these issues, where relevant, is provided below.

### Design and amenity

1.30 Policy BNE1 of the Chorley Local Plan states planning permission will be granted for new development, including extensions, conversions and free standing structures, provided that:

- a) The proposal does not have a significantly detrimental impact on the surrounding area by virtue of its density, siting, layout, building to plot ratio, height, scale and massing, design, orientation and use of materials.
- b) The development would not cause harm to any neighbouring property by virtue of overlooking, overshadowing or overbearing.

1.31 The proposed dwelling, in terms of its design, is consistent with the other properties on Cross Keys Drive. The final appearance of the dwelling and use of materials can be controlled by condition to ensure it is consistent with its setting. The orientation of the

dwelling would follow the trend of the other properties on the road which curve in parallel with the road itself.

- 1.32 Neither side elevation of the proposed dwelling would contain any windows. The facing side elevation of No. 46 contains a ground floor window but this does not serve as the principal window of a habitable room. The first floor front windows of the proposed dwelling serve as the principal windows of habitable rooms and face the front garden/driveway of No.48. There are however established intervening trees along the site boundary and the proposed dwelling sits at a lower level than No.48. and the windows would be approximately 10m from the common boundary.
- 1.33 In light of the above, and given the orientation and positioning of the dwelling within the site, there would be no conflict with policy BNE1 of the Local Plan.

#### Parking

- 1.34 Policy ST4 'Parking Standards' of the Chorley Local Plan 2012-2026 requires that proposals for development will need to make parking provision in accordance with the standards set out in Appendix A of the Local Plan. Appendix A identifies the Council's minimum parking standards for new development which would be parking for three cars for this particular proposal of a four bedroom dwelling. A condition can be attached requiring the submission of a parking layout plan to be submitted for agreement. As such, it is considered there would be no conflict with this policy.

#### Public Open Space (POS)

- 1.35 The Development Plan requires affordable housing / public open space contributions for new dwellings to be provided in order to overcome the harm of developments being implemented without facilities being provided.
- 1.36 A written Ministerial statement from the 28 November 2014 sought to set a National Policy and remove the ability of Councils to secure S106 contributions on small sites (i.e. 11 or less) and resulted in the National Planning Practice Guidance (NPPG) being changed. This was challenged by a consortium of Councils in the High Court who were successful and the change to the NPPG was removed. Chorley resisted the change to the NPPG and applications were processed through Committee rather than delegated decision.
- 1.37 The Government challenged the decision of the High Court in the Court of Appeal on four grounds and the outcome was that on the 13 May the decision gave legal effect to the written Ministerial Statement of 28 November 2014. The NPPG has been changed again but highlights that the Ministerial statement should be taken into account. The Ministerial Statement (28 November 2014) carries weight in the decision making process, as does the National Planning Policy Guidance.
- 1.38 The Court of Appeal judgement does however state that "the aim or goal of a policy's author is that his policy should be followed" this remains subject to "the proper operation of s 38(6)" and that the policy guidance does not have to explicitly express that an alternative view can be reached as "the changes were introduced as policy, not binding law". The judgement goes on to highlight "In the determination of planning applications the effect of the new national policy is that although it would normally be inappropriate to require any affordable housing or social infrastructure contributions on sites below the thresholds stated, local circumstances may justify lower (or no) thresholds as an exception to the national policy. It would then be a matter for the decision-maker to decide how much weight to give to lower thresholds justified by local circumstances as compared with the new national policy" (evidence submitted on behalf of the SofS). The Council must determine what lower thresholds are appropriate based on local circumstances as an exception to National Policies and how much weight to give to the benefit of requiring a payment for 1 or 2 dwellings.
- 1.39 It is considered that the benefit of securing a public open space contribution on the basis of one/two dwellings (which would now be £134/£268) would not be sufficient or carry significant weight to outweigh the national policy position. The benefit to the Council is the

delivery of improvements to play space however the cost of managing the end to end process of delivering those improvements is high and not commensurate to the benefit. The likely success of delivering improvements is also in doubt due to the difficulty of identifying schemes to pool small amounts of money secured through Section 106 agreements.

1.40 Therefore a POS commuted sum is not requested for this scheme.

### **Community Infrastructure Levy**

1.41 The Chorley CIL Infrastructure Charging Schedule provides a specific amount for development. The CIL Charging Schedule was adopted on 16 July 2013 and charging commenced on 1 September 2013. The proposed development will be a chargeable development and the charge is subject to indexation in accordance with the Council's Charging Schedule.

