



# Agenda

## Planning Committee

Date:	Wednesday, 10 October 2018 at 10:00am
Venue:	Town Hall, St Annes, FY8 1LW
Committee members:	<p>Councillor Trevor Fiddler (Chairman)</p> <p>Councillor Richard Redcliffe (Vice-Chairman)</p> <p>Councillors Christine Akeroyd, Jan Barker, Michael Cornah, Neil Harvey, Kiran Mulholland, Linda Nulty, Liz Oades, Sandra Pitman, Heather Speak, Ray Thomas.</p>

### Public Speaking at the Planning Committee

Members of the public may register to speak on individual planning applications: see [Public Speaking at Council Meetings](#).

	PROCEDURAL ITEMS:	PAGE
1	<b>Declarations of Interest:</b> Declarations of interest, and the responsibility for declaring the same, are matters for elected members. Members are able to obtain advice, in writing, in advance of meetings. This should only be sought via the Council's Monitoring Officer. However, it should be noted that no advice on interests sought less than one working day prior to any meeting will be provided.	1
2	<b>Confirmation of Minutes:</b> To confirm the minutes, as previously circulated, of the meeting held on <a href="#">12 September 2018</a> as a correct record.	1
3	<b>Substitute Members:</b> Details of any substitute members notified in accordance with council procedure rule 23.	1
	DECISION ITEMS:	
4	Planning Matters	3-187
	INFORMATION ITEMS:	
5	List of Appeals Decided	188-201

Contact: Lyndsey Lacey-Simone - Telephone: (01253) 658504 – Email: [democracy@fylde.gov.uk](mailto:democracy@fylde.gov.uk)

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<http://fylde.cmis.uk.com/fylde/DocumentsandInformation/PublicDocumentsandInformation.aspx>

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## 10 October 2018

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DWELLINGS WITH ASSOCIATED OPEN SPACE AND  
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## Background Papers

In accordance with Section 100D of the Local Government Act 1972, the background papers used in the compilation of reports relating to planning applications are listed below, except for such documents that contain exempt or confidential information defined in Schedule 12A of the Act.

- Fylde Borough Local Plan (As Altered) October 2005 (Saved Policies)
- Joint Lancashire Minerals and Waste Local Plan
- Fylde Local Plan to 2032 (Submission Version) December 2016
- Bryning-with-Warton Neighbourhood Plan
- Saint Anne's on The Sea Neighbourhood Development Plan
- National Planning Policy Framework
- National Planning Practice Guidance
- The Community Infrastructure Levy Regulations 2010 (as amended)
- Conservation of Habitats and Species Regulations 2010 (as amended)
- Strategic Housing Market Assessment (SHMA) 2014 and Addendum I and II November 2014 and May 2015 and Housing Market Requirement Paper 2016
- Five Year Housing Land Supply Statement at 31 March 2018
- Strategic Housing Land Availability Schedule (SHLAA)
- Consultation on Additional Evidence in Support of Fylde Local Plan to 2032 – August 2017
- Other Supplementary Planning Documents, Guidance and evidence base documents specifically referred to in the reports.
- The respective application files
- The application forms, plans, supporting documentation, committee reports and decisions as appropriate for the historic applications specifically referred to in the reports.
- Any additional information specifically referred to in each report.

These Background Documents are available either at [www.fylde.gov.uk/resident/planning](http://www.fylde.gov.uk/resident/planning) or for inspection by request at the Town Hall, St Annes Road West, St Annes.

# Planning Committee Schedule

## 10 October 2018

**Item Number:** 1

**Committee Date:** 10 October 2018

<b>Application Reference:</b>	17/0745	<b>Type of Application:</b>	Variation of Condition
<b>Applicant:</b>	Mr Howells	<b>Agent :</b>	Condy & Lofthouse Architects Ltd
<b>Location:</b>	LAND SOUTH OF BRIDGESIDE LYTHAM ST ANNES, FY8 2SW		
<b>Proposal:</b>	VARIATION OF CONDITION 2 (APPROVED DRAWINGS) TO ALLOW FOR PLOT SUBSTITUTION & REMOVAL OF CONDITION 8 (PEDESTRIAN GATE ACCESS TO PLOTS 19-22) OF PLANNING APPROVAL 13/0231.		
<b>Ward:</b>	ST LEONARDS	<b>Area Team:</b>	Area Team 2
<b>Weeks on Hand:</b>	57	<b>Case Officer:</b>	Andrew Stell
<b>Reason for Delay:</b>	Need to determine at Committee		

**If viewing online this is a Google Maps link to the general site location:**

<https://www.google.co.uk/maps/@53.7766215,-3.0476367,575m/data=!3m1!1e3?hl=en>

**Summary of Recommended Decision:** Grant subject to variation of s106

### Summary of Officer Recommendation

This application relates to an area of land off Bridgeside and Hornsey Avenue in St Annes near the boundary with Blackpool borough. The site is being developed as 22 residential dwellings under planning permission 13/0231 over the past 12 months or so, with these to be occupied as affordable units managed by Progress Housing Association. The application proposes revising the layout of the scheme to omit a proposal in the approved layout that direct pedestrian access is provided to Bridgeside. The applicant believes that this would create security concerns and so has sought to vary the site layout to exclude it and remove the planning condition that requires its provision and maintenance.

Officers have considered this and believe that the alternative routes available, whilst slightly less direct, remain adequate to ensure that a sustainable access is maintained to the services that the access would lead to on Squires Gate Lane and beyond. As such the application to revise the layout in this manner is acceptable and so the application is supported.

The Town Council have objected as the direct access route was initially sought to ensure compliance with Policy HL6 of the Fylde Borough Local Plan. That relates to ensuring layouts achieve a good standard of design and as the revision continues to provide that it is not considered that there is any conflict with Policy HL6 if the direct access routes were omitted. The scheme also complies with the relevant requirements of the Fylde Local Plan to 2032 and the St Annes Neighbourhood Plan both of which have progressed significantly since the original decision was made.

### **Reason for Reporting to Committee**

The application is recommended for approval but the Town Council have raised objection and so it is necessary for the decision to be made at Committee under the Scheme of Delegation.

### **Site Description and Location**

The application site is an L-shaped area of previously developed land close to the boundary with Blackpool Borough and effectively forming part of that settlement. The maximum dimensions are 120m x 60m and it has an area of 0.41 Hectares.

The land has been vacant for some years but in the past 12 months or so residential development has been ongoing under planning permission 13/0231 and is now well advanced and relates to the erection of 22 affordable dwellings.

The surrounding land uses are mixed with employment uses off Bridgeside and Squires Gate Lane to the north, residential properties to the east and south and Squires Gate train station and Pontins site beyond to the west. The proposed access to the site is from the south via Hornsey Avenue, Martin Avenue and Westgate Road to Squires Gate Lane, with no access direct from Squires Gate Lane.

The land is within the settlement as defined by Policy SP1 of the Fylde Borough Local Plan and is alongside land that is within the built settlement in the Blackpool Local Plan 2006. There are no other designations on the site, but the land immediately to the west between the site and the railway line is a Biological Heritage Site protected by Policy EP17 of the Fylde Borough Local Plan.

