

## Development Management Committee

Wednesday 4 February 2015

### Late Observations Schedule

#### Schedule Items

<u>Item</u>	<u>App No</u>	<u>Observations</u>
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1	13/0597	<u>Comments from English Heritage</u> The comments received from English Heritage refer to the proposal for dwellings at the southern end of the site. English Heritage do not wish to comment on the applications for conversion of the listed building and associated garden area.
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Revised Recommendation

The plans have been amended to omit parking to the rear and increase the communal garden area and so are to be amended in condition 2 to the new reference.

The recommendation on the report is to grant planning permission, whereas the Summary refers to delegating it to officers. The recommendation should be to delegate this decision to officers to ensure that the listed building consent application can be issued prior to issuing this planning permission.

2	14/0358	<u>Additional representation</u>
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A representation sent via email at 20:23 on the 3 February and received today the 4 February 2015 from Tim Price the Director of Commercial Planning at Savills. This email requests that members be provided a copy of the correspondence as it is a material consideration in the decision making process and requests Officers prepare a formal update to Members with regard to the content of the letter and states that the application should be refused or as a minimum withdrawn from consideration by members should they want further analysis. It also states that a positive decision of this planning application based on the assessment contained within the Officer report would be susceptible to a legal challenge.

The letter submitted states that Savills act on behalf of Land Securities which owns Blackpool Retail Park also located on Squires Gate Lane and that Land Securities has a live planning application currently being considered by Blackpool Borough Council for a new discount food store which they say will form part of the established Retail Park and be operated by Aldi. The representations refer to the following matters;

1. The use and location of the application site at Blackpool Retail Park.
2. The established shopping patterns of Blackpool Retail Park; and
3. The assessment of accessibility of both the Westgate House and Blackpool Retail Park sites.

## The use and location of the application site at Blackpool Retail Park

The applicants letter states;

*It is correct that the application site forms part of a wider allocation for employment land uses. However the site is separated from the main industrial area by the private estate road and directly adjoins the Blackpool Retail Park. The floor space is now vacant, with the majority unoccupied for between 12 and 18 months, but historically was used for retail land uses within Class A1. The site to the south is also occupied for a quasi retail use (a Cash and Carry). The floor space does not contribute positively towards the employment land supply and the Council's own Employment Land Review acknowledges that the floor space at the application site is 'tired and rundown' with no real prospect for reletting in their current form. Given the location of the site, the proposed Aldi store will form an integral part of the established Retail Park comprising an 'in-fill' section to the south east corner of the Park (in between Currys and Pets at Home). The proposed store will be physically integrated into the existing terrace and will be directly accessed and served by the established pedestrian routes and car parking serving the Retail Park. Due to the established retail function of the Retail Park and adjoining Morrisons, the proposed store will benefit from established shopping and travel patterns. It will provide genuine opportunities for linked trips which will reduce the overall number of vehicular trips in accordance with the objective to deliver more sustainable forms of development. The Westgate House site is not an established retail location and will be a solus facility. It follows that a store proposed at that site would established new retail trips to the area and has the potentially for a greater level of impact on defined centres. The Baxter Group emphasises that the Westgate House site is equidistant between the Local Centres at Starr Gate and at Abbey Road, and has much easier access to Highfield Road District Centre.*

*The Committee Report refers to Fylde Council's consultants consideration that Blackpool Retail Park is not a 'centre' and therefore is not a preferred location for retail development. In their view, neither of the Westgate House site nor the site at Blackpool Retail Park can claim preference in terms of the sequential approach because 'neither is well connected to a town centre'. This is incorrect. The Blackpool Retail Park and Morrisons store are located directly to the south of the defined St Anne's Local Centre. The application site is less than 200m from the boundary of the defined centre and therefore accords with the definition of an 'edge of centre' site in the NPPF. Paragraph 10 of the National Planning Policy Framework ('NPPF') is explicit that out of centre sites, such as Westgate House, should only be consider after in and edge of centre sites. As the application site at Blackpool Retail Park is in an 'edge of centre' location, is easily accessible by a range of modes of transport and provides the opportunity for linked trips with established retail operators, the proposed development is sequentially preferable to that at Westgate House. Fylde Council's analysis of the location of the application site and therefore the interpretation of the local and national policy relating to the sequential approach is incorrect. Any decision*

*based on the current assessment would be open to legal challenge.*

#### Officer's opinion

The application within Blackpool's boundaries is located within a designated employment area. The proposed loss of employment land is an issue for their officers to consider. The retail park which the proposed Aldi store would be accessed from (but is not a part of) is not a town centre. Both the Westgate House site and the proposed Aldi site in Blackpool are out of centre. The St Annes Local Centre constitutes a Local Centre and therefore for the purposes of the Sequential test does not constitute a primary shopping area and therefore development within 300m of it cannot be considered edge of centre but out of centre. Blackpool has an abundance of small Local Centres, for example three along Squires Gate Lane, if land within 300m of all these sites were to be considered edge of centre then a significant area of Blackpool would thus become edge of centre, making all that area sequentially preferable to out of centre sites. This is quite simply not the case. The Aldi site within Blackpool is therefore not sequentially preferable to that considered by members today and officer's interpretation of local and national policy is correct.

#### The Established Shopping Patterns of Blackpool Retail Park

Savills letter states;

*The Baxter Group states that Savills has made an error in failing to recognise that 'need' is no longer a development management test. The applicant itself however suggests that the proposed development at Westgate House would help to reduce overtrading at the existing Morrisons store and therefore help to better meet local needs. We have simply made the point that as local residents have established shopping and travel patterns to the Morrisons store, an additional facility, particularly a discount store which complements a main line food store, at the Retail Park would be best located to help address the known overtrading. A solus store at the Westgate House site will not have the same impact in respect of alleviating pressure on the Morrisons store and therefore the qualitative benefits will be less.*

#### Officer's opinion

The need of a retail development is not one that is tested by the planning process, whether or not a proposed site is sequentially preferable and will have an acceptable impact on existing town centres is. Blackpool retail park is an out of centre retail destination afforded no protection. The loss of trade from the existing Morrisons to either the proposed Aldi on the employment site in Blackpool or the application before members today on brownfield land within Fylde is not relevant to the determination of this application.

## The Accessibility of the Application Sites

Savills letter states;

*The Baxter Group commissioned Turner Lowe Associates ('TLA') to undertake a comparative assessment of the accessibility of both of the application sites. TLA concluded that the Westgate House site is more accessible than the site at Blackpool Retail Park. A formal Transport Assessment has been submitted with the application for the proposed Aldi store at Blackpool Retail Park that demonstrates that the site is accessible by a range of modes of sustainable, public and private modes. Critically the application site benefits from direct pedestrian access via controlled pedestrian crossings to the St Anne's Local Centre and the resident population to the north of Squires Gate Lane. .*

*JMP has analysed the accessibility of the Westgate House site. A copy of the formal assessment is included at Appendix 1 but we summarise the key conclusions below:*

- 1. Blackpool highways officers state that Westgate Road is not suitable for the Westgate House proposal, with or without off-site works. This has not yet been satisfactorily addressed and insufficient information has been submitted to confirm that an appropriate solution can be provided.*
- 2. The lack of a controlled pedestrian crossing from the Westgate House site across Squires Gate Lane will discourage access to the site on foot to the principal resident population.*
- 3. There are issues with the potential for parking on Westgate Road in the vicinity of the proposed site access junction, which has the potential to impact on highway safety if appropriate restrictions are not introduced.*
- 4. Furthermore, the alignment of the site access arm of the priority junction is kinked. It is considered that this has the potential to cause conflict issues between vehicles entering and leaving the car park, and the alignment of the kerb on the north side of the junction could encourage the inbound vehicle to follow a path into the middle of the access.*
- 5. In comparison however, Blackpool Retail Park serves an equally large, if not larger residential base that is within 1km of the site, primarily to the north of Squires Gate Lane.*
- 6. Blackpool Retail Park will also be within walking distance to a large 'working' population for employees based in the employment / industrial areas to the south and east of Squires Gate Lane.*
- 7. Furthermore, pedestrian accessibility to the proposed Aldi scheme at Blackpool Retail Park includes access via the secondary route off Squires Gate Lane, which includes footways on both sides of the road. JMP has identified clear issues associated with the access to and functionality of a convenience store at the Westgate House site which could have severe impacts on the safe and convenient use of the local highway network.*