### **CONCLUSION**

1.42 The proposed dwelling is not considered to have a greater impact upon the openness of the Green Belt, compared to what currently exists. As such, the proposal does not represent inappropriate development in the Green Belt. The proposal is considered to be of an appropriate scale and design and would not unacceptably impact upon the amenity of neighbouring occupants. The proposal is therefore recommended for approval.

**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

1. The proposed development must be begun not later than three years from the date of this permission.

*Reason: Required to be imposed by Section 51 of the Planning and Compulsory Purchase Act 2004.*

2. The development hereby permitted shall be carried out in accordance with the approved plans below:

Title	Plan Ref	Received On
Location Plan	000/CKD/SP	1 September 2017
Proposed Plans and Elevations	000/CKD/PL	4 September 2017

*Reason: For the avoidance of doubt and in the interests of proper planning.*

3. All new dwellings are required to achieve a minimum Dwelling Emission Rate of 19% above 2013 Building Regulations.

*Reason: Policy 27 of the Adopted Central Lancashire Core Strategy requires new dwellings to be built to Code for Sustainable Homes Level 4 however following the Deregulation Bill 2015 receiving Royal Assent it is no longer possible to set conditions with requirements above a Code Level 4 equivalent. However as Policy 27 is an adopted Policy it is still possible to secure energy efficiency reduction as part of new residential schemes in the interests of minimising the environmental impact of the development.*

4. Prior to the commencement of the development details shall be submitted to and approved in writing by the Local Planning Authority demonstrating that each dwelling will meet the required Dwelling Emission Rate. The development thereafter shall be completed in accordance with the approved details.

*Reason: Policy 27 of the Adopted Central Lancashire Core Strategy requires new dwellings to be built to Code for Sustainable Homes Level 4 however following the Deregulation Bill 2015 receiving Royal Assent it is no longer possible to set conditions with requirements above a Code Level 4 equivalent. However as Policy 27 is an adopted Policy it is still possible to secure energy efficiency reductions as part of new residential schemes in the interests of minimising the environmental impact of the development. This needs to be provided prior to the commencement so it can be assured that the design meets the required dwelling emission rate.*

5. No dwelling hereby approved shall be occupied until a SAP assessment (Standard Assessment Procedure), or other alternative proof of compliance (which has been previously agreed in writing by the Local Planning Authority) such as an Energy Performance Certificate, has been submitted to and approved in writing by the Local Planning Authority demonstrating that the dwelling has achieved the required Dwelling Emission Rate.

*Reason: Policy 27 of the Adopted Central Lancashire Core Strategy requires new dwellings to be built to Code for Sustainable Homes Level 4 however following the Deregulation Bill 2015 receiving Royal Assent it is no longer possible to set conditions with requirements above a Code Level 4 equivalent. However as Policy 27 is an adopted Policy it is still possible to secure energy efficiency reductions as part of new residential schemes in the interests of minimising the environmental impact of the development.*

6. Prior to the occupation of the dwelling, particulars showing the provision for the parking of cars and associated manoeuvring areas shall be submitted to, and approved in writing by, the Local Planning Authority. Such details as agreed shall be laid out and made available in all respects prior to the first occupation of the dwelling to which it is related and thereafter retained (notwithstanding the Town and Country Planning (General Permitted Development) Order 2015).

*Reason: In order that the Council may be satisfied with the details of the proposal and to ensure a satisfactory level of off-street vehicle park.*

7. During the construction period, all trees shall be protected in accordance with British Standard BS 5837:2012 or any subsequent amendment to the British Standards.

*Reason: To safeguard the trees to be retained.*

8. No demolition works shall occur between the 1st March and 31st August unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to works commencing and written confirmation provided that no active bird nests are present which has been agreed in writing by the LPA.

*Reason: In order to prevent any disturbance to nesting birds.*

9. As a precautionary measure, the soffit boxes and the wooden cladding on the garage shall be taken down by hand, with care, with the presence of bats borne in mind. If bats are found at any time during any of the works then work should cease immediately and advice sought from a suitable qualified bat worker.

*Reason: In order to protect a European Protected Species.*

10. A biodiversity enhancement plan shall be submitted to and approved in writing by the LPA, prior to commencement of development. The content of the plan should include enhancement features for bats and birds (to include bat boxes, bird boxes, bat bricks and native tree and shrub planting). The approved plan will be implemented in accordance with the approved details.

*Reason: In order to enhance the site's biodiversity value. This is required to be pre-commencement to offset any disturbance caused during construction works*