

Special Development Management Committee

Wednesday 18 December 2013 (2.30pm)

Late Observations Schedule

Schedule Items

<u>Item</u>	<u>App No</u>	<u>Observations</u>
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1	12/0118	
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Revised Recommendation:

Notification was received from the National Planning Casework Unit (NPCU) on December 16th that any decision to approve the application should be subject to Call In by the Secretary of State for Communities & Local Government (SoSCLG).

Therefore, the recommendation should be changed to: **Minded to Approve subject to referral to the SoSCLG.**

Alterations to Conditions:

As a result of further representations and in order to clarify the conditions set out on the order paper, the following revisions to conditions and reasons are proposed.

Change condition 2 to read: The site shall only be occupied as permanent accommodation by Gypsies & Travellers as defined in Annex 1 of DCLG Planning Policy for Traveller Sites (March 2012).

Change the reason for condition 2 to read: In order to ensure the site is occupied by Gypsies & Travellers as the grant of planning permission for a residential caravan park or a holiday caravan park may not be appropriate in this locality and as the use of the site as transit accommodation would lead to an unacceptable increase in towed vehicular movements.

Change the reason for condition 7 to read: In the interests of residential amenity & ecology.

Change the reason for condition 8 to read: To enhance the quality of the development in the interests of the amenities of the locality and to ensure adequate hard surfacing to prevent materials being brought onto the highway.

Add conditions 13 & 14 relating to highway matters:

Condition 13: No part of the development hereby approved shall commence until a scheme for the construction of the site access and the off site highway works of improvement has been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to satisfy the Local Planning Authority that the final details of the highway scheme/works are acceptable before work commences on site.

Condition 14: No part of the development hereby approved shall be occupied until the approved scheme referred to in condition 13 has been constructed and completed in accordance with the scheme details.

Reason: In order that the traffic generated by the development does not exacerbate unsatisfactory highway conditions in advance of the completion of the highway scheme/works.

Further Consultation replies received:

A letter from Sanderson Associates (see attached), who are Transport Consultants acting on behalf of the Newton Residents Association (NRA) has been sent to Lancashire County Council (LCC) Highways.

LCC Highways have submitted a response on the 13th December (see attached) which now recommends, *'I consider that it would be inappropriate to grant planning permission, however, should you be mindful to grant planning permission I would ask that conditions are imposed,'* and these conditions are listed in the response.

LCC Highways have submitted a further consultation response on the 16th December (see attached). They conclude: *'We see no highway grounds for objection relating to the issues covered by the conditions (risk of loose materials in the highway; safe access junction; lighting & safe walking surface in Thames Street; delivery of improvements before site occupation).'*

We believe it is a matter for Fylde BC to determine the weight and significance to be attached to this situation given that it is an FBC policy and consequently it does not offer LCC grounds for a highway related objection. Therefore we would not wish to see it become a highways reason for refusal and would not wish to defend it an appeal process.'

A letter from the Fylde MP, Mr Mark Menzies was received on Tuesday December 17th and is attached to this schedule.

A further response was sent on Saturday 14th December by Mr. Peter Tufnell on behalf of the NRA:

All issues raised in this letter are dealt with in the original report. The following information is provided as clarification.

Where the report refers to the site as a Builders Yard, it is used as a form of shorthand for the storage of Building Contractor's Materials.

The matter of abandonment is considered at page 25 of the Report.

Abandonment is concept used in the planning law system that has developed through case law to address circumstances of a break or interruption of use where there has been no actual change of use. A range of factors based on the evidence relating to the site have to be taken into account. There is no evidence available that indicates that the use of the site for the storage of builders' materials has been abandoned during the period from 2008, when the Lawful Development Certificate was issued. Should that use be found to be abandoned then the site would have a "nil" use and any subsequent development would require planning permission. There is no support for the argument that the use would be agricultural.

Conclusion: The late submissions contain no new issues which have not already been covered in the report. Counsel's opinion has been received and the conditions as set out in the Agenda, fulfil the tests of Circular 11/95. Therefore, the officer conclusions remain unchanged

Glenn Robinson
Lancashire County Council
PO Box 78
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11 December 2013

alison.france@sandersonassociates.co.uk

By Email only
glenn.robinson@lancashire.gov.uk

Our ref : 6697/AJF/ASL/005

Dear Glenn

**Change of Use of Land to 4 No. Gypsy Caravan Plots with Amenity Block and Ancillary Works at Builders Yard, Thames Street, Newton with Clifton
Planning Application Ref: 12/0118**

I refer to the comments you have made with regard to this planning application which are also included within the Special Development Management Committee Meeting Agenda to take place next week.

Your most recent comments which I believe are dated 13th September 2013, come to a conclusion which states:

"Overall, whilst the highway network here is not ideally suited, to an increase in vehicular activity, I do not consider there to be sufficient detriment to highway safety or highway capacity to raise a highways objection".

I would refer you however, to our report which was submitted to the Council summer 2012 that clearly provided empirical evidence of the traffic generation that would take place from the proposed use. I would refer, in particular to paragraphs 3.18 and 3.19 in our report.

As a result of detailed surveys that we undertook in Fylde at a site in Hardhorn, it was proven that the development of gypsy family caravans, during a 15 hour period, would result in a significant level of traffic generation. Utilising the empirical data that we have from those surveys, the proposed four pitches would generate in the order of 30 vehicle movements. As stated in our report, that in comparison to a trip rate for a standard house, which is in the order of approximately six trips in a 24 hour period, that the empirical data that we hold indicates a higher potential trip rate per pitch, even before a projection of a 24 hour period is made.

Notwithstanding this trip rate and calculations, the current traffic movements to and from the site are minimal and from the information supplied by existing residents, is in the order of only two to three trips per day. This situation is understood to have been prevalent since the 1970's.

Therefore, I consider that this proposal would have a significant increase in traffic generation, on what you have already stated in your report to the Planning Committee as a highway network that is not ideally suited to an increase in vehicular activity. From the empirical evidence we have supplied, the traffic generation would be greater than you have included in your response to the Planning Committee.

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I consider that this needs to be reviewed again prior to the Special Development Management Committee Meeting, which I believe is scheduled to take place next Wednesday at 2.30pm.

I also consider that the sub-standard layout and construction and lighting of Thames Street needs to be considered, particularly its ability to physically and safely accommodate the vehicle movements and also pedestrian and cyclists movements that would be generated by the proposed development, travelling to and from the site from Newton.

Also, from a sustainable aspect, I consider there is a lack of facilities with regard to shopping, service support, healthcare and higher education that can be accessed by sustainable modes of travel in Newton.

I would therefore request that you re-consider your comments as promptly as possible.

I have forwarded a copy of this letter by email today, to Mike Atherton, the Planning Officer at Fylde Borough Council, dealing with this application and also the representatives of Newton Residents Association.

I look forward to receiving your updated response.

Yours sincerely



Alison France I Eng, FIHE AMICE MCIHT
Director

Copy to: Mike Atherton - Planning Office Fylde Borough Council
 Newton Residents Association
 Robert Greenwood - SA

Planning application 12/0118

Proposed change of use of land to 4No. Gypsy Caravan plots with amenity block and ancillary works.

Builders yard, Thames Street, Newton with Clifton.

The following comments relate to a review of the documentation associated with the above planning application.

Since highway comments were made on this planning application further correspondence has been received from transport consultants on behalf of local residents opposed to the planning application.

The transport consultants have carried out a traffic count at a "travellers" site located elsewhere within Fylde. From this they have stated that this site is likely to generate in the order of 30 vehicle movements per day and compare this to a trip rate for private housing of 6 trips per day per dwelling (24 vehicle movements in total).

The TRICS database is the industry standard for establishing trip rates at developments. However, there are limited sites within the database that could be used to accurately forecast the trip rates here. I have no issues with the methodology used by the consultants to establish the likely trips here.

When assessing the impact of development traffic on the highway network the impact in the peak hours tends to be the most critical. In general terms it is accepted that around 10% of development traffic occurs in the peak hours. Here this would equate to around 3 vehicle movements in each of the am and pm peaks.

Thames Street is very lightly trafficked by vehicle and whilst 30 additional daily vehicle movements would be a significant percentage increase in vehicle numbers it would be difficult to argue that this would have any impact on highway capacity.

Thames Street is in general a single vehicle wide and not generally suited to two-way vehicle movements the level of vehicle movements associated with this development would rarely lead to two vehicles being in conflict.

The transport consultants have produced vehicle tracking plans which show that when a caravan is being towed it would require the full carriageway width available in order to negotiate the lane. Whilst this is not ideal in access term given the level of vehicle conflict I cannot consider this to lead to a significant highways issue.

Thames Street is in general in a poor state of repair with numerous potholes and edge of carriageway deterioration. Whilst its condition will help in keeping vehicle speed low it does present problems for pedestrians and cyclist.

