

Planning Committee

Wednesday, 28 July 2021

Late Observations Schedule

National Guidance

On Tuesday 20 July 2021, the National Planning Policy Framework (NPPF) 2021 replaced the NPPF 2019. The 2021 version is an update of the previous framework rather than a completely new document. Key changes include:

- Revising the definition of sustainable development to reflect the United Nations' 17 Global Goals for Sustainable Development,
- Introducing 'beauty' as a requirement for new development,
- Placing more emphasis on protecting and enhancing the environment and improving biodiversity,
- Requires plans to mitigate climate change
- A requirement for strategic plans to look at least 30 years ahead (transitional provisions apply to this paragraph)
- Revised guidance on the use of Article 4 directions
- Requiring LPAs to work with developers and delivery partners to ensure faster delivery of public service infrastructure,
- Greater emphasis to delivering good design, including reference to the national design guide and model design code and local design codes and
- Requiring new streets to be tree lined.

Each of the planning applications set out in the reports that are before this committee for consideration on this agenda have been reviewed and it is considered that there are no changes that impact upon the recommendations set out in the reports.

The implications for the Partial Review of the Fylde Local Plan are set out below.

The full NPPF21 document is available at:

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

Agenda Items

<u>Item</u>	<u>Comments</u>
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5	Partial Review of the Fylde Local Plan to 2032
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On 20th July 2021 the government issued a revised National Planning Policy Framework.

There are no transitional arrangements for the majority of the changes made to the Framework. Therefore, the Council needs to address any changes to the Framework that affect the Partial Review.

The Council has reviewed the revised Framework and has identified that one further Main Modification to the Partial Review is necessary. This has been incorporated into a revised version of Appendix 1 which is attached to this Late Observations Schedule. The new Main Modification is MM9 to Policy H6. Subsequent Main Modifications in the draft schedule have been renumbered accordingly.

Two additional modifications are also necessary to ensure the introductory text of the plan accurately reproduces extracts of the revised Framework text; these additional modifications do not affect soundness and have been included in the Draft Schedule of Proposed Additional Modifications.

The Inspector has reviewed the Council's assessment and confirmed these changes (without prejudice to the Inspector's final conclusions on the Partial Review of the Fylde Local Plan to 2032) as set out in MM9 in replacement Appendix 1 attached.

Amendment to Recommendation 1 of Item 5:

- 1) *That the Draft Schedule of Main Modifications to the Partial Review of the Fylde Local Plan to 2032 Appendix 1 as attached to the Late Observation Schedule be approved by Planning Committee.*

7	Authority Monitoring Report
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There has been an update to the figures presented in the Authority Monitoring Report for Performance Monitoring Indicator 6: Cumulative additional jobs created as a direct result of the Enterprise Zone (at BAE Systems Warton). The proposed addition was provided by Lancashire County Council and involves the following additional text being added to page 57 of the document which forms Appendix 1 to Item 7:

"Occupation from 2019:

High Integrity Systems Limited and Dassault Systems UK Limited – average 1 to 2 officers per week using office space as a hot desk facility"

Schedule Items

<u>Item</u>	<u>App No</u>	<u>Observations</u>
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1	20/0357	Representation from Newton Resident Association
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The Newton Resident Association (NRA) circulated a detailed document to the Planning Committee in advance of the meeting and copied officers in. As Committee members have received this directly it is not included in full, but the Executive Summary and Conclusion are provided along with some officer thoughts.

Executive Summary

The original Condition 14 was carefully set out by the Inspector appointed by the Secretary of State following a Planning Inquiry to address the known contaminants on the site. A previous decision by FBC to discharge this condition was quashed by the High Court after Judicial Review.

Unauthorised works conducted by the applicant (asbestos burial) have resulted in the applicant receiving EA sanction in the form of a warning letter and further compromising of the site's contaminated status (now to be entered on the Contaminated Land Register).

Through information obtained by FOI, planning officers have made proposals directly to the applicant to vary and weaken condition 14 such that it is easier and more affordable to discharge. This raises a number of concerns - particularly when the same officers are then making recommendations to the planning committee as the decision makers on these variations. It might appear that the outcome of this application has been pre-determined. It is perfectly proper for an officer to advise on an application, however in this case the idea to vary and subsequent assistance given, points to a potential view that this application was pre-determined

Despite the issues raised by the NRA and others concerning the hazards present on the site, the revised remediation report has not had input from 3rd party subject matter experts.

There is considerable uncertainty relating to the proposed package treatment plant as a foul drainage solution due its inability to satisfy the binding rules. A foul drainage solution requires significant excavation and earth works (and thus the potential to expose more contaminants and create hazardous waste) it is logical to assume an EA permit should be sought and a solution finalised prior to implementing a proposed remediation plan with no dig layers and concrete slabs.

