

Report of	Meeting	Date
*** Corporate Director (Business)	Development Control Committee	9 October 08

**PLANNING APPLICATION 08/00728/FULMAJ DEMOLITION OF EXISTING BUNGALOW, WORKSHOP AND GARAGE AND ERECTION OF 10 NO. TWO BED APARTMENTS CROW NEST COTTAGE TARNBECK DRIVE MAWDESLEY.**

**PURPOSE OF REPORT**

- To outline the reason for refusal that has been formulated in respect of the decision made at the previous committee meeting.

**RECOMMENDATION(S)**

- That the single reason for refusal identified is approved as the sole reason for refusal.

**EXECUTIVE SUMMARY OF REPORT**

**REASONS FOR RECOMMENDATION(S)**

**(If the recommendations are accepted)**

- The single reason for refusal identified is one that can be supported with evidence that can be used to counter any appeal made against this refusal.

**CORPORATE PRIORITIES**

- This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region	√	Develop local solutions to climate change.	
Improving equality of opportunity and life chances	√	Develop the Character and feel of Chorley as a good place to live	√
Involving people in their communities	√	Ensure Chorley Borough Council is a performing organization	√

## **BACKGROUND**

5. Following the refusal of planning permission for the above development, the formulation of the reason for refusal was delegated to the Development and Building Control Manager in association with the Chair of the Development Control Committee.

## **POSITION**

7. Following the review of the possible grounds of refusal and the previous Planning Inspectors report a single reason for refusal has been identified as set out below:

The proposed development is proposed to be served by an access on to Tarnbreck Drive and the access emerges onto the outside bend of Tarnbreck Drive. As part of the consideration of the application there was an essential requirement to provide a visibility splay (supported on the previous appeal decision) and the land required for the visibility splay incorporates land in other peoples ownership. At the previous appeal concerning the same development type the matter of the visibility splay was considered, the visibility splay was considered essential but a Grampian Condition was thought to be appropriate because there was little evidence to indicate the purchase of the land and provision of the visibility splay was not a real prospect. The current application also requires the provision of a visibility splay within other peoples land ownership (since the appeal decision in early 2006 the applicant has had the opportunity to secure the purchase of the visibility splay and has failed to do this) and the land owner's executor has specifically written to say the land will not be sold to the developer for the purpose of the visibility splay. In accordance with current legal practice the visibility splay has now no prospect at all of the action in question being performed within the time-limit imposed by the permission. As such the application site cannot be served by a safe and adequate access and the proposal would be unacceptable on the grounds of highway safety.

8. In advising the Committee about a reason for refusal, officers must provide that advice, in full knowledge that a reason for refusal that can not be justified on appeal may give rise to a claim for costs against the Council. The above reason is one that can be supported at appeal and one where the Inspector did not at the time have sufficient grounds to discount a Grampian Condition at the previous appeal. The evidence that the land that forms the visibility splay will not be available to the developer is now stronger and could be viewed as sufficient to support an appeal with a reduced chance of a claim for costs.

## **Conclusion**

Following consideration of the case and the limited discussion at the previous committee meeting the only ground identified that can be presented and supported at appeal is the ground presented above. Alternative grounds to refuse the application present a higher risk of an award of costs against the Council and have been discounted as an option.