Thames Street is unlit and this together with its poor general condition would make it hazardous for pedestrian and cyclists to access the site.

Policy HL8 contains 10 points that need to be met before a traveller / gypsy site can be considered acceptable. Point 5 states that "the proposed site is within or close to a settlement which can provide a Primary School, Public Transport, Shops and other Community Services and Facilities". I consider that this is only partially met, there is a limited bus service and little in the way of shops and other community services and facilities. Point 7 states that "there is safe vehicular and pedestrian access to the site and adequate parking for vehicles, caravans and other equipment". Again, I consider this only to be partially met, as I do not consider there to be safe pedestrian access to the site.

In order to satisfy the Highway Authority that a safe means of pedestrian access is available street lighting would need to be introduced on Thames Street so that a continuous system of street lighting is provide to Grange Lane as well as making improvements to the surface of Thames Street so that it is safe for pedestrians to use.

Whilst the improvements to Thames Street could be secured through an appropriate planning condition the lack of shops and community services and facilities cannot be secured.

In view of the above I consider that it would be inappropriate to grant planning permission, however, should you be mindful to grant planning permission I would ask that the following conditions be imposed.

1. That part of the access extending from the highway boundary for a minimum distance of 5m into the site shall be appropriately paved in tarmacadam, concrete, block pavours, or other approved materials. Reason: To prevent loose surface material from being carried on to the public highway thus causing a potential source of danger to other road users.
2. No part of the development hereby approved shall commence until a scheme for the construction of the site access and the off-site works of highway improvement (street lighting and surfacing to Thames Street) has been submitted to, and approved by, the Local Planning Authority in consultation with the Highway Authority. Reason: In order to satisfy the Local Planning Authority and Highway Authority that the final details of the highway scheme / works are acceptable before work commences on site.
3. No part of the development hereby approved shall be occupied or opened for trading until the approved scheme referred to in Condition 2 has been constructed and completed in accordance with the scheme details. Reason: In order that the traffic generated by the development does not exacerbate unsatisfactory highway condition in advance of the completion of the highway scheme / works.

Note. The grant of planning permission will require the applicant to enter into an appropriate Legal Agreement with the County Council as Highway Authority. The Highway Authority hereby reserves the right to provide the highway works within the highway associated with this proposal. Provision of the highway works includes design, procurement of the works by contract and supervision of the works. The applicant should be advised to contact the Environment Directorate in the first instance to ascertain the details of such an agreement and the information to be provided.

Regards
Glenn

Martin, Nicola

From: Crompton, Rachel <Rachel.Crompton@lancashire.gov.uk>
Sent: 16 December 2013 11:02
To: Martin, Nicola
Cc: Atherton, Mike; Evans, Mark; Robinson, Glenn
Subject: RE: Thames Street 12/0118

Dear Nicola,

I regret that when we spoke on Friday, I didn't realise that Glenn is on leave today and unable to help us directly by providing the clarity you seek before your Chair's briefing at 1.30pm. However the comments attached to your colleague Mike Atherton's email are sufficiently clear to me for me to be confident in providing that clarity for you.

Glenn has identified the 3 conditions we recommend are necessary to overcome the key access deficiencies with the proposed development. We see no highways grounds for objection relating to the issues covered by the conditions (risk of loose material in the highway; safe access junction, lighting and safe walking surface in Thames Street; delivery of improvements before site occupation).

He has also identified that the proposals lack the ready access to schools and community facilities required by Fylde BC's Local Plan policy HL8. We believe it is a matter for Fylde BC to determine the weight and significance to be attached to this situation given that it is an FBC policy, and consequently it does not offer LCC grounds for a highway-related objection. Therefore we would not wish to see it become a highways reason for refusal and would not wish to defend it in an appeal process.

I hope this is sufficiently direct to clear up any residual misunderstandings? I shall try to catch you by telephone to ensure the message reaches you in time.

Thank you for giving me the opportunity to check over this matter before decisions are taken,

Rachel Crompton, Developer Support Manager
Lancashire Highways Service
Lancashire County Council
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HOUSE OF COMMONS
LONDON SW1A 0AA

FYLDE BOROUGH COUNCIL

17 DEC 2013

Allan Oldfield
Fylde Borough Council
Town Hall
Lytham St Annes
FY8 1BR

13 December 2013

Dear Allan,

RE: Travellers site at Newton – planning application 12/0118

I am writing after I was contacted by a large number of residents from Newton-with-Clifton regarding a planning application for a permanent travellers site at Thames Street in the village, which has been earmarked for approval at this week's meeting of the Development Management Committee.

Obviously this is a scheme which has caused considerable concerns locally and I understand the council's planning department has been in discussions with a group of residents in the run-up to an application being submitted.

While I entirely respect the role of the borough council as the local planning authority and would not wish to be charged with trying to impose my will on councillors, as Fylde's Member of Parliament I felt that on this occasion I must raise the matter with you formally.

In my view, having visited the site personally, I feel the area is completely inappropriate for this type of use and the planning committee should be looking at refusing the scheme.

The site sits adjacent to residential housing and the road network locally would mean heavy vehicles must pass alongside village homes and the local school to access the land. I also understand there could be issues with flooding and sewerage at the site.

I am also concerned that residents have told me they have been given the minimum time required to respond to this proposal before it has been scheduled to be heard at a Development Management Committee meeting and would at the minimum request the hearing is deferred so there can be no allegations that the council has not given suitable notice or has tried to force the scheme through.

It is my understanding that Fylde Borough's Local Plan has confirmed there is no obligation to provide permanent accommodation for travellers due to the size and population of the borough.

However, local residents, and their planning advisor, believe the council has recommended this scheme for approval based on the expectation that future guidance, as part of the duty to co-operate, will show that Fylde must make allowances for sites of this nature due to the large number of pitches needed in Blackpool.



While I appreciate the council has already been involved in a long drawn-out battle over the site in Staining I would not expect that to colour any potential decisions on future development plans of this nature.

Many thanks, as ever, for taking the time to read this letter and allowing me to raise my concerns and those of the residents of Newton.

Yours,

Mark Menzies
Member of Parliament for Fylde
www.markmenzies.org.uk

CC: Councillor David Eaves, Councillor Trevor Fiddler and Councillor Ben Aitken



**RESPONSE TO THE PLANNING OFFICER'S REPORT
TO DEVELOPMENT MANAGEMENT COMMITTEE
APPLICATION 12/0118**

**CHANGE OF USE OF LAND TO USE AS A
RESIDENTIAL CARAVAN SITE FOR
4 NO. GYPSY FAMILIES, EACH WITH 2 NO. CARAVANS,
TOGETHER WITH THE ERECTION OF AN AMENITY BLOCK,
ERECTION OF A BOUNDARY FENCE, INSTALLATION OF A
PACKAGE SEWAGE TREATMENT PLANT, THE FORMATION
OF A LANDSCAPED MOUND AND ALTERATIONS TO THE
VEHICULAR ACCESS.**

**LAND AT THAMES STREET, NEWTON, PRESTON, LANCs. PR4 3RH
SUBMISSIONS BY PETER H. TUFNELL Dip.TP MRTPI
ON BEHALF OF NEWTON RESIDENTS ASSOCIATION (NRA)**

OUR REF: T1118

T1118 Report 12.12.13r

1. INTRODUCTION

- 1.1 This response to the Officer's Report is provided to assist understanding of the proposals and their consideration and to ensure that NRA's submissions are understood, and taken into account in the balance of material considerations.
- 1.2 From here on this response Report refers to headings within the Officer's Report for ease of reference.

2. SITE DESCRIPTION AND LOCATION

- 2.1 Reference to previous use of the site as a "Builder's Yard" does not accurately reflect the previous use of the site or its past relationship with a former Builder's Yard and Premises on a different site in the village, on the corner of Bryning Lane and Grange Lane. As referred to under the heading Relevant Planning History, a Certificate of Lawfulness (granted on the 29th August 2008) describes the use of the land for "storage of building contractor's materials". I will return to the issue of the Certificate of Lawfulness, but it must be said that the use set out in the Certificate is not as broad and open as "a Builder's Yard" and it is wrong and misleading to continue to refer to the site as a Builder's Yard. The description, rather than simply referring to residential property to the north should rightly refer to the site being bounded by residential curtilage to the east, north and west. Where reference is made to the Grade II Listed Building, Dagger Cottage it should be noted that the "curtilage" of that cottage shares a common boundary with the Application Site (its western boundary) of some 30 metres. The curtilage of Grade II Listed Dixon's Farm House adjoins Dagger Cottage some 25 metres to the west of the Application Site. The context on all but the southern boundary is residential. Across Thames Street on the

southern boundary the site context is agricultural (as set out in the Report), but also includes a dwelling.

3. DETAILS OF PROPOSAL

- 3.1 The Officers explain that the Application is partly retrospective and set out the works that have been undertaken. The description of development should be amended to include the phrase “part retrospective”.
- 3.2 The Applicant appears to have accepted that due to site and access constraints the site is unsuitable for mobile home type caravans.

4. RELEVANT PLANNING HISTORY

- 4.1 The Certificate of Lawfulness referred to earlier has been the subject of debate. NRA has submitted to FBC that there is allegedly evidence that the Certificate was issued taking account of false or misleading information. FBC has considered whether the Certificate should be revoked and concluded, on the basis of evidence available that it should not. NRA understands, but does not share FBC’s view, and considers that the matter should be kept under review, should further information become available. (Further discussion on the Certificate of Lawfulness will follow).

5. CONSULTATION RESPONSES

- 5.1 It is noted that Local Planning Authorities invariably précis consultation responses. In doing so it is possible that material content may not properly be before Members, which is of concern. In this case the Officer’s Report provides detail of responses from consultees.

- 5.2 By contrast neighbour observations, including those submitted by or on behalf of NRA are simply set out in lists of issues. We are concerned that the Report does not properly present the submissions made, or give them due weight.
- 5.3 The Planning Policy Team's response properly identifies conflict with the Development Plan, e.g. conflict with Policy SP2 and with Policy HL8. The Policy Officer advises that these clear policy conflicts need to be balanced with National policy, including "The Framework" and "PPfTS".
- 5.4 The Environment Agency's response is that the site is defined on the Environment Agency Flood Map as having a low probability of flooding and despite to being adjacent to areas of Flood Zone 2 (medium risk) and Flood Zone 3 (high risk) the Application Site itself is not shown to be at risk. Such a response is on the basis that the flood map is correct. Flood maps are based partly on empirical evidence and partly on modelling. The maps are invariably not correct in terms of precise boundaries. The only way to ensure that the site is not at risk, (and identify which Zone the site actually fell within), would be to undertake a site specific Flood Risk Assessment. In this case even basic information such as site levels, comparing with levels in the high risk Flood Zone 3 have not been provided. Caravans have a status as "highly vulnerable" to flooding, and accordingly the precautionary principle should apply.
- 5.5 From the information currently available the relationship between: the potential for flooding; drainage; and land contamination, is not properly understood. Consultation should be undertaken with Lancashire County Council, as Lead Flood Agency, in respect of pluvial flooding. This does not appear to have been undertaken.

- 5.6. The drainage condition recommended by the Environment Agency is potentially a “disguised Refusal” and will (in our view) fail the tests of Circular 11/95. In order to impose a condition the decision maker needs to be reasonably confident that the terms of the condition can be complied with. The Environment Agency is clearly not confident, and indicates that alternative drainage arrangements are available. Such alternatives are not being considered as part of this planning process. The alternatives have potential off-site or highway implications that would need to be properly assessed, if they were before the LPA. A decision taken on this basis would not be sound.
- 5.7 LCC (Ecology) response is based on there being no ponds within 250 metres of the Application Site area. However there are ponds and other water features in closer proximity (and also within 500 metres) which have not been properly assessed. The effects of the proposals on ecology and biodiversity are not fully or properly understood, due to the lack of information provided by the Applicant.

6. COMMENT AND ANALYSIS

- 6.1 I agree with the Officer’s Report that Borough Local Plan Policy, HL8 is highly relevant, as it is in general conformity with National Policy. The Officer’s Report quotes from paragraphs 21 and 22 of the PPfTS but these should not be taken out of context. For example they should be balanced with paragraph 20, which reminds decision makers that planning law requires Applications to be determined in accordance with the Development Plan, and paragraph 23 that advises LPAs “should strictly limit new Traveller Site development in open countryside that is away from existing settlement or outside areas allocated in the Development Plan”.

6.2 Policy HL8 is carefully but positively worded indicating that Applications for Gypsy Sites will be permitted where all of the following criteria can be met, (my emphasis). Therefore all ten of the criteria need to be met. I address each of the criteria in turn:

1. There is no identified need within the Fylde Borough. It is agreed that National Policy requires cooperation between Local Authorities and it is known that FBC is in the process of cooperating with neighbouring Blackpool and Wyre Boroughs. The Officer's Report indicates a need for 24 pitches identified in Blackpool but does not contain detailed information on whether that need is being met. What is most surprising is that there is no evidence of consultation with Blackpool and Wyre Boroughs in respect of the current Application. In the absence of evidence of supply and delivery to meet Blackpool's needs it would be wrong to conclude that there is a pre-identified need that cannot be met elsewhere. The criterion is not therefore met. Part B of the criterion allows the Applicant the opportunity to present a need for a site in the area. It is telling that the Applicant has not presented any evidence of general need. In addition there is no evidence of any need on the basis of personal circumstances, of the Applicant's Gypsy status or present place of residence. There is no demonstration of need.
2. Criterion 2 requires that the Application is made on behalf of Gypsies. Whilst it is not disputed that the Applicant may have Gypsy status, the normal process is for details to be provided within the Application.
3. Criterion 3 appears to be met with the Application proposed solely as a residential site.

4. Criterion 4 requires the site to be appropriate to meet the identified need (or part of it). In our submissions the site is too small to satisfactorily accommodate the development in accordance with Good Practice Guide and Site License requirements, together with required parking, manoeuvring, amenity space and landscaping. The criterion is not met.
5. Criterion 5 is a sustainability requirement. Although the site is close to some services and facilities it is constrained by the poor highway and accessibility. (See Sanderson's Report for NRA) and the criteria is not fully met.
6. Criterion 6 requires that the location should not give rise to nuisance to neighbours. Thames Street has many of the characteristics of a "backland" form of development adjoined by the rear gardens of dwellings fronting Grange Lane. There is some conflict with the criteria.
7. Criterion 7 relates to highways and on-site provision for access and parking. There are highway deficiencies and constraints within the site resulting in some conflict.
8. Criterion 8 deals with impacts on the character and amenities of the area and the Landscape Character Type within which the site is situated. The Officer's Report does not consider the Landscape Character Type, or the importance of Thames Street as a footpath and bridleway link. The proposal would have significant harmful effects upon character and visual amenity and the criterion is not met.

9. Criterion 9 requires that buildings are appropriately designed using materials which respect the setting and location of the site. Neither the amenity block building, nor the caravans respect the setting and location of the site, and indeed have adverse impacts upon the setting of Listed Buildings. The criterion is not met.

10. Criterion 10 requires satisfactory drainage facilities. This has not been clearly demonstrated and on the information available there is conflict.

6.3 There can be little doubt therefore that a significant number of the criteria of Policy HL8 have not been met. Taken cumulatively there is a serious conflict with the Policy. In the balance of considerations significant weight should be given to this policy conflict.

6.4 The Officer's view in respect of Policy SP2 is noted and there is some agreement that there is a degree of inconsistency between it and more recent National policy. Some weight should however be given to the policy having regard to its underlying objectives and the advice in PPfTS that development in the open countryside should be strictly limited. Whilst it is agreed that weight should be given to evidence of need this should be properly researched and understood prior to the taking of a decision. If the harms identified outweigh the need which is presented by the Officers, then Planning Permission should be rejected. The alternative would be to defer the Application to enable further investigation and consideration of need (including personal circumstances), so that an informed balancing exercise may be undertaken.

7. PREVIOUS USE, LAWFUL DEVELOPMENT, ABANDONMENT AND PREVIOUSLY DEVELOPED LAND

- 7.1 As referred to earlier the Lawful Use Certificate was not issued on the basis of a Builder's Yard. A Lawful Use Certificate is in place and it would be normal that such a Certificate would be afforded significant weight. NRA has questioned whether the Certificate ought to be revoked. Although FBC has investigated the matter and concluded that there is insufficient evidence to revoke the Certificate, such a decision may be reviewed if further information becomes available.
- 7.2 It is NRA's view that the use has, in any event, been subsequently abandoned. The issue of Abandonment of a Certificate was considered in the case of *M & M (Land) Limited –v- Secretary of State for C & L.G. & Hampshire C.C.* (2007) EWHC489 (ADMIN). The principles in law set out in this case can be applied to the site. It is noted that the current Application is part retrospective.
- 7.3 Your Officer's advice is that the Certificate of Lawfulness (or subsequent abandonment of the use) does not matter as the site is a Brown Field site in any event. We are in disagreement with that view. If the use has been abandoned then it is necessary to identify what the proper or ordinary use of the land is. The former use of the land was agriculture, and that is the "base use" of land. If the site has an agricultural use (albeit not actually in use for that purpose), then it falls outside the definition of "previously developed land". In addition it will be noted that the site does not include any buildings. Whilst there is evidence of former timber sheds on the site, there is no evidence of permanent buildings.

8. IMPACT ON THE SETTING OF A LISTED BUILDING

8.1 The Officer's Report sets out in some length an analysis of the issue, including general reference to English Heritage Guidance. The Officers do not mention the Statutory Duty to have "special regard" to Listed Buildings, and their Settings. The first step is to identify whether any proposal affects the setting of a Listed Building, with the second step to assess whether the affects are harmful. The setting of a Listed Building (although difficult to define) is a wider concept than the curtilage of a Listed Building. In this case the development immediately adjoins the curtilage and I have no doubt that the development affects the setting of that Listed Building, and in fact the adjoining curtilage of Dixon's Farm House. As there is an affect on the setting of one or more Listed Buildings, the LPA has a duty to advertise the proposals and to undertake consultation with relevant bodies, including English Heritage. It is also normal practise for Applicants to be required to produce evidence in the form of a Historic Environment Statement to address the issue. The requirement was highlighted more than a year ago. Your Officers have attempted to consider the second step without taking account of available evidence (and any necessary expertise), as advised in paragraph 129 of The Framework. It remains our submission that the proposal will lead to substantial harm to the setting of the designated assets. Consent should be refused unless the harm is outweighed by public benefits. If the LPA were not to accept our view on harm it should, at least, advertise the proposals and undertake necessary consultation and expertise to discharge the "special duty".

9. HIGHWAYS

- 9.1 On this issue the Officers comment that the highway network is not ideally suited to an increase in vehicular activity but do not consider there to be sufficient detriment to highway safety or highway capacity to raise a highway objection. This view is based on the proposal relating to touring caravans, rather than mobile homes. Nevertheless the narrow width and alignment of Thames Street makes it unsuitable for towed vehicles and the site constraints are such that manoeuvring into and out of the site cannot easily be achieved. The Applicant had been requested to provide swept path analysis to demonstrate manoeuvring, but no such information has been provided. On the evidence available there will be considerable manoeuvring on entering or leaving the site in Thames Street and difficulties at the junctions between Thames Street and Grange Lane.

10. CONCLUSIONS

- 10.1 The Officer's Report does not include any assessment of abandonment of use. The Report relies on the concept of "previously developed land" taking the view that the Certificate of Lawfulness (or abandonment thereof) is not material. However if the site has no use it falls to the base use of land "agriculture" which by definition is not previously developed land. The proposal through an intense over-development of the site would dominate the Grange Lane group of properties and would harm the setting of two Listed Buildings. The development would impact detrimentally on the key characteristics of Clifton and Hutton Marsh Landscape Character Area, and be visually prominent in the landscape to the detriment of visual amenity. Interrelated matters of flood risk, drainage and contaminated land have not

been properly assessed. Due to the lack of information available on these combined issues, the Application should be rejected.

- 10.2 Whilst there is some evidence of an identified need for Traveller Sites in the wider area, that need, (and the opportunity to address such need in the neighbouring boroughs) has not been assessed or analysed. The general need is, in this case, not sufficient to outweigh the considerable harms that have been identified.

11. RECOMMENDATIONS/CONDITIONS

- 11.1 NRA is in disagreement with the recommendation to grant Planning Permission for reasons expressed above and as previously submitted to the LPA. The comments below on the Officer's conditions are made "without prejudice", to assist consideration.
- 11.2 As the proposal is part retrospective, and has already commenced, condition 1 (requiring commencement within 3 years) is not necessary and should not be imposed.
- 11.3 Condition 2 is interesting in that, Reason 2 sets out that Planning Permission for a residential caravan park or a holiday caravan park would not be appropriate in this locality. As the impact of alternative caravans would be similar to the current proposals (minus the amenity block) the condition and associated reason clearly demonstrates that the Officers have given great weight to "need" in reaching their conclusions that need (and only need) outweighed other harms to the locality, including e.g. visual amenity. The condition does not prohibit the site being a "transit site". A modified condition should set out that the development is for a residential G/T site, to

meet identified need. As a transit site use is not proposed it may be appropriate for this exclusion to be covered by a note.

- 11.4 Whilst the reason for condition 4 clearly includes highway safety, the reason also has residential and visual amenity implications, and should say so. Likewise the condition 7 reason, rather than simply being in the interests of residential amenity, should also refer to the interests of ecology. Condition 8 (Landscaping) needs to reflect the fact that the development has already commenced. It is interesting that the Applicant is requested at this stage to provide “finished levels”. Such information along with details of existing levels is, in our opinion, an essential pre-requisite to considering the acceptability, or otherwise, of the scheme.
- 11.5 Condition 10 (as previously highlighted) has the potential to be a disguised Refusal, as the package treatment proposals, the subject of the Application, may not be capable of acceptable implementation. Alternative drainage, including any unexpected consequential affects are not before the LPA (or others) for consideration. Condition 11 should also be amended to take account of the part retrospective nature of the proposals. The condition appears to be in standard form and includes reference to a public surface water sewer which does not appear to be relevant to this case.
- 11.6 In respect of condition 12, whilst it is not unusual for land contamination conditions to be in this form, it is not appropriate to impose such conditions where there is doubt that they can be implemented without consequential impacts. In this case there are consequential affects and impacts between the issues of flood risk, drainage and land contamination. The information that has been made available is not sufficient to allow the risks and implications to be properly understood. The LPA has the opportunity to refuse the

Application on the lack of information on these issues, or defer to allow further information to be provided.

- 11.7 A number of the conditions which are set out in the Officer's Report fail the tests of Circular 11/95.

12. CONCLUDING COMMENT ON BEHALF OF NRA.

- 12.1 The LPA has a number of alternative options for the consideration and determination of the current Application:

1. Grant Planning Permission on the basis of the Officer's Report and recommendations without amendment.
2. Grant Planning Permission on the basis of the Officer's Report and recommendations, with amendment to conditions.
3. Defer consideration of the Application expressing concern in respect of identified harms asking the Applicant to (a) address the identified harms and (b) to provide information in respect of need, inclusive of personal need and circumstances. In addition deferment would allow the opportunity for consultation with neighbouring Authorities, the advertising of the development as affecting the setting(s) of Listed Building(s), taking professional advice on that issue and consultation with relevant bodies. Other essential information: to include site levels, site specific FRA and ecological information to include consideration of ponds/water bodies within 250 metres should be requested.

4. To refuse the Application on the basis of the information available, and (in simple terms) that the needs/benefits of the proposals do not outweigh the significant harms that have been identified.
5. It would normally be appropriate to give consideration to a temporary Planning Permission. However, as no information has been provided in respect of the Applicant's individual needs and personal circumstances, and no information appears to be available relating to supply/delivery within the three Boroughs, consideration of temporary permission is not necessary/appropriate. In addition temporary Planning Permission would not be appropriate where the proposals include built development (the amenity block). The Applicant has not offered the withdrawal of that element of the proposals to allow consideration on a temporary basis.

12.2 On behalf of NRA it is respectfully requested that due and proper consideration be given to option 4 (Refusal). If the LPA considered that the applicant should be given an opportunity to address matters where further information is required (notwithstanding the primary objections), then option 3 would apply. Options 1 and 2 would be contrary to the Development Plan. After taking account of all other material considerations, (including balancing the pros and cons) NRA concludes that planning permission should not be granted. A summary is provided in Appendix 1.

APPENDIX 1

LAND AT THAMES STREET, NEWTON, PRESTON PR4 3RH

On behalf of NRA, I provide an alternative summary to the “summary of the Officer’s recommendations”.

It is important to establish whether the use certified in the Certificate of Lawfulness has subsequently been abandoned. This view had been shared in September 2013 in a Report prepared by Nicola Martin, Solicitor, Legal Services FBC. If the use has been abandoned then the site will have the base use of land as agriculture, and as such will fall outside the definition of “previously developed land”. The proposals will cause harm to visual amenity and to landscape character and are contrary to Local Plan Policy HL8. The proposals are also considered to be harmful to the setting of two Listed Buildings contrary to policy and the statutory duty to pay “special regard” to the protection of Listed Buildings and their settings. The proposals will have a dominating effect upon the Grange Lane group of properties, particularly those which overlook or adjoin the site. Insufficient information has been provided to demonstrate that interrelated issues of flood risk, drainage and contaminated land have been satisfactorily addressed. In addition insufficient information has been supplied to demonstrate that ecology and bio-diversity interests will not be adversely affected. The proposals relate to an over-development of this site, and are likely to result in highway safety issues. There is no need for Gypsy/Traveller accommodations in the Fylde Borough to weigh in favour of the development and although there is an acknowledged need within the wider area, insufficient information has been provided to demonstrate that the wider need outweighs the identified harms in this case. The proposals conflict with Fylde Borough Local Plan Policy HL8, with additional policy conflict adding some weight to balanced harm and a required withholding of planning permission.