*The Committee Report prepared by your professional officers states that the*

*Westgate House site is more accessible as it is '...equidistant between the Local Centres at Starr Gate and at Abbey Road, and has much easier access to Highfield Road District Centre'. The Baxter Group acknowledges that the site is in an out of centre location and therefore not on the edge of any of these defined centres. The Committee Report fails to acknowledge in any way that the application site at the Blackpool Retail Park has direct links to the St Anne's Local Centre and the resident population which will be the principal customers.*

*It follows that the analysis in the Committee Report is inaccurate and the justification for the conclusion in respect of the Westgate House site being more accessible is erroneous. If the Committee makes a formal decision based on the current Report, that decision would be open to a legal challenge.*

### Officers Opinion

The highways issues raised are considered with the appropriate section of the committee report. With regard to the points raised about the accessibility of the site the NPPF states when considering edge of centre and out of centre proposals preference should be given to accessible sites that are well connected to the town centre. The fact that the site in Blackpool is adjacent to an existing out of centre Retail Park does not make it better connected to the town centre. Local Centre's do not constitute primary shopping areas or town centres. The letter from Savills appears to suggest that the site in Blackpool is more accessible because of its relationship with a few shops/takeaways/pub in a local centre 200m away, but then also claims that visitors to the Aldi store will also be visiting the retail park and thus there will be shared trips. It is considered that there is no material difference between the two sites in terms of accessibility to the local population and if anything the Westgate site is better connected to the Town Centre by virtue of the fact it is closer to bus routes, bus stops and main roads that lead to the town centre.

### Conclusions

The letter from Savills then concludes;

*The Planning Committee has been made aware of the competing schemes at Westgate House and Blackpool Retail Park and as a result of the previous representations made on behalf of Land Securities at the December Committee, took a view to defer the application to enable further time to consider the points raised. The applicant for Westgate House has provided further information to which we have responded as part of this correspondence. In summary, we conclude that:*

*1. The proposed Aldi store will form an integral part of the established Blackpool Retail Park. The store will be served by the existing car park and will be an extension to the existing terrace. It will benefit from established shopping and travel patterns and provides genuine opportunities for linked trips with the*

*Retail Park, Morrisons and the St Anne's Local Centre;*

*2. The Westgate House site is agreed as being in an 'out of centre' location. The application site at the Blackpool Retail Park is within 200 metres from the defined St Anne's Local Centre which is directly linked situated on the opposite side of the Squires Gate Lane junction into the Retail Park. In comparison however, the Westgate House site is not located adjacent to a defined centre and as such does not have direct pedestrian links to a defined centre; and*

*3. The application site at Blackpool Retail Park has better pedestrian links to the primary resident catchment to the north of Squires Gate Lane than the Westgate House site. Furthermore, there are a number of outstanding highways matters which have yet to be resolved in respect of the proposal at Westgate House and therefore a store at this location could have a severe impact on the local highway network*

*The application site at Blackpool Retail Park is sequentially preferable to that at Westgate House and accords more closely with the objective to create more sustainable forms of development. The NPPF is explicit that an out of centre site should only be considered after in and edge of centre sites. The assessment of the two proposed developments contained within the Officer's Report to Committee erroneously categorises the application site at Blackpool Retail Park as out of centre and as a result, concludes that the Westgate House site is more accessible. We would stress again that any decision made pursuant to the current assessment and Officer's Report would be open to a legal challenge. We therefore respectfully request that the application be refused as there are sequentially preferable sites or as a minimum, deferred so that a more detailed assessment of the two sites can be undertaken.*

*We would also reiterate that Blackpool Council has objected to the proposed development which should be afforded material weight in the decision making process.*

#### Officer's conclusions

In response to the above conclusions your officers would comment;

1. The Aldi site in Blackpool is within an identified employment area. Blackpool Retail Park is adjacent to this and is an out of centre site afforded no protection in retail terms.

2. The NPPG within its glossary defines Edge of Centre as:

"Edge of centre: For retail purposes, a location that is well connected and up to 300 metres of the primary shopping area. For all other main town centre uses, a location within 300 metres of a town centre boundary. For office development, this includes locations outside the town centre but within 500 metres of a public transport interchange. In determining whether a site falls within the

definition of edge of centre, account should be taken of local circumstances.”

The St Annes Local Centre 200m from the retail park is not a town centre, similarly along Squires Gate Lane the Abbey Road Local Centre and Starr Gate Local Centres are not Town Centres. They do not form primary shopping areas. Therefore the application on the designated employment site within Blackpool and Westgate house are both out of centre locations.

3. The highways issues with the application are addressed in the report. LCC Highways have raised no objections and the applicants will be required to upgrade the existing signals to provide safe access to the site for pedestrians, upgrade existing bus stops and improve the junction. As well as paying £17000 contributions.

Your officers opinion is therefore that the advice and analysis reported in the committee report is correct.

3      14/0406      Applicant's Agent Letter

A letter has been received from the applicant's agent following the publication of the Committee report. This makes the following points:

1. The application should be determined in accordance with the development plan, and the report confirms the application accords with the relevant policies
2. There is no justification to grant permission for a temporary period because of possible change to national policy that has not completed its consultation stage and so there can be no certainty that any changes will be made. This consultation exercise has not been taken into consideration in any appeal decision issued by PINs since the consultation exercise was launched, and is a matter that carries no weight at present.
3. The PPTS explains the need for the planning system to ensure fair and equal treatment for travellers and so if the council is prepared to grant planning permission for permanent dwellings outside of settlement boundaries then it should also grant permanent permission for gypsy development.

Officer Comments

The main issue raised by the letter is the suggestion that the application should not be subject to a temporary use condition on the basis that that condition is being imposed due to potential changes in guidance for Traveller applications. Whilst the agent's comments are noted in this respect, officers believe that this is a justified approach to this potential change in guidance and so it is recommended that this condition is retained.

The secondary issue comparing the proposal to a residential scheme is not valid, as the policies and guidance that apply to such proposals are different to those relating to a gypsy / traveller site. As that report explains, the council has a shortfall in its housing supply and as that scheme demonstrates sustainable development it is to be supported to help address that shortfall.

Revised Condition

The reference to the size of caravan as stated in condition 3 should be removed as this was taken from the conditions discussed at the Thames Street, Newton public inquiry, and was introduced due to the particular highway arrangements leading to that site. This site is accessed direct from a classified road where there is a good standard of access and visibility, and so such a restriction is unnecessary. The revised condition

retains the controls over the accommodation being caravans and the number of pitches/caravans on the site and reads:

*3. No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.*

*There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved no more than 2 caravans shall be stationed at any time.*

*Reason: In order to control the density of development having regard to the character of the area and in order to ensure adequate parking and manoeuvring space for vehicles within the site.*

- 5      14/0646      Consultation Comments  
Kirkham Town Council have provided further comments. These refer to the amended plans including dwellings to the rear and describe this as an underhand tactic to change the application and avoid full consideration by the Town Council and neighbours.
- Officer Comments  
The Town Council's comments are without substance as the application does not include any dwellings to the rear, and the revision relates to the revision of parking spaces on the application to increase the size of the garden area only.
- Comments from English Heritage  
The comments received from English Heritage refer to the proposal for dwellings at the southern end of the site. English Heritage do not wish to comment on the applications for conversion of the listed building and associated garden area.
- Revised Recommendation Detail  
The plans have been amended to omit parking to the rear and increase the communal garden area and so are to be amended in condition 2 to the new reference.
- The recommendation remains as on the agenda to allow further revised plans to be sought on the drawings to clarify the extent of repairs to the front elevation, the alterations to the doors and windows, the revision of the access details to maintain pedestrian dominance, etc. There is also a need to await for the consultation period to conclude and consider any comments made.
- 6      14/0659      Further information  
An additional letter has been received from the applicant's ecologist with regard to the proposed mitigation, method statement required, landscaping plan and management plan. This information has been forwarded to LCC Ecology and their comments are awaited. The recommendation to delegate to the Head of Planning & Regeneration to approve subject to resolution of the ecological issues therefore remains.
- 7      14/0696      Additional documents  
Following submission of the revised site plan on the 21 January 2015 after the committee report was finalised on the 23 January 2015 an addendum to the Landscape and Visual Impact Assessment Appraisal was received and on the 28 January 2015 a wintering birds survey and the applicants formal response to the



comments of LCC Ecology were received.

#### Landscape and Visual Impact Appraisal Addendum

This document has been produced in addition to the LVIA already considered by officers in the committee report. The assessment was produced following a meeting with officers where concerns were made over the impact of the proposed development due to its scale, change to landscape character and visual impact on the railway, the PROW the adjacent road and residential dwellings.

The document looks at the viewpoints and the differences between the scale of effect based on the originally submitted plans and the revised layout which set back the solar panels from Moss Side Lane and also proposed tree belts adjacent to the boundaries. For example the document assesses the difference from viewpoint 1 which is from Moss Side Lane looking north as result of the amendment to be reduced from moderate adverse to minor adverse. The majority of viewpoints considered have a reduced scale of effect according to this document. The document details the amendments to the layout which have been considered within the committee report. The document considers 6 additional viewpoints to the original LVIA in an attempt to address officers concerns. These views include A which is a view from the PROW looking south west across the application site, the report states that the existing view has a medium value as it does not form part of any landscape designation but is within a rural environment offering visual enjoyment of the wider countryside but in context of the existing infrastructure surrounding its immediate environment which detracts from its overall value. The application suggest that the impact on these viewpoints will be Major or moderate adverse but the visual impact will be reduced by year 5. It all includes photomontages of all the views, showing existing, year 1 and year 5 views.

#### Officers View

The additional submission has been considered by Development Management Officers. It is considered that whilst the impact will be reduced by the additional planting the officer report considered the amendment to the site plan and the mitigation and the submission of this document does not alter the views expressed in the committee report.

#### Additional Ecological information

The submitted Wintering Bird survey includes details of the method of survey and when. These dates being 7 November, 26 November and 22 December 2014. The conclusion of these reports was that none of the species which the SPA has been designated were found. The survey recommends that 1.25 hectares of land is seeded with a seed-rich seed mix to mitigate for the loss of food sources for a small number of other declining bird species that were present.

The letter in response to LCC Ecology' representation outlines the applicant's

ecologists views on the potential impact on amphibians. And includes why they think surveys are not required because of the mitigation and methods used in construction and de-commission of the arrays.

Following receipt of the additional information the documents were forwarded to both Natural England and LCC Ecology who both maintain their objections to the development.

#### Natural England response

*In our previous response dated 24 October 2014 we requested that the applicant refer to the methodology in the NE Technical information Note TIN069 which although is intended for survey requirements for wind farms can equally be applied for this application. It recommends survey visits for non-breeding birds to be at least one or two visits per month, and weekly for passage birds, over the winter season (Oct-March).*

*The submitted Wintering Bird Survey by MWA, January 2015 does not follow this guidance.*

*It is recommended that you have regard to Natural England Technical Information Note TIN008, Assessing ornithological impacts associated with wind farm developments: surveying recommendations(TIN 008) (<http://publications.naturalengland.org.uk/file/79012>) and the Scottish Natural Heritage (SNH) guidance: Recommended bird survey methods to inform impact assessment of onshore wind farms, May 2014 SNH guidance (<http://www.snh.gov.uk/docs/C278917.pdf>) whilst noting this is designed for turbine applications, it provides details of the type of surveys that we would consider necessary for this development and level of survey effort. It is recommended that the surrounding fields are surveyed as the proposed solar farm could cause disturbance and avoidance of SPA birds.*

*We note the start of the Autumn passage period was missed. Different birds use estuarine SPAs for different reasons and at different times. Autumn passage species and numbers would be very different to Spring passage numbers and species. Therefore the submitted survey isn't sufficient to rule out Likely Significant Effect.*

*We note that LERN data has been utilised in the Ecological Survey By WMN September 2014, however the wintering bird survey could be further backed up by the applicant contacting the Lancashire Wildlife Trust, Fylde Bird Club or Lancaster and District Bird-Watching Society to obtain records of the use of this site and surrounding fields by SPA interest feature bird species.*

#### LCC Ecology response

*I have reviewed the additional and amended information submitted since my previous comments. The information submitted does not fully address my previous comments. At this stage the ecological surveys are incomplete and Fylde Borough Council does not have sufficient information on which to base a*

*planning decision and to have regard to the Habitats Regulations in reaching a planning decision. The applicant has not demonstrated that the proposals would be in accordance with the legislation, planning policy and guidance listed in my previous letter.*

*The application should not be approved until the following matters have been addressed:*

*Wintering Birds and designated sites*

*The wintering bird surveys are not in accordance with the guidelines referred to by Natural England. The application should not be approved until Natural England are satisfied that adequate surveys have been carried out and issues raised by Natural England have been fully addressed.*

*Based on the surveys to date it has been established that the proposals would result in a loss of habitat used by foraging wintering birds of open country (including Species of Principal Importance) that cannot be compensated for on site. Whilst in terms of local impacts it may be acceptable to propose mitigation on known and assumed likely impacts, prior to determination of the application there is need to demonstrate that all unavoidable impacts will be adequately offset and that offsite mitigation is deliverable.*

*It is not clear to me that the offsite compensation proposed would be adequate to offset the likely losses. In addition the applicant has not demonstrated that proposed compensation would be deliverable.*

*The wintering bird report appears to acknowledge losses of foraging habitat for Skylark and Meadow Pipit only, however, the information submitted shows that there would also be losses of habitat persistently used by Herring Gull (a red listed species on the birds of conservation concern and a Species of Principal Importance) and Black-headed Gull (an amber listed species on the birds of conservation concern) (as detailed in paragraph 5.2.16).*

*The report estimates that some 25ha of habitat within which these species have been observed (Zone 2, 3 and 4) will be lost to the development (para 6.4.3). Although the report is referring to Skylark and Meadow Pipit, the gulls were observed using zones 2 and 4) and thus the area of habitat to be lost is not altered.*

*The report recommends mitigation for these losses and acknowledges the need for offsite compensation, as losses of birds of open habitat cannot be compensated for onsite. The proposed offsite compensation comprises "a single block of at least 1.25ha of open arable land to be cultivated and seeded bi-annually in autumn, with a wintering bird seed mix" (para 6.5.5).*

*It is not clear to me how the figure of 1.25ha has been calculated and it is not clear to me that this would be sufficient. Further information is required to establish the scale of the necessary compensation. Consideration will also need to be given to loss of habitat used by foraging gulls.*

*Use of the pilot biodiversity offsetting metric may be appropriate. Whilst this is*

*not designed for species, calculating the offset required for the proposed loss of arable land and grassland habitat used by foraging wintering birds may provide a useful guide.*

*Prior to determination of the application Fylde Borough Council will need to be satisfied that any offsite compensation proposed is deliverable. The applicant will also need to submit information to demonstrate that adequate offsite compensation can be delivered. This should include a map showing the area of land to be used, details to demonstrate management control and details regarding its current ecological value.*

*If offsite habitat creation/enhancement cannot be delivered then a commuted sum or use of a biodiversity offsetting broker would be required. If a commuted sum is proposed, then the applicant should be required to submit costings to demonstrate that the commuted sum would be sufficient to re-establish a sufficient area of habitat to compensate for that being lost and to provide aftercare and maintenance.*

#### Breeding Birds

*· Breeding bird surveys have not been carried out; rather the applicant appears to be assuming that there would be adverse impacts on populations of breeding birds that cannot be compensated for onsite.*

*Whilst this approach may be acceptable, the applicant has not quantified potential impacts/losses and has not demonstrated that there would be adequate compensation for all potential impacts. In addition the applicant has not demonstrated that offsite compensation would be deliverable. Further information to address this matter will need to be submitted prior to determination of the application.*

*The potential losses and impacts should be quantified in order to establish the scale of the compensation required. As with wintering birds, the applicant will need to submit information to demonstrate that adequate offsite compensation (offsite habitat creation and/or a commuted sum/use of a biodiversity offsetting broker) can be delivered (see details above).*

#### Great Crested Newt

*· Great Crested Newt presence/absence surveys have not been carried out. The applicant has not demonstrated that offences would be avoided. As highlighted in my previous letter presence/absence surveys are required as the proposals include removal of habitat providing suitable hibernation habitat for Great Crested Newt (i.e. sections of hedgerow).*

*The letter submitted acknowledges that the hedgerows to be affected by the proposals are suitable to support hibernating Great Crested Newt. The letter appears to go on to consider the removal of hedgerows only in terms of avoiding killing and injury of GCN, however removal of a place used as shelter/hibernation habitat by Great Crested Newt (whether or not they are present at the time) is an offence. In addition, it does not appear to me that all elements of the proposals and the likely impacts on Great Crested Newt have*

*been fully considered. The letter submitted appears to seek to address the points I made in previous letter only, which were examples and not a full appraisal of proposals and potential impacts. An exhaustive list of all potential offences should be provided, with full consideration and knowledge of all elements of the proposals, and consideration given as to whether avoidance of impacts (and offences) is possible. Fylde Borough Council needs to have regard to The Conservation of Habitats and Species Regulations 2010 (as amended) in reaching a planning decision. The applicant has not demonstrated that all offences would be avoided. The need for a Natural England licence must be established prior to determination of the application. In order to inform the need for such a licence Great Crested Newt presence/absence surveys are required. If these surveys show that a Natural England licence would be required, then Fylde Borough Council will need to consider whether or not a Natural England licence would be granted and will need to consider the 3 tests (as detailed in my previous letter). In addition to this, the submitted letter states that the decommissioning element of the project has the potential to result offences. At this stage the nature and scale of these impacts are not clear as the decommissioning works would be 25 years hence and conditions on site are likely to have altered in that time period. However, the letter does acknowledge that there is a likelihood of offences as there is potential for the piles used to fix the panels and other infrastructure to provide hibernation features for newts, and therefore there would be a need for the decommissioning works to be carried out under a Natural England licence if Great Crested Newt are present at that stage. At this stage Natural England would be unlikely to grant such a licence as there is no survey data to inform the need for a licence or the mitigation requirements. Fylde Borough Council needs to engage with the Habitats Regulations. If the decommissioning element of the proposals is being applied for, there is a need for Fylde Borough Council to decide how they can discharge their duties. I am not a planner or legally trained, however it may be that this matter can be dealt with by planning condition requiring up to date surveys prior to decommissioning works and requiring the applicant to submit mitigation proposals at that stage. Alternatively there may be a need for additional information to be submitted at this stage, prior to approval of the application, in order to establish the likely impacts on Great Crested Newt based on the current conditions and the perceived impacts on decommissioning works. Either way there will be a need for up to date surveys prior to decommissioning, in order to establish the likely impacts and to inform the mitigation measures and the need for a Natural England licence to carry out the decommissioning works. Fylde Borough Council will need to ensure that they have discharged their legal duties in reaching a planning decision and may wish to seek legal advice on this matter.*

#### *Bats and Lighting*

*Information to address my previous comments regarding bats and lighting does not appear to have been submitted.*

*Further review of additional information submitted to address the above matters will be required. I am unable to provide further comments at this stage*

*as the principal of development has not been established. Fylde Borough Council should however be aware that if the above matters are adequately addressed there will be a need for planning conditions to be attached to any approval*

#### Officers View

Ecological issues at the site remain outstanding, further surveys are required to be undertaken and in relation to Wintering Birds in particular these will need to be carried out at an appropriate time of the year. Great Crested Newt surveys are not complete and therefore the application has not been submitted with sufficient information to fully assess the impact of the proposals on protected species as the full ecological value of the site has not been established. It remains reasonable to refuse the application on the basis of the appropriate surveys required to consider the impact on bird populations and protected species have not been done. Without due consideration of these surveys and using this information to consider appropriate mitigation planning permission should not be granted, and to do so would be contrary to section 11 of the NPPF and Local Plan policy EP19 – protected species.