Unreferenced in the new information in the officer's report is a significant change that has been made to condition 15. This is the condition concerning off site highway works and lighting that the applicant argued to the inspector was too onerous and expensive but on which the inspector insisted for safety

reasons. This is an application to vary condition 14 not condition 15. Condition 15 should remain unchanged from the original.

Notwithstanding the NRA position that this application should be rejected, the timetable for verification of remediation works in condition 14 through a written report should mandate that the report is approved in writing prior to first occupation. This proposed variation allows first occupation on receipt only of the report. We also believe that the approval should only be given following a specialist evaluation.

Planning Officers and Committee members have a duty of care to local residents and the developer. This duty of care extends to ensuring that in the long-term, health and safety related issues do not arise as a result of inadequate contamination remediation. The variation as proposed does not satisfy this requirement

Conclusion

The Committee is being asked to dilute a Secretary of State imposed condition regarding contaminants, with no expert opinion in support of the proposal, to remedy a situation brought about through breaches of legally imposed conditions by the applicant. The situation is exacerbated by lack of timely monitoring and enforcement.

In the light of all the available evidence, together with the 9 year history of the application, to allow this variation would be irrational, and not be in the interests of the developer or local residents from a health and safety perspective.

To be constructive, the NRA would suggest that, in principle the variation of condition 14 is acceptable to move the development forward if issues 1-9 inclusive above are resolved. In the event that they cannot all be properly resolved then we call for the rejection of this application.

The NRA has always accepted that the site would be developed. We would view a variation acceptable if

- a) an EA approved foul drainage system was obtained*
- b) the site is fully and expertly characterised*
- c) a full remediation plan was produced in compliance with 'EA Guidance Land contamination risk management' which was submitted based on the full characterisation of the contamination. (Appendix 1 Remediation Plan and Verification EA Guidance on Land contamination risk management)*
- d) a verification report is produced to demonstrate the effectiveness of the remediation in compliance with 'EA Guidance Land contamination risk management'*
- e) a sequence of works should be agreed (e.g., foul solution approved and permitted before no-dig and slabs)*
- f) an agreed timetable, scheme of works, risk assessment and site management plan*

- g) the verification of all mitigation measures provided to the Local Authority of each stage of construction and during development*
- h) a finalised site plan*
- i) Condition 14 changed to verification and approval (by contamination experts) before occupation*
- j) there was no change to condition 15*

(Note: Original document has bullets for this list but is revised here to letters to assist the response below)

Officer Response to NRA Representation

The overriding view expressed by the NRA is that the current proposal is a dilution of the controls that are secured through the existing planning permission. That is not considered to be the case, rather the proposal is a workable way forward with the development of the site in accordance with the safeguards that are appropriate for the development given the change in circumstances since the planning permission was granted.

The list at the end of the NRA's conclusion serves as a useful list of their concerns and so it has been amended from bullets to letters and a response to each provided here:

- a) condition 11 deals with foul drainage and confirms that the previously approved arrangement should be implemented whilst allowing for a revision of that to be submitted for approval. The previously approved scheme was only approved following consultation with the EA, and they would be consulted on any revision. As such it is considered that the NRA query is addressed.
- b) the applicant's consultant advises in the addendum report recently provided that 'characterisation' is not necessary providing the material that is removed is taken to an appropriate location through appropriate techniques, and it is their intention to do this. Condition 13 enforces this matter.
- c) The applicant has provided various remediation documents and responded to request for further clarification on these. Officers consider that these are sufficient, hence the recommendation on this application. Condition 13 should be revised to confirm that these works are to be undertaken by 'a licensed contractor'
- d) A verification report is to be produced to satisfy condition 14, with the timing of this revised from the April agenda papers to ensure it is provided prior to any occupation.
- e) It is not considered that there is a need for any additional controls to be introduced over the phasing of the development beyond that already contained in the suggested conditions which require that a series of works are undertaken prior to occupation
- f) The timetable of works is covered by the response to e), with the risk assessment and site management elements outside of the scope of the planning scrutiny as they are controlled by other pollution control legislation
- g) This is a requirement of condition 14

- h) Officers have suggested to the applicant that some revisions to the site plan would assist clarity. His agent has declined to provide that, and so the wording of condition 9 has been revised to enable the material that is to be removed off site to be removed without creating conflict with the approved plan. This is an acceptable solution to the query that is raised.
- i) The condition requires that the Verification Report is approved by the local planning authority. This is the appropriate mechanism for determining the acceptability of any information that is required by condition. The local planning authority can then draw on whatever expertise is necessary to support its assessment of that information. This will be the case with the report that is submitted to satisfy this condition.
- j) Condition 15 to the original planning permission requires that a scheme of 'site access and off-site highway works' be submitted for approval and then implemented. This scheme has been submitted and approved previously. The proposed condition 15 requires that approved scheme to be implemented and so delivers the improvements approved satisfying the original condition. The change in wording to 'site access and off-site access works' do not alter the scope of the works required, but it is accepted that consistency would be helpful and so this proposal can be adopted and the condition changed to refer to 'highway works'.

4 21/0379 **Revised Officer Recommendation**

The recommendation on the agenda is to grant planning permission based on a series of planning conditions that are listed in brief, and were to be provided in full as part of this late observations schedule. Unfortunately other work priorities have meant that it has not been possible for officers to undertake this work in advance of the meeting. The applicant is aware of this and has agreed to a short extension of the determination time of the application to allow them to be concluded in the next week or so.

To accommodate this it is requested that the decision on this application be delegated to the Head of Planning and Housing, with that decision being to grant planning permission for the development once work on the planning conditions has been concluded.

5 21/0437 **Additional Assessment**

The officer report omits any reference to an important element of the assessment that is needed in applications of this nature, which is the potential for the application to be referred to the Secretary of State under the Town and Country Planning (Consultation) (England) Direction 2021, This replaces the previous 2009 version of the 'Green Belt Direction'. It applies where an application is for inappropriate development in the green belt, and is for a building that is over 1,000m² in floorarea or which has a significant impact on the openness of the green belt. In such circumstances the council is obliged to refer any intention to grant planning permission to the Ministry of Housing, Communities and Local Government so that they can determine whether the application is of such significance that it should be 'called-in' for consideration

by the Planning Inspectorate.

In this case the application is in the green belt, and is for a building in excess of the size parameter as it is 1.930m2. However, the officer assessment of the application as set out in the agenda report concludes that it does not constitute 'inappropriate development' as set out in para 145 of NPPF19. Accordingly there is no need for the intention to grant planning permission in this case to be referred under this Direction and the council is free to grant planning permission.

Additional Condition

As part of the green belt assessment relates to the green belt benefits of Hanger 5 being demolished it is appropriate and necessary to include a planning condition to require that this building is actually demolished and the area of its current siting reinstated as grassed area. A suggested wording for this condition is:

9. No later than 2 months following the first use of the gym hereby approve the building identified as Hanger 5 and for demolition on the approved location plan listed in condition 2 of this permission (Ref: 314363 - 3694 - TPB - GY - XX - DR - A - 1030 - S0 - 01 - D0100) shall be demolished, all resultant material shall be removed from site, and the resultant area of land shall be reinstated as grassed area.

Reason: To provide visual improvements to the wider area through the demolition of this redundant and deteriorating building as required by Policy GD2 of the Fylde Local Plan to 2032, and to ensure that the development of the new gym does not represent inappropriate development as set out in NPPF para 145 and the requirements of Policy GD2 of the Fylde Local Plan to 2032.

Revised Condition

Condition 7 on the agenda papers refers to the recording of the Hanger 5 building prior to its demolition to maintain a historic record of the building. On reflection the proposed condition is considered to involve an overly detailed level of investigation that is not proportionate to the expecting interest of the building. Accordingly, members are recommended to impose a simpler condition as follows:

7. No works associated with the demolition of the building identified in this application as 'Hanger 5' shall commence until a programme and timetable of historic building recording and analysis has been submitted to and approved in writing by the local planning authority. The programme shall comprise the creation of a record of the building which should be largely photographic to record the details of the building and its relationship to other surviving buildings from the period. Any details of such items as signage or graffiti from the period of use should be recorded. The programmes shall follow the guidance set out in 'Understanding Historic Buildings' (Historic England 2016) and shall be undertaken by an appropriately qualified and experienced professional contractor to the standards and guidance of the Chartered Institute for

Archaeologists (www.archaeologists.net).

A digital copy of the report and photographs shall be supplied to the local planning authority and placed in the Lancashire Historic Environment Record within 3 months of the gym facility hereby approved being first brought into use.

Reason: To record and advance the understanding of the archaeological and historical significance of the existing building for archival and research purposes prior to its loss and to make information concerning the building's significance publicly accessible in accordance with the requirements of Fylde Local Plan to 2032 policy ENV5 and the National Planning Policy Framework.

6 21/0468 **Revised Condition**

The agenda report includes a condition that requests that details are provided of the proposed fencing to separate the dwelling and its curtilage from the surrounding land uses. A revised plan has been received which provides that detail and so it is suggested that condition 4 be amended to simply require that this detail is implemented, and condition 2 is revised to list this plan.

The revised wording suggested for condition 4 is:

4. Prior to the first residential occupation of the dwelling hereby approved the fencing indicated on drawing no. A3113/PL07 REV. A shall be installed to the design and routeing shown on that plan in its entirety to form an effective and appropriate separation of the property from Cherry Tree Farm and the employment uses.

The approved fencing shall be retained in that form and location thereafter.

Reason: To provide an appropriate separation between the proposed dwelling and the surrounding developments to prevent loss of privacy between the occupiers of the new dwelling and Cherry Tree Farm, and to provide security and privacy for the occupiers of the new dwelling from the employment land. These are to protect residential amenity in accordance with the requirements of Policy GD7 of the Fylde Local Plan to 2032 and the aims of the National Planning Policy Framework.