The settlement designation is carried forward in the Fylde Local Plan to 2032 and it is allocated as a Non-Strategic Housing site under Policy H1 of the Plan as a reflection of the 2013 permission.

### **Details of Proposal**

The application proposes the variation of condition 2 of planning permission 13/0231 which lists the approved plans under that permission. The variation proposed is to revise the approved site layout drawing to exclude the provision of a pedestrian link from the rear of each of plots 19-22 to Bridgeside, and so to Squires Gate Lane which Bridgeside leads to.

The application also proposes the removal of condition 8 which requires the provision and maintenance of these pedestrian gates.

No other changes are sought, although the drainage and site level drawings that had previously been approved under the original layout are also revised to reflect that change.

### **Relevant Planning History**

<b>Application No.</b>	<b>Development</b>	<b>Decision</b>	<b>Date</b>
17/0791	APPLICATION TO DISCHARGE DETAILS ASSOCIATED WITH CONDITIONS ON PLANNING PERMISSION 13/0231 CONDITION 3 (MATERIALS) CONDITION 6 (CONSTRUCTION MANAGEMENT PLAN)	Advice Issued	01/10/2018

16/1009	APPLICATION TO DISCHARGE DETAILS ASSOCIATED WITH CONDITIONS TO PLANNING PERMISSION 13/0231 - CONDITION 3 (MATERIALS), CONDITION 5 (LIVING WALL BOUNDARY TREATMENT), CONDITION 6 (CONSTRUCTION PLAN), CONDITION 13 (LEVELS), CONDITION 14 (DRAINAGE) AND CONDITION 17 (REPTILE PROTECTION)	Advice Issued	08/02/2017
13/0231	PROPOSED CONSTRUCTION OF 22NO. TWO STOREY DWELLINGS	Approved with 106 Agreement	26/02/2014

### **Relevant Planning Appeals History**

None

### **Parish/Town Council Observations**

**St Anne's on the Sea Town Council** notified on 06 September 2017 and comment:

*"Object: Condition 8 was imposed by FBC Policy HL6 so this application is contrary to FBC Policy."*

### **Statutory Consultees and Observations of Other Interested Parties**

No comments to report.

### **Neighbour Observations**

**Neighbours notified:** 06 September 2017  
**Site Notice Date:** 07 September 2017  
**Summary of Comments**

### **Relevant Planning Policy**

#### **Fylde Borough Local Plan:**

SP01	Development within settlements
HL02	Development control criteria for new housing proposals
EP01	Environmental Improvement Schemes
EP10	Protection of important landscape and habitat features
EP12	Conservation trees & woodland
EP14	Landscaping of new developments
EP15	Protection of European wildlife sites
EP16	Development in or near SSSI's
EP17	Development in or near Biological & Geological Heritage Sites
EP18	Natural features
EP19	Protected species
EP25	Development and waste water
EP26	Air pollution
EP27	Noise pollution
EP28	Light pollution
EP29	Contaminated land
HL06	Design of residential estates



CF02	Provision of new primary schools
TR05	Public transport provision for large developments
TR09	Car parking within new developments
TREC01	Primary Holiday Areas
CF01	Provision of community facilities
CF02	Provision of new primary schools

#### **Fylde Local Plan to 2032:**

GD1	Settlement Boundaries
GD7	Achieving Good Design in Development
SL2	Fylde-Blackpool Periphery Strategic Location for Devt

#### **Other Relevant Policy:**

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance
STANP	St Annes on Sea Neighbourhood Plan

#### **Site Constraints**

#### **Environmental Impact Assessment**

This development does not fall within Schedule 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

#### **Comment and Analysis**

The principle of the development proposal is established by the previous planning permission which has been implemented, and reinforced by the subsequent housing allocation in the Fylde Local Plan to 2032. The only matter for consideration here is the merits of revising the layout to exclude the gated pedestrian accesses to Bridgeside.

The original layout proposed access via a series of private gates from the back gardens of the 4 dwellings that back onto Bridgeside and so allows access to that road and on to Squires Gate Lane and the services beyond. The proposal is to remove these gates from the layout and remove the condition requiring their provision so that the access to these services would be through the development, and then either along Hornsey Avenue where there is a pedestrian link to Bridgeside or along Martin Avenue and Westgate Road to reach Squires Gate Lane.

The development has been built to the layout as now under consideration. This application was submitted in advance of that construction, but its determination has been delayed by other matters.

The Committee Report for application 13/0231 makes passing reference to the provision of this gate following reference to the general accessibility of the whole site to services:

*“A relatively direct pedestrian access is available along Hornsey Avenue to the services on this road and so it is not necessary for this development to provide for such an access point, other than for the dwellings that have their rear boundaries to Bridgeside who are each provided with a back gate to this road.”*

The applicant’s reasoning for not providing these gates is provided in the submission letter which

states: *“We would like to remove the pedestrian gates to plots 19-22 as our client has concerns over security and surveillance and would like the development to comply with the requirements of secured by design.”*

The inclusion of the gates would increase connectivity for these 4 dwellings, but it is not seen as an essential element, and the applicant’s reasoning for its removal is accepted as a valid point. With the availability of alternative routes via Hornsey Avenue and Westgate Road and the similar connectivity using these routes that other properties utilise, it is considered that omission of these links, which would only provide for a limited number of properties on the development, will not unduly undermine the connectivity of the development as a whole to the services available off Bridgeside on Squires Gate Lane and beyond. Indeed the access through the development and along Martin Avenue to the new Lidl store is an improved connection over that which previously existed. Accordingly the application is recommended for approval.

The Town Council refer to the reasoning for the gates being included as to ensure compliance with Policy HL6. This Policy states:

*“Well designed housing schemes which respect the character of the area and provide an attractive, safe and crime free environment for residents will be permitted.*

*Proposals which involve poor designs and/or layouts which would prejudice the character of the area or public safety, or increase the potential for crime will not be permitted.”*

The gates do bring slight accessibility improvements for the 4 plots they serve and so are an enhancement to accessibility. However their removal will likely bring security benefits as the applicant’s desire and so it is not considered that there is actually any conflict with Policy HL6 if the gates are removed.

There are also no conflicts with other adopted, emerging or Neighbourhood Development Plan policies by this revision.

Given that this is an application to vary that condition is determined as if it is a new planning application for the site it is appropriate to repeat any conditions on the original permission that remains relevant. The applicant had discharged the details of these in advance of construction works and so those details are carried through into any revised planning permission that may be granted. The s106 agreement that relates to the provision of the dwellings as affordable units also needs to be varied to relate to this new permission (if granted).

## **Conclusions**

This application relates to an area of land off Bridgeside and Hornsey Avenue in St Annes near the boundary with Blackpool borough. The site is being developed as 22 residential dwellings under planning permission 13/0231 over the past 12 months or so, with these to be occupied as affordable units managed by Progress Housing Association. The application proposes revising the layout of the scheme to omit a proposal in the approved layout that direct pedestrian access is provided to Bridgeside. The applicant believes that this would create security concerns and so has sought to vary the site layout to exclude it and remove the planning condition that requires its provision and maintenance.

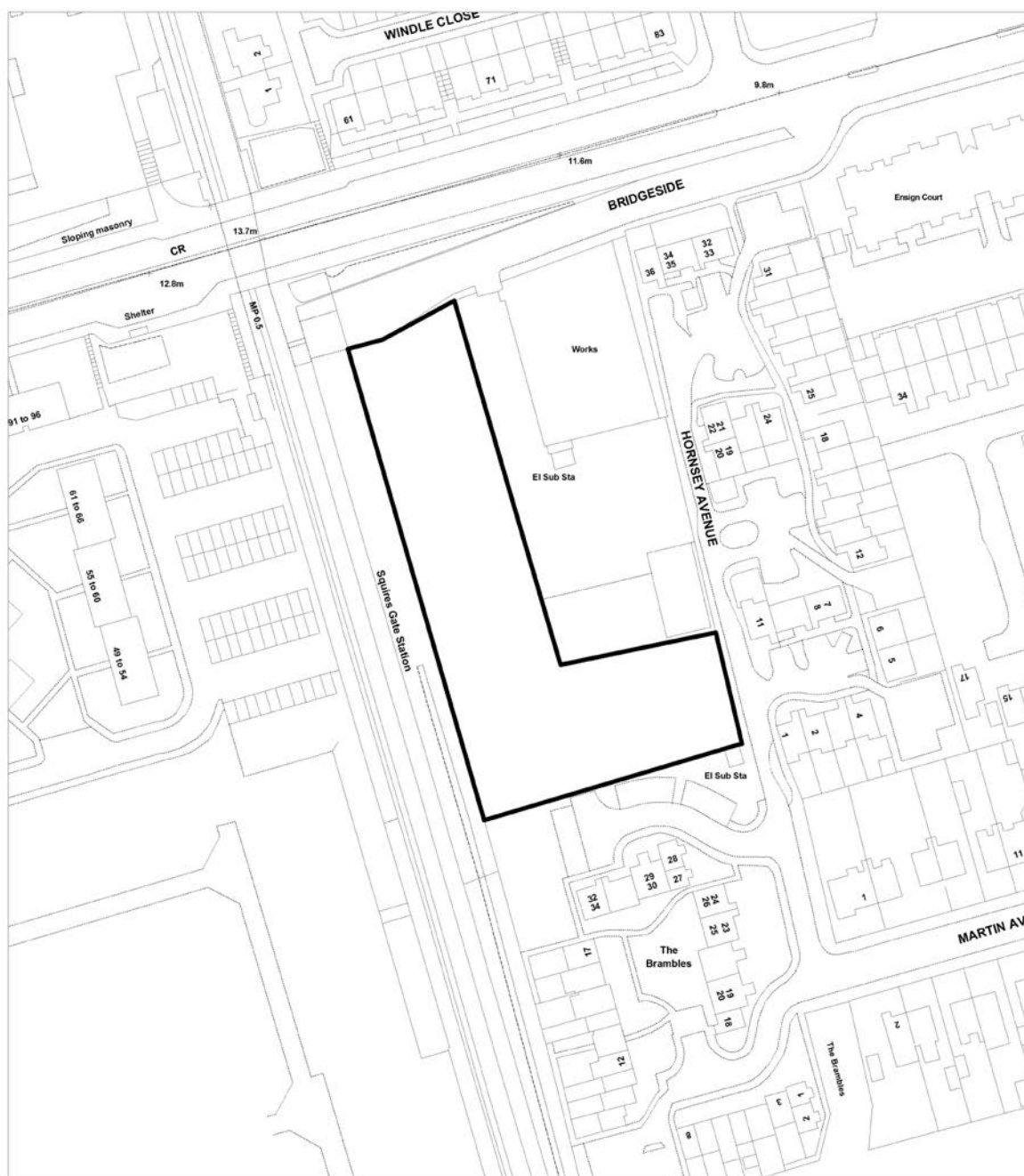
Officers have considered this and believe that the alternative routes available, whilst slightly less direct, remain adequate to ensure that a sustainable access is maintained to the services that the

access would lead to on Squires Gate Lane and beyond. As such the application to revise the layout in this manner is acceptable and so the application is supported.

The Town Council have objected as the direct access route was initially sought to ensure compliance with Policy HL6 of the Fylde Borough Local Plan. That relates to ensuring layouts achieve a good standard of design and as the revision continues to provide that it is not considered that there is any conflict with Policy HL6 if the direct access routes were omitted. The scheme also complies with the relevant requirements of the Fylde Local Plan to 2032 and the St Annes Neighbourhood Plan both of which have progressed significantly since the original decision was made.

### **Recommendation**

That the decision to GRANT planning permission with the varied site layout, the omission of condition 8, and the update to the other conditions to reflect the current state of development is delegated to the Head of Planning and Housing subject to the variation of the s106 agreement associated with planning permission 13/0231 to relate to this application, and the repeat of those conditions which remain relevant and have not yet been discharged.



Development Services Fylde Council		(c) Crown Copyright and database right (2018). Ordnance Survey (100006084).	
Application No. 5/17/0745	Address Land south of Bridgeside, Lytham St Annes	Grid Ref. E.3309 : N.4316	Scale 0 6 12 18 24 m

Item Number: 2

Committee Date: 10 October 2018

<b>Application Reference:</b>	17/0851	<b>Type of Application:</b>	Variation of Condition
<b>Applicant:</b>	Warton East Developments	<b>Agent :</b>	Hollins Strategic Land
<b>Location:</b>	LAND TO THE NORTH OF FRECKLETON BYPASS / EAST OF WARTON, BRYNING WITH WARTON		
<b>Proposal:</b>	APPLICATION TO VARY CONDITION 7 OF PLANNING PERMISSION 14/0410 (OUTLINE APPLICATION WITH ACCESS FOR A RESIDENTIAL DEVELOPMENT OF UP TO 350 DWELLINGS) IN ORDER TO REMOVE COMPONENTS (A) AND (B) AND TO INCREASE THE NUMBER OF DWELLINGS THAT CAN BE CONSTRUCTED IN ADVANCE OF THE COMPLETION AND BRINGING INTO USE OF A PACKAGE OF OFF SITE HIGHWAY IMPROVEMENTS AT THE JUNCTION OF CHURCH ROAD, LYTHAM ROAD AND HIGHGATE LANE (COMPONENT (C)) FROM 15% TO 33% OF THE OVERALL DEVELOPMENT		
<b>Ward:</b>	WARTON AND WESTBY	<b>Area Team:</b>	Area Team 1
<b>Weeks on Hand:</b>	48	<b>Case Officer:</b>	Matthew Taylor
<b>Reason for Delay:</b>	Negotiations to resolve difficulties		

If viewing online this is a Google Maps link to the general site location:

<https://www.google.co.uk/maps/@53.7535198,-2.8853363,554m/data=!3m1!1e3?hl=en>

**Summary of Recommended Decision:** Grant

#### **Summary of Officer Recommendation**

The application follows outline planning permission 14/0410 (as allowed by recovered appeal APP/M2325/W/15/3004502) relating to a residential development of up to 350 dwellings on a *circa* 12.78 hectare site to the north of the Freckleton Bypass, on the eastern periphery of Warton. Application 14/0410 was allowed as part of a conjoined appeal with an application for up to 115 dwellings at Clifton House Farm to the western end of Warton (15/0562). Condition 7 of planning permission 14/0410 reads as follows:

*"No more than 15% of the development hereby approved shall be occupied until the completion and bringing into use of:*

- a) The Preston Western Distributor Road*
- b) The relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue*
- c) The works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060."*

The current application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary condition 7 of planning permission 14/0410 as follows:

1. To increase the proportion of the development that can be constructed in advance of the completion and bringing into use of a package of off site highway improvements from 15% to 33% of the overall development.

2. To remove reference to highway infrastructure components (a) The Preston Western Distributor Road; and (b) the relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue, from the present wording of the condition.

Accordingly, if the application were approved, condition 7 would be varied to read as follows:

*“No more than 33% of the development hereby approved shall be occupied until the completion and bringing into use of the works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.”*

The reasons for imposing condition 7 of planning permission 14/0410 are set out in paragraphs 235-239 of the Inspector’s report. When read in conjunction with the Inspector’s conclusions at paragraphs 181-186, the report clarifies that the reason for imposing the condition related to ensuring that “with the conditions recommended, neither proposed development would cause the capacity of the highway network to accommodate the cumulative effects of development in Warton to be exceeded”. The Secretary of State did not seek to alter the wording of condition 7 when issuing their decision on the recovered appeal.

Since the issuing of the appeal decision additional traffic assessments have been undertaken by the applicant’s transport consultant and the Local Highway Authority (LHA). These assessments were prepared in early 2018 and took into account up-to-date traffic surveys, all committed developments in Warton (including the Enterprise Zone) and traffic growth factors. The LHA advise that this updated assessment reveals that “traffic growth on the A584 (Lytham Road) had not reached the level predicted” and, subject to the requirement for additional infrastructure improvements associated with a MOVA upgrade to traffic signals at the Church Road/Lytham Road/Highgate Lane junction, there are no objections to the proposed changes to condition 7.

Having regard to the evidence presented by the applicant’s transport consultant and the LHA that provides an updated analysis of traffic conditions on the highway network surrounding the site since the issuing of the appeal, it is concluded that: (i) removing reference to the highway infrastructure improvements cited in clauses (a) and (b) of the extant condition; and (ii) increasing the proportion of development that can be occupied prior to the completion of the Church Road, Lytham Road and Highgate Lane junction improvements cited in clause (c) of the condition from 15% (up to 54 dwellings based on a maximum of 350 units) to 33% (up to 117 dwellings based on a maximum of 350 units) would not result in a severe residual cumulative impact on the capacity of the surrounding highway network, nor would there be a significant adverse impact on highway safety.

The proposed variation of the condition would also assist in kick starting the delivery of housing on a strategic site which is allocated in the SLP (site reference HSS12) by improving its marketability to developers and its commercial viability. Accordingly, further benefits would arise by virtue of the proposal’s positive impact in boosting the supply of housing in the Borough. No other adverse effects would arise from the variation of the condition that would significantly and demonstrably outweigh the benefits. Therefore, when considered as a whole, the proposal is considered to represent sustainable development in accordance with the relevant policies of the FBLP, the BWNP, the SLP and the NPPF.

### **Reason for Reporting to Committee**

The application is classified as major development and the officer recommendation is for approval. In addition, the application seeks to vary a condition on a planning permission that was not granted under delegated powers and the Parish Council have submitted representations in objection to the application and requested that it be determined by the Planning Committee.

### **Site Description and Location**

The application relates to a *circa* 12.78 hectare site to the north of the Freckleton Bypass, on the eastern periphery of Warton. The land is allocated as a strategic site for the delivery of 350 homes within the Warton Strategic Location for Development under policy SL3 of the Fylde Council Local Plan to 2032 (Submission Version) – site reference HSS12. This allocation follows the granting of outline planning permission 14/0410 at appeal on 13 February 2017 (appeal reference APP/M2325/W/15/3004502).

Application 14/0410 was allowed subject to 21 conditions as part of a conjoined appeal with an application for up to 115 dwellings at Clifton House Farm to the western end of Warton (15/0562) which was recovered by the Secretary of State. This application seeks to vary condition 7 of planning permission 14/0410 (granted by the Secretary of State), which reads as follows:

*"No more than 15% of the development hereby approved shall be occupied until the completion and bringing into use of:*

- a) The Preston Western Distributor Road*
- b) The relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue*
- c) The works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060."*

The junction works and appeal decision referred to in criterion (c) of condition 7 relate to planning permission 13/0674 for up to 360 dwellings at Blackfield End Farm (BEF). An application for approval of reserved matters for a total of 333 dwellings at BEF was subsequently approved on 5 March 2018 (reference 17/0129) and this permission has been implemented.

### **Details of Proposal**

The application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary condition 7 of planning permission 14/0410 as follows:

1. To increase the proportion of the development that can be constructed in advance of the completion and bringing into use of a package of off-site highway improvements from 15% to 33% of the overall development.
2. To remove reference to highway infrastructure components (a) The Preston Western Distributor Road; and (b) the relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue, from the present wording of the condition.

Accordingly, if this application were approved, condition 7 would be varied to read as follows:

"No more than 33% of the development hereby approved shall be occupied until the completion and

bringing into use of the works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060."

When originally submitted, the application sought to vary condition 7 to allow up to 65% of the development to come forward prior to the completion of the off-site highway works cited in criteria (a), (b) and (c) of the condition. This proposal was, however, revised to reduce the proportion of development to 33%, though including the removal of clauses (a) and (b), on 14th August 2018. Accordingly, the application is to be assessed on that basis.

### **Relevant Planning History**

Application No.	Development	Decision	Date
15/0303	RESUBMISSION OF OUTLINE PLANNING APPLICATION 14/0410 FOR THE ERECTION OF UP TO 350 DWELLINGS WITH ACCESS APPLIED FOR AND ALL OTHER MATTERS RESERVED (APPLICATION INCLUDES ILLUSTRATIVE LANDSCAPE MASTER PLAN FOR 350 DWELLINGS)	Refused	03/06/2016
14/0410	OUTLINE APPLICATION FOR ERECTION OF UP TO 375 DWELLINGS WITH ACCESS FROM EXISTING ROUNDABOUT APPLIED FOR AND ALL OTHER MATTERS RESERVED	Appeal against non-determination	07/04/2015

### **Relevant Planning Appeals History**

Application No.	Development	Decision	Date
14/0410	OUTLINE APPLICATION FOR ERECTION OF UP TO 375 DWELLINGS WITH ACCESS FROM EXISTING ROUNDABOUT APPLIED FOR AND ALL OTHER MATTERS RESERVED	Allowed	13/02/2017

### **Parish/Town Council Observations**

***Bryning with Warton Parish Council:*** Notified of the original proposal on 13.11.17 and comment (23.11.17) as follows:

- The Parish Council believe that there is no evidence in terms of the highways schemes linked to this condition not coming forward. On the contrary there is evidence of progress being made. The Council has met with the developer for Blackfield End Farm, Miller Homes have publicly stated that the Lytham Road/Church Road scheme will be delivered in the first half of 2018.
- The developer's supporting statement for this variation contains no new arguments beyond those exercised during the appeal or indeed capable of being exercised during the currency of the appeal. The Council therefore looks to Fylde Borough Council to refuse this application out of hand. It is also worthy of consideration that at the time of formal opening of the long awaited Broughton bypass the Lancashire County Council senior highways representative in addressing the media clearly stated that the correct way to undertake developments is for the infrastructure to be put in place prior to the construction process getting underway. We would respectfully suggest that this cannot be argued against as representing best practice.
- The appellant did not challenge the imposition of condition 7 at the appeal which would



have been the proper time to do so in fact they were a party to the drafting of the condition with the 15% agreement there was common consensus that the three highways schemes would be delivered. It is worthy of note that Lancashire County Council as the highway authority raised safety concerns relative to the Lytham Road/Church Road junction specifically in regard to ensuring completion of the remodelling prior to the developments.

- The Planning inspector imposed the condition for good reason and the Secretary of State supported the condition when granting the appeal.

The Parish Council also wrote to the Secretary of State on 27.02.18 requesting that they exercise their powers under article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to call the application in should the Local Planning Authority by minded to approve it, citing the following reasons:

- The Inspector's Report after the inquiry held on 12, 13 and 14 July 2016 was presented to you on October 4th 2016 and you subsequently announced your recovered decision on 13th February 2017. In granting planning permission you agreed with your Inspector that the respective conditions limiting the amount of development on each site until certain highways infrastructure was provided were necessary and reasonable. The Inspector's recommendation was in the light of the case made by the Parish Council (and local residents). The conditions were not among those which had been agreed between the applicants and the local highway authority and the Inspector gave careful consideration to the need for the conditions and their reasonableness in making his recommendation. Less than a year later the appellants have submitted applications to amend these conditions arguing that circumstances have changed to such a degree that the careful consideration given at the inquiry, the Inspector's professional judgement and your own assessment have little merit or applicability.
- A fundamental argument made at the inquiry was that the likelihood the highway improvements maturing within the planning period were supportive of granting the appeal. The Inspector clearly accepted this general line of argument but recognised that until these highway improvements were fully operational there should be some constraint on the level of housing development of these two sites. This was accepted by both appellants at the time.
- More generally and perhaps more significantly, the Parish Council and the Warton community cannot easily appreciate how the applicants can seek to vary the conditions of your recovered appeal decision which was so obviously based on thorough scrutiny of all material facts. Indeed, the view was that your decision was welcomed as being the exercise of common sense and safeguarded the village from premature development activity but secured essential infrastructure enhancements before the two sites were fully developed. It would be difficult to explain to the community how a decision taken at national level can be undermined by two applications which might now not receive the full examination of the elected members should the response to these applications be delegated to officers.
- There are wider implications for the local network should the conditions be varied. Four major housing developments (up to 650 dwellings) could be under construction at the same time within a one mile radius of the centre of Warton, with the obvious consequences for the highway network if these three highway schemes are not implemented first.
- It is also worthy of consideration that at the time of the formal opening of the long awaited Broughton bypass in October 2017 a Lancashire County Council senior highways representative emphasised that the correct way to undertake developments is for the infrastructure to be put in place prior to the construction process getting underway. We would strongly argue that consistency in the planning system is paramount.
- And finally, LCC Highways have recommended to the Local Planning Authority (Fylde Borough Council) that the applications to vary the conditions are refused and they have

additionally pointed out that there will be less capacity at key points on the local network than first thought.

The Parish Council were notified of the amended proposal by letter dated 15.08.18 and made the following comments on 14.09.18 in respect of the revised proposal:

- Policy S1, Para 6.13 in the Emerging Local Plan states "It is important that development within the Strategic Locations for Development is accompanied by the timely provision of the necessary infrastructure." The supporting Infrastructure Delivery Plan (IDP) Para 2.16 states "the council will continue to work with LCC to determine the potential increase in traffic through Warton that would be generated from the development of the committed strategic sites in this location" and "that Warton will expand its role and develop a local (retail) centre including shops and community facilities" (Para 9.12).
- Bryning with Warton's 'made' Neighbourhood Development Plan (NDP) has the same legal status as the Local Plan and is part of Fylde's statutory development plan. Fylde are therefore legally required to ensure that the principles and policies in the NDP are taken into account when considering planning applications. Para 4.3 of the NDP requires the "Parish Council to work together with Lancashire County Council, Fylde Borough Council, public transport providers, local schools and developers to develop a long term sustainable strategy for improvements to the highway network and the management of traffic in and around Bryning with Warton to reduce the impact of development".
- The Applicants did not challenge Condition 7 at the public inquiry which would have been the proper time to do so; indeed, they were party to the drafting of the condition with the 15% limit and there was common consensus that the three highway schemes would be delivered. The Planning Inspector's reasoning took into account different interpretations of the modelling at the time and the Secretary of State supported the Planning Inspector's recommendation. It is important to recall the words of the Planning Inspector at Para 236 of his report "These arguments were not challenged by the appellants. Although these two schemes are outside the control of the appellants, there is common consensus that they will be implemented within the next few years in any event [86 (bullets 5, 6-9 and 18)]."
- At the formal opening of the long awaited Broughton bypass the Senior Lancashire County Council highways representative stated that the correct way to undertake developments is for the infrastructure to be put in place prior to the construction process getting underway. This cannot be argued against as representing best practice; consistency is paramount to ensure public confidence.
- The proposed variation of Condition 7 seeks to remove a) and b) and to vary the proportion of development from 15% to 33% that can be occupied prior to the need to making operational the improvement works at A584 Lytham Road/Church Road (as required by conditions 16 and 17 of the Blackfield End Farm appeal decision).
- The LCC response dated 4th Sept to 17/0851 says that the classification of Warton as a Local Service Centre and Strategic Location for Development in the Emerging Local Plan has been taken into account but this is not quantified. We are not aware that any work in support of Policy S1 and the IDP has commenced, indeed it may not until Fylde's Local Plan is finally adopted. If work has been carried out by FBC and LCC then we would have expected it to have been shared with the Parish Council on the basis of our stakeholder and NDP status. If LCC are saying that they are confident that they have factored in a projected increase in traffic generated by Warton being a Strategic Location for Development and Local Service Centre, then we would expect and request that these traffic assumptions are made explicit and transparent.
- LCC Highways response dated 31st August (17/0851) states that the Planning Inspector 'imposed' these conditions. At a recent meeting with the Parish Council, Fylde's Development Officer suggested that the infrastructure elements of Condition 7 had been

imposed at the 'whim' of the Planning Inspector. Both views do not reflect the reality of the discussions and joint agreements reached at the public inquiry.

- It is evident that LCC and FBC have been working with the Applicant(s) and they have been encouraged to submit these applications, presumably on the basis that officers will be minded to recommend approval. The Parish Council is disappointed that it has been excluded from negotiations that impact the community of Warton; this is inconsistent with the aforementioned objectives and policies of the Local Plan, Neighbourhood Development Plan and Fylde's wider statutory development plan.
- The basis for these applications appears largely premised on Blackfield End Farm conditions rather than directly related to predicted traffic volumes. There appears to be no correlation in the evidence presented to support a figure of 33% - this suggests that the traffic modelling is (as ever) open to interpretation.
- The dependency on the three highways improvements schemes was recognised by the Planning Inspector. The three come as a package, remove either or both a) and b) and it has consequences. The PWDR will take a large proportion of BAE inbound/outbound traffic away from the centre of Warton; likewise the relocation of the BAE gate. When implemented, schemes a) and b) will create additional capacity at the critical junction of Church Road/Lytham Road which is unarguable and this in itself should be sufficient for retaining these elements.
- The applications repeat the argument that items a) and b) are reliant on infrastructure that it is not within the gift or power of the applicant to deliver or influence. And yet, as has already been noted, there were no such objections from the applicants at the public inquiry.
- LCC Highway's response highlights that: (i) the agreed measures will improve junction efficiency for motorised vehicles only; this interim improvement (MOVA etc) does not overcome the lack of pedestrian/cycle provision and additional capacity that is required to satisfy approved development within Warton; (ii) that significant progress is being made with the (now approved) PWDR.
- Fylde planning officers have emphasised to the Parish Council in recent weeks that the best way to protect communities across Fylde from inappropriate development applications is by ensuring that a 5 Year Housing Supply is delivered. The community of Warton is, however, experiencing the exact opposite - protections that were put in place for approved developments by two Planning Inspectors - Condition 7 for these two applications and Condition 16 for Blackfield End Farm - are now being cast aside.
- The elements that make up Condition 7 are the essential infrastructure building blocks in Warton that support Local Plan Policy S1 and the objectives of the NDP (and associated Masterplanning). The Parish Council strongly believe that these essential infrastructure enablers that are required to be delivered through agreed planning conditions (Conditions 7 and 8 of these two approved sites: Conditions 16 and 17 of the Blackfield End Farm approved site) must be retained and enforced to ensuring the future viability and sustainability of Warton as a Strategic Location for Development and Local Service Area - and the wider area.

**Freckleton Parish Council:** Notified of the application on 13.11.17 and comment (18.12.17) as follows:

- The Parish Council are against this application and re-iterate the comments and concerns of Bryning with Warton PC. Freckleton PC also have concerns as there is no inclusion of any infrastructure for the Schools, Doctors or Shops.

#### **Statutory Consultees and Observations of Other Interested Parties**

*Highways England – Comments as follows:*

- Highways England (as the Highways Agency) was not consulted on the initial application and so did not have an opportunity to comment on the 15% threshold the developer is wishing to vary. However, this variation affects only local roads and is a sufficient distance from the Strategic Road Network to not offer us any concern. As such, we recommend no objection to the application.

*Local Highway Authority (LHA) – Lancashire County Council:* Objected to the original scheme proposing an increase in the proportion of development from 15% to 65% by correspondence dated 05.01.18 and recommended refusal due to the absence of any new evidence to allow a relaxation of the condition imposed by the Inspector and upheld by the Secretary of State.

Subsequently submitted comments on revised scheme dated 10.09.18 as follows:

- The proposed variation of condition 7 seeks to remove the reference to elements a) PWD; and b) BAE Systems gate/access changes and also to vary, by increasing from 15% to 33%, the proportion of development that can be occupied prior to the need to deliver and bring into use the improvement works at A584 Lytham Road/Church Road (as set by conditions 16 and 17).
- Condition 7 attached to planning application 14/0410 was not a condition suggested by LCC Highways. The condition was imposed by the Planning Inspector following full consideration of all evidence presented at the Warton conjoined Appeal Inquiry (2016). The Secretary of State subsequently supported the condition when granting the appeal.
- Having reviewed all the latest relevant documentation, including that submitted with the proposed variation of condition 7, and also other recent traffic assessment work at the A584 Lytham Road/Church Road junction (Wrea Green conjoined Appeal 2018), I consider there have been traffic changes which allow consideration of a review and variation to Condition 7.
- Traffic assessments carried out for the recent Wrea Green conjoined Appeal highlighted traffic growth on A584 Lytham Road had not reached the level predicted at the time of the Warton conjoined Appeal Inquiry. The classification of Warton as a Local Service Centre and Strategic Location for Development in the Emerging Local Plan has been taken into account when considering the proportion of development that could be brought forward and the level of traffic growth accounted for in future traffic forecasts. The latest traffic forecasts were compiled in advance of the Wrea Green conjoined Public Inquiry earlier this year and took into consideration (i) Up to date traffic surveys; (ii) All committed development such as BEF, Warton East, Clifton House Farm etc. and also included the EZ and PWD; as well as (iii) Traffic growth. This was therefore what must be considered a thorough assessment.
- Condition 8 of planning permission 14/0410 states that no dwelling shall be occupied until a MOVA/UTC control has been installed and brought into use at (a) the Church Road/Lytham Road/Highgate Lane junction; (b) the Lytham Road/Mill Lane junction and (c) the junction of Lytham Road and the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue. Therefore, improvement works will still be required to be delivered at the Church Road/Lytham Road/Highgate Lane junction prior to any occupation on site, unless these works have been delivered by another developer.
- In order to be consistent with the requirements requested of development as part of the Wrea Green conjoined Appeal in regard to the Church Road/Lytham Road/Highgate Lane junction, I consider that LCC's support for the variation of condition should include a requirement for the 'Land to the East, Warton' development to deliver equivalent measures, These were: (i) Installation of MOVA control and setup; (ii) A new signal control box; (iii) New signal poles and signal heads; (iv) Relocate loop locations in highway where required (in line with MOVA requirements); and (v) Installation of remote CCTV monitoring of the junction. I would note that these agreed measures will improve junction efficiency for motorised

vehicles only; this interim improvement does not overcome the lack of pedestrian/cycle provision and additional capacity that is required to satisfy approved development within Warton.

- With regard to the proposed s278 Church Road signalised junction scheme, progress has been made. However, as with all development led improvement schemes the timing of the delivery is ultimately within the control of the developer(s) for the approved development. I would also note that significant progress has also been made in regard to the Preston Western Distributor Road which now has planning permission.
- On the basis that the similar measures as requested for the Wrea Green conjoined Appeal sites are delivered at the Church Road/Lytham Road/Highgate Lane junction (as part of the wider s278 works for MOVA/UTC as required by Condition 8), then LCC Highways would offer no objection to the proposed variation of condition 7.

### **Neighbour Observations**

<b>Neighbours notified:</b>	13 November 2017
<b>Site notice posted:</b>	19 September 2018
<b>Press notice:</b>	20 September 2018
<b>Amended plans notified:</b>	15 August 2018
<b>No. Of Responses Received:</b>	Seven
<b>Nature of comments made:</b>	Seven objections

The appropriate neighbouring properties were notified of the original application by letter on 13.11.2017 and, subsequently, of the amended scheme on 15.08.2018. In addition, as the application involves major development notices have also been posted on site and in the local press (the dates above reflecting publicity undertaken in respect of the amended scheme). At the time of writing, a total of five letters had been received in objection to the application. The points of objection are summarised below. Any additional representations will be reported to the committee as late observations.

- Condition 7 of the Inspector's report was supported by the Secretary of State. Therefore, the 15% restriction prior to the completion of all highway improvements listed in a), b) and c) of the condition should be retained. The Inspector recorded the fact that this was not challenged by the appellants at the public inquiry. Similarly, the appellants did not argue at the Inquiry that the highways improvements were outside of their control, indeed, the Inspector noted that there was common consensus that the three highway schemes would be delivered.
- The Planning Inspector recommended that Condition 7 be imposed because of recognised concerns over the increased amount of traffic that would travel through the village of Warton until major road infrastructure improvements were in place. There is no justification for varying the condition as it is presently imposed.
- Warton is a Strategic Location for Development and significant highway infrastructure improvements are required to support housing growth before development takes place. It is not certain that the Preston Western Distributor Road, the re-design of the Lytham Road/Church Road and the re-location of the BAE entrance will have a truly significant and positive impact on traffic management in Warton, but they should be delivered before the two housing sites on the east and west sides of Warton are developed beyond the 15% limit imposed by the Inspector.
- The planning system needs to find a balance between the need to meet housing supply figures and the wellbeing of the community. As Warton is to almost double in size up to 2032 it requires commensurate improvements in its highway infrastructure to support that

level of growth. If there isn't an integrated approach then Warton will see growth in its housing stock without any supporting highway infrastructure to mitigate it, which will have an adverse effect on residents and those who travel to, from and through it.

- There has been no change in circumstances to justify a relaxation of the condition.
- As the decision on the appeal was made by the Planning Inspectorate and Secretary of State, any application to vary its conditions should also be made by those bodies, via another public inquiry is necessary, and not by the Local Planning Authority.
- Varying the condition on this application would set a precedent for a similar variation at the Clifton House Farm site. This would further increase traffic through the village of Warton, with no major road infrastructure improvements in place.
- The applicant has failed to make any progress with the site since receiving the Secretary of State's decision. They are contributing to their own delay. Although the applicant is challenging the 15% limit imposed by the Inspector, it remains residents' view that no houses should be built on this site until all three highway improvement schemes have been fully implemented. The residents of Warton have had to accept the decision to permit development on this site. Therefore, the developer should also accept the decision with the conditions that were imposed.
- In the absence of any detailed plans, it is unclear whether the development will require the removal of native boundary hedgerows between the site and neighbouring dwellings.
- Provision should be put in place to direct surface water drainage away from neighbouring dwellings, especially given the increased waterlogging that has taken place in recent years.

### **Relevant Planning Policy**

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise. At present, the statutory adopted development plan for Fylde comprises the saved policies of the Fylde Borough Local Plan (As Altered) 2005 (the 'FBLP'). In addition, as the site falls within the Bryning with Warton Neighbourhood Development Plan (BWNP) area, the Neighbourhood Plan also forms part of the Development Plan in this case.

Fylde Borough Council submitted the "Fylde Council Local Plan to 2032" – the Emerging Local Plan (referred to hereafter as the 'Submission Local Plan' or 'SLP') – to the Secretary of State for examination on 9 December 2016. An Inspector appointed to undertake an independent examination into the soundness of the SLP held three sessions of examination hearings in March, June and December 2017. The Inspector confirmed that the Stage 3 hearings formally closed on 11 January 2018. Following those hearings a 'Schedule of Proposed Main Modifications for Consultation' was produced and the Council consulted on the "Fylde Local Plan to 2032 - Schedule of Proposed Main Modifications" between 8 February and 22 March 2018. This consultation also included a number of Additional Modifications to the SLP. These do not concern the Plan's policies or affect the soundness of SLP, but are factual updates of the supporting text. A Schedule of Proposed Policies Map modifications was also consulted on for clarity with respect to some of the main modifications.

The Planning Inspectorate issued a letter to the Council on 18th September 2018 confirming that the Fylde Council Local Plan to 2032 (as modified) has been found sound and can be adopted by the Council at its discretion. Specifically, the Local Plan Inspector confirms at paragraph 216 of her report "that with the recommended main modifications set out in the Appendix the Fylde Council Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework." Accordingly, the SLP (as modified) has been found sound and can be progressed for adoption without delay. It is anticipated that the Fylde

Council Local Plan to 2032 will be formally adopted by the Council by the end of October and, at that point, it will replace the FBLP as the Development Plan for the Borough, which should guide decision taking. For the avoidance of doubt, references to the SLP in the remainder of the report refer to the most up-to-date (modified) version of the Fylde Council Local Plan to 2032 which has been found sound by the Inspector.

Given the above, and although the SLP has not yet been formally adopted by the Council (and, accordingly, is not yet part of the statutory development plan) it is considered that substantial weight should be afforded to it in the decision making process in accordance with the provisions of paragraph 48 of the NPPF.

### **National Policy:**

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

### **Fylde Borough Local Plan:**

SP02	Development in countryside areas
HL02	Development control criteria for new housing proposals
HL06	Design of residential estates
TR01	Improving pedestrian facilities
TR05	Public transport provision for large developments
TREC17	Public Open Space within New Housing Developments
EP10	Protection of important landscape and habitat features
EP11	Building design & landscape character
EP12	Conservation trees & woodland
EP14	Landscaping of new developments
EP18	Natural features
EP19	Protected species
EP21	Archaeology
EP22	Protection of agricultural land
EP25	Development and waste water
EP27	Noise pollution
EP29	Contaminated land
EP30	Development within floodplains
CF02	Provision of new primary schools

### **Fylde Local Plan to 2032:**

S1	Proposed Settlement Hierarchy
DLF1	Development Locations for Fylde
M1	Masterplanning the Strategic Locations for Development
SL3	Warton Strategic Location for Development
GD4	Development in the Countryside
GD7	Achieving Good Design in Development
GD9	Contaminated Land
H1	Housing Delivery and the Allocation of Housing Land
H2	Density and Mix of New Residential Development
H4	Affordable Housing
INF1	Service Accessibility and Infrastructure
INF2	Developer Contributions
T4	Enhancing Sustainable Transport Choice

CL1	Flood Alleviation, Water Quality and Water Efficiency
CL2	Surface Water Run-Off and Sustainable Drainage
ENV1	Landscape
ENV2	Biodiversity
ENV4	Provision of New Open Space

### **Bryning with Warton Neighbourhood Development Plan (BWNP):**

BWNE1 – Protecting and Enhancing Local Wildlife and Habitats

BWNE2 – Protecting and Enhancing Local Character and Landscape

BWNE3 – Design to Reduce Surface Water Run Off

### **Site Constraints**

Within countryside area

### **Environmental Impact Assessment**

The development is of a type listed within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and exceeds the threshold in column 2 of the table relating to category 10(b) developments. Paragraph 8 of the Inspector’s report in respect of appeal APP/M2325/W/15/3004502 (‘Appeal A’) identifies that “in respect of Appeal A, on 21 May 2015 the Secretary of State directed that the development is not Environmental Impact Assessment (EIA) development.” Accordingly, this S73 application is also not EIA development.

### **Comment and Analysis**

#### **Background and principle of development:**

The principle of a residential development for up to 350 dwellings on the site has been established through the granting of outline planning permission 14/0410 as part of an appeal recovered by the Secretary of State (APP/M2325/W/15/3004502). No subsequent applications for approval of reserved matters or discharge of conditions on the outline permissions have been submitted.

Paragraphs 013 – 018 of the “flexible options for planning permissions” chapter to the NPPG relate to “amending the conditions attached to a permission including seeking minor material amendments (application under Section 73 TCPA 1990)”. Paragraph 15 of the NPPG makes clear that a grant of a S73 application is, in effect, the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.

Whilst applications to vary conditions on an extant permissions are to be determined in accordance with S38 (6) of the Planning and Compulsory Purchase Act 2004, given the existence of extant permission 14/0410 it follows that attention should be focussed on national or local policies or other material considerations that have changed since the original grant of permission, as well as the effects of the proposed changes sought to the wording of the condition. Given the grant of planning permission 14/0410, the principle of development on the site has already been established and this is not a matter to be revisited as part of the S73 application.

Application 14/0410 was approved by the Secretary of State on 1<sup>3</sup> February 2017. Although the statutory, adopted development plan for Fylde remains the same (the FBLP), the SLP is at a much more advanced stage of preparation and, accordingly, it should be afforded substantial weight in the decision making process (though it does not yet have ‘development plan’ status). The BWNP was



adopted on 24 May 2017 and is also part of the development plan. In addition, the Ministry of Housing, Communities and Local Government published the revised NPPF in July 2018. Accordingly, there have been material changes in both local and national planning policy since the issuing of planning permission 14/0410. These changes do not, however, indicate that an alternative approach should be taken with respect to the principle of development. Indeed, the application land is now allocated as a strategic site for housing development under policy SL3 of the SLP (site reference HSS12).

#### Scope of assessment:

While any grant of permission would, in effect, result in the issuing of a new outline planning permission (though the timescale for implementation must be consistent with the extant permission), given the advice in the NPPG it follows that consideration only needs to be given to those elements of the scheme which differ from the previous approval, along with any effects of the abovementioned changes in policy since the issuing of the previous decision.

Given the scenario-based nature of the wording of condition 7, the LPA has a number of options available to it when considering this application. In summary, it could either:

- Grant permission and issue a new decision that varies the wording of condition 7 in the manner proposed by the applicant, along with any changes to other conditions or additional conditions it considers to be necessary; or
- Grant permission and issue a new decision that varies the wording of condition 7 in a form that differs from that proposed by the applicant (e.g. with reference to a different proportion of development or with removal of only one of the current infrastructure projects), along with any changes to other conditions or additional conditions it considers to be necessary; or
- Refuse permission on the basis that it does not consider any change to the wording of the current condition to be appropriate.

#### Effects of the proposed variation to condition 7:

The purpose of the application is to vary condition 7 of planning permission 14/0410 in order to allow an increase in the proportion of development that can take place in advance of a package of off-site highway improvement works – from 15% to 33% – and to remove reference to two components of infrastructure – a) The Preston Western Distributor Road; and b) The relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue – from the condition.

The reasons for imposing condition 7 of planning permission 14/0410 are set out in paragraphs 235-239 of the Inspector's report on appeal APP/M2325/W/15/3004502 as follows:

- "In addition the parties have drafted a condition making progress beyond 15% of the developments conditional on the completion of highway schemes which would be under the appellants' control through the mechanism of s278 agreements under the Highways Act. There is no suggestion but that such a condition is necessary; rather, third parties argue that the developments should also be conditional on the prior completion of the Preston Western Distributor Road and the relocation of the BAE Systems gatehouse from Mill Lane to Thunderbolt Avenue."
- "These arguments were not challenged by the appellants. Although these two schemes are outside the control of the appellants, there is common consensus that they will be implemented within the next few years in any event [86 (bullets 5, 6-9 and 18)]. Other than the obvious point that many factors can delay or stymie good intentions, I have no evidence to suggest that this

expectation will be confounded and so do not recommend that permission be refused because of doubts over the eventual delivery of both these schemes. But, it is open to the Secretary of State to take a different view of the prospects for the Preston Western Distributor Road and the progress of BAE Systems reconfigurations at Warton."

- "For the reasons given in my conclusions, I tend to agree with the interested parties' arguments about the sequencing of events and so have expanded the main parties' agreed suggested condition to include the two additional system improvements (Recommended condition 7 in both appeals). Guidance warns that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability, but the condition is not phrased in that positive form."
- "Guidance advises that it may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition such as that suggested by the parties) – i.e. prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. That is not the case here, where the expectation of all parties is that the actions in question will be performed."
- "However, the Secretary of State may prefer to agree with Lancashire County Council as highway authority which is prepared to risk the consequences in highway congestion of housing development in Warton progressing faster than some of the supporting highway network, except for the scheme at the Lytham Road/Church Road junction where it is thought safety concerns would arise if the junction works were not completed before the developments [86 (bullet 18)]. If the Secretary of State prefers that approach, clauses (a) and (b) should be deleted from my recommended condition (7) in each appeal."

When read in conjunction with the Inspector's conclusions at paragraphs 181-186, the report clarifies that the reason for imposing condition 7 related to ensuring that "with the conditions recommended, neither proposed development would cause the capacity of the highway network to accommodate the cumulative effects of development in Warton to be exceeded".

Although the 15% restriction on the proportion of development to be brought forward in advance of the junction improvements at Church Road, Lytham Road and Highgate Lane formed part of the LHA's recommendation, paragraph 239 of the Inspector's report makes clear that the LHA did not request the inclusion of the Preston Western Distribution Road (PWDR) or the re-location of the BAE Systems gate within the wording of the condition. Instead, these elements were added in by the Inspector as a result of representations from third parties made at the inquiry. Paragraph 239 of the Inspector's report also invites the Secretary of State to omit these highway infrastructure projects from the condition should they be minded to agree with the LHA's approach. However, the Secretary of State's decision maintains the Inspector's wording, albeit that there is no specific commentary concerning the merits of condition 7 in their decision.

The gist of the applicant's case is twofold. Firstly, the applicant contends that increasing the proportion of development that can be brought forward in advance of the highway infrastructure improvements from 15% to 33% and omitting infrastructure components a) and b) would "would be inconsequential in relation to the reduction of vehicle movements on the network that would arise from amendment of only a single area of the methodology used to calculate the sensitivity test flow forecasts presented at the Appeal and on which the original threshold was based." Secondly, the applicant asserts that the current wording of the condition stifles the marketability of the site to potential developers and its commercial viability as the 15% limitation does not provide a

competitive return for a willing landowner/developer implementing the first phase (including the construction of the proposed roundabout access) and relies on the actions of third parties to bring forward infrastructure improvements that are outside the applicant's control before any further phase of development can be brought forward. Each element of the applicant's case is considered below:

*Highway capacity:*

Criterion (9) of FBLP policy HL2 states that applications for housing will only be permitted where the development would have satisfactory access and parