

## APPLICATION REPORT – 23/00163/PIP

**Validation Date: 22 February 2023**

**Ward: Chorley North East**

**Type of Application: Permission In Principle**

**Proposal: Permission in principle application for up to 9 no. detached dwellings**

**Location: Land 85M East Of 48 Town Lane Whittle-Le-Woods**

**Case Officer: Mr Iain Crossland**

**Applicant: Miss Kerrigan**

**Agent: John Manley**

**Consultation expiry: 24 March 2023**

**Decision due by: 29 March 2023**

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### RECOMMENDATION

1. It is recommended that permission in principle is granted subject to conditions.

### SITE DESCRIPTION

2. The application site is located within Safeguarded Land as defined by policy BNE3 the Chorley Local Plan 2012 – 2026 and is located immediately north of the existing settlement area at the urban fringe. It comprises open grassland located to the south of Town Lane and lies between residential dwellings at no.48 Town Lane to the west and no.72 Town Lane to the east.
3. The site itself stretches along the road frontage though it is not deep. The land slopes from east to west and north to south across the site, with a steep change in levels down to a water course along the southern boundary. There are trees and shrubs to the periphery of the site, other than which it is open ruderal grassland.
4. The character of the area is that of urban rural fringe with suburban housing estate to the south and west and open land to the north and east. There are more traditional buildings of agrarian origins along Town Lane and adjacent to the application site, which are constructed of local sandstone. It is noted that there is a Biological Heritage Site known as Lucas Lane Pasture to the south of the application site beyond the watercourse.

### DESCRIPTION OF PROPOSED DEVELOPMENT

5. This application seeks permission in principle for up to 9 no. detached dwellings. Paragraph 012 of the National Planning Practice Guidance (NPPG) on Permission in Principle, states that *“the scope of permission in principle is limited to location, land use and amount of development. Issues relevant to these ‘in principle’ matters should be considered at the permission in principle stage. Other matters should be considered at the technical details consent stage. In addition, local authorities cannot list the information they require for applications for permission in principle in the same way they can for applications for planning permission.”*

6. The permission in principle process came into force on 15 April 2017 with the government intention of simplifying the planning process for developers, and to give developers more certainty over whether a site is suitable for development ahead of going to the expense of working up more detailed proposals necessary to obtain full planning permission. The government expected this to encourage new development and increase the amount of land available to build on, thereby helping to boost housing supply. While the council has been clear that it prefers a locally-led planning process, as the local planning authority, the current NPPG has to be followed.

## REPRESENTATIONS

7. Cllr Mark Clifford: Has made the following comments:

As member responsible for Environment and Green Space at Chorley Council I wish to strongly object to planning application 23/00163/PIP.

The land in question is completely unsuitable for any housing as it is a contaminated landfill site with dangerous vehicular access onto Town Lane. The financial cost to make this area safe for habitation would likely outweigh several times what any sane person would be willing to pay for building land.

Granting permission in principle for this land does not make sense on any level. The land cannot be cleaned up safely without contaminating the wider area and the river running behind it. What's in the ground at this old landfill site should stay in it and not be disturbed.

I have a large file from the Environment Agency and within it there are historical recommendations from agencies such as North West Water to object to any planning on this site. The site was deemed unsuitable in the 1980's for development when environmental concerns and regulations were much weaker. The site has not got any better since.

8. Representations in objection have been received from 10no. individuals raising the following issues:
  - The land is heavily contaminated.
  - Highway safety issues
  - Surface water flood risks downstream of the site
  - Ecological harms.

## CONSULTATIONS

9. Whittle-le-Woods Parish Council: Have made the following comments:

The Parish Council comprises people who have lived in the village for decades. Our response is based on local knowledge and the living memory of senior residents. It is supported by official documents held by CBC, Manager of Waste Services. We are aware the site was used as landfill in the last century. It is widely understood to contain asbestos. There is a strong belief that illegal tipping also took place reportedly, on occasions, during hours of darkness. The land now appears neglected and the perimeter fencing has not been maintained in some time. A levelling exercise undertaken in recent years has resulted in a mound/build-up at the western end with no supporting wall. Drainage to the south will be into a natural stream which crosses a BHS, and residential gardens, on its way to the River Lostock.

Neighbours report witnessing occasional 'mini explosions' which suggests to us methane still builds up; we understand there have been methane venting pipes in the ground but these are no longer visible. Observations from the road suggest the foliage to be unhealthy and less than natural growth over time. We believe this may be a symptom of inadequate capping off when tipping ceased. Additionally, we have a report of Japanese knotweed to the south western side, which we believe was treated several years ago.

There is no doubt in our minds that this land could benefit from expert attention but we have grave misgivings regarding its suitability for development. The Parish Council OBJECTS to any decision that indicates development is possible unless detailed, investigative,

professional plans are presented, and agreed, by CBC in the first instance. These must establish exactly what is buried and how it could be made safe. We expect this would mean removal and many large vehicles on Town Lane, with the inherent risks already known to LCC Highways. We would wish to see expert monitoring for potential contamination of the local watercourse, should the land be disturbed.

10. United Utilities: Comment that should the applicant receive Planning in Principle permission for this proposal, United Utilities will review the drainage element of any application for Technical Detail Consent in line with the surface water hierarchy. United Utilities will request evidence that the drainage hierarchy has been fully investigated and why more sustainable options are not achievable before a surface water connection to the public sewer is acceptable.
11. Contaminated Land Officer: Have made the following comments:

I am concerned about this proposal to develop housing on a former landfill site. There are known issues historically with landfill gas and asbestos in the site, which must be very carefully managed if the site is to be disturbed. There is also anecdotal evidence of historic illegal and unlicensed tipping activity at this site so the contamination status is not known.

If the site is to be developed, a comprehensive environmental ground investigation would be required strictly prior to any development. This would need to identify the risks to construction workers, future end users, and any neighbouring properties. It is highly likely that the development of the site would require significant remedial works to ensure the site is safe and suitable for development.

## **PLANNING CONSIDERATIONS**

12. In terms of location, land use, and amount of development, the key consideration in the determination of this application is that the site is situated within an area designated as Safeguarded Land under policy BNE3 of the Chorley Local Plan 2012 – 2026.
13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan for any determination then that determination must be made in accordance with the plan unless material considerations indicate otherwise.
14. The Development Plan comprises the adopted Central Lancashire Core Strategy (2012) and the adopted Chorley Local Plan 2012- 2026.
15. The Central Lancashire Core Strategy was adopted in July 2012 and covers the three neighbouring authorities of Chorley, South Ribble and Preston. The three authorities are a single Housing Market Area (HMA).
16. Core Strategy Policy 4 sets out the minimum housing requirements for the plan area and is assessed later within this report.
17. The site forms a very small section of a vastly larger area of safeguarded land, protected by policy BNE3 of the Chorley Local Plan 2012-2026, known as BNE3.10 'West of M61, Whittle-le-Woods' which covers land between Whittle-Le-Woods and the M61. Policy BNE3 indicates that development other than that permitted in the countryside whether Green Belt or Area of Other Open Countryside will not be permitted as shown on the policies map.

### Other material considerations

18. The National Planning Policy Framework (the Framework) is a key material consideration. The purpose of the planning system is to contribute to the achievement of sustainable development. There are three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). There are three objectives to sustainable

development set out at paragraph 8 and it is fundamental that development strikes the correct balance between:

1. Environmental - the protection of our natural, built and historic environment
2. Economic - the contribution to building a strong and competitive economy
3. Social - supporting strong, vibrant and healthy communities

19. Paragraph 10 of the Framework states that; so that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11).
20. Paragraph 11 of the Framework states for decision-taking this means:
  - c) approving development proposals that accord with an up-to-date development plan without delay; or
  - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
    - a. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
    - b. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
21. The Footnote (6) to paragraph 11 sets out examples of the type of policies that may indicate development should be refused. Footnote 7 makes clear that the tilted presumption in favour of sustainable development will apply where a Local Planning Authority cannot demonstrate a five-year supply of deliverable housing sites.
22. Paragraph 59 of the Framework confirms the Government's objective of significantly boosting the supply of homes.
23. Paragraph 60 of the Framework reinforces that requirements represent the minimum number of homes needed.
24. Paragraph 73 of the Framework requires Local Planning Authorities to maintain a supply of deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategies or against their local housing need where the strategic policies are more than five years old. Footnote 37 states in circumstances where strategic policies are more than five years old, five year housing land supply should be calculated against Local Housing Need calculated using the Government standard methodology, unless those strategic policies have been reviewed and found not to need updating.

#### *Housing land supply*

25. It is therefore necessary to establish whether Chorley has a five year housing land supply (5YHLS) or not in order to determine whether Paragraph 11(d) of the Framework is engaged or not (commonly referred to as the 'tilted balance'). When engaged, the tilted balance changes the 'balancing exercise' which the Council must undertake in deciding whether or not to grant planning permission; from a neutral balance where if the harms outweigh the benefits planning permission is usually withheld, to a tilted balance where the harm should significantly and demonstrably outweigh the benefits for permission to be withheld. The tilted balance therefore increases the prospect of planning permission being granted because it 'tilts' the balance in favour of approving an application.
26. At 1st April 2022 there was a total supply of 1,890 (net) deliverable dwellings which is a 3.3 year deliverable housing supply over the period 2022 – 2027 based on the annual housing requirement of 569 dwellings which includes a 5% buffer.
27. Recent appeal decisions concluded that it is appropriate to calculate the housing requirement against local housing need using the standard method, as such the Council can no longer demonstrate a 5-year supply of housing land meaning that the tilted balance, and

presumption in favour of sustainable development is, therefore, engaged under paragraph 11(d) of the Framework.

#### *Emerging Central Lancashire Local Plan*

28. Chorley Council is working with Preston and South Ribble Councils to produce a Central Lancashire Local Plan (CLLP). Once adopted, this will replace the existing joint Core Strategy and Chorley Local Plan. The CLLP is at an early stage of preparation and consultation on Issues and Options closed in February 2020. The Central Lancashire Local Plan (CLLP) is at the Preferred Options Stage and public consultation on Preferred Options Part 1 closed in February 2023.
29. The application site, including land to the north of Town Lane, was submitted for consideration as part of the Local Plan process. The site was included in the Preferred Options Part 1 consultation as part of the larger site ref CH/HS1.53. Responses to this consultation are being reviewed and will inform Preferred Options Part 2, which is expected later this year. A number of assessments are ongoing and will inform decisions made on sites to be taken forward as part of the development of the CLLP
30. The emerging CLLP will look at the distribution of new homes and the CLLP will be informed by an evidence base including a Housing Need and Demand Study, the results of which will also help to inform the future distribution of housing across the Plan area. Limited weight can be attached to the emerging local plan at this stage.

#### *Summary - the tilted balance*

31. Paragraph 11 d (ii) of The Framework essentially comes into play whereby the most important policies for determining an application are out of date, then planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
32. Policy 4 of the Central Lancashire Core Strategy and policy BNE3 of the Chorley Council Local Plan are the most important policies for determining the planning application.
33. At 1st April 2022 there was a total supply of 1,890 (net) deliverable dwellings which is a 3.3 year deliverable housing supply over the period 2022 – 2027 based on the annual housing requirement of 569 dwellings which includes a 5% buffer. Chorley does not have a five-year deliverable supply of housing plus 5% buffer and the shortfall is significant. Significant weight should therefore be attached to the delivery of housing provided by this proposal.
34. The Borough cannot show a 5-year HLS and as such Core Strategy Policy 4 is out-of-date.
35. Paragraph 143(d) of the Framework sets out that when defining Green Belt boundaries, plans should make clear that 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 an update to a plan that proposes the development. Policy BNE3 is consistent with the Framework in this respect. However, the boundaries of the settlements and safeguarded land to which they relate were established based on meeting the housing requirement in Policy 4 of the CS, which is out of date. This means that Policy BNE3 is also out of date.
36. Taking the development plan as a whole, the most important policies for determining this appeal are out-of-date and the tilted balance applies.
37. In accordance with the Framework, planning permission should be granted for the proposal, unless:
  - a. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

- b. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

#### *Other issues*

- 38. Issues such as land contamination, ecological impacts, flood risk and highway safety and traffic congestion raised within the representations and by the Parish Council are technical matters that could only be assessed as part of any future detailed consent application. They fall outside of what the Council can assess as part of this current application, as set out in the above paragraph from the NPPG.

#### Applying the tilted balance

- 39. Paragraph 11. d) ii. of the Framework indicates that, where the most important development plan policies for determining the application are out-of-date, planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; the tilted balance.
- 40. As previously noted in this report, the scope of a permission in principle application is limited to location, land use and amount of development. Other matters such as highway safety, contaminated land, and biodiversity. can only be considered at the technical details consent stage.
- 41. With regards to the amount of development, whilst some changes may be required to ground levels to form a development platform, it is considered that it is possible that up to nine detached dwellings could be adequately located on the application site with space for vehicle manoeuvring / parking, gardens and landscaping. This is, however, without the benefit of being able to consider detailed ground investigations and other physical constraints to development.
- 42. The adverse impacts of the development relate solely to its conflict with policy BNE3 in locational and land use terms. Whilst BNE3 is broadly consistent with the Framework it is also out of date as it safeguards land based on the housing requirement in policy 4, which is also out of date. The conflict with policy BNE3 is, therefore, only afforded limited weight in the planning balance.
- 43. In terms of benefits, there would be some moderate economic benefits through the creation of work in the construction industry and demand for services and products within the local supply chain, whilst there would be some increase in the expenditure available to local businesses and tax income for the local authority from Council Tax through the end use.
- 44. There would be a clear and significant social benefit of the development in contributing towards the shortfall in housing land supply in the Borough.
- 45. The proposal would boost the supply of housing, albeit on a small scale, in a situation where there is no five-year supply and, as a result, significant weight can be given to the social benefits of the proposal. It is considered that the economic benefits for proposal would be modest and so can be afforded moderate weight.
- 46. It is not considered that the adverse impacts of the proposed development relating to the conflict with policy BNE3 of the Local Plan would significantly and demonstrably outweigh the economic and social benefits of the proposal when applying the tilted balance. The scheme therefore benefits from the presumption in favour of sustainable development, and as such, the proposal is recommended for approval.

#### Other matters

- 47. Contaminated land: It is known that the site has been used for landfill purposes in the past and that the levels and type of contamination that may exist are not recorded. There would

clearly be great difficulties in addressing the necessary levels of remediation that would be required to carry out a residential development on this land, and that such remediation may be ultimately prohibitive. However, this matter is not for consideration as part of an application for permission in principle and could only be examined as part of a technical details consent application that must follow on from any grant of permission in principle should the development of the site be pursued.

## **CONCLUSION**

48. The principle of erecting up to 9no. detached dwellings at the application site is considered acceptable in terms of location, land use and the amount of development, as the adverse impacts of the proposal do not significantly and demonstrably outweigh the economic and social benefits it would deliver. It is, therefore, recommended that permission in principle is granted, subject to conditions.

## **RELEVANT HISTORY OF THE SITE**

**Ref:** 80/00797/FUL      **Decision:** REFFPP      **Decision Date:** 20 October 1980  
**Description:** Improvement to vehicular access, tipping inert filling material and re-grading/re-soiling site,

**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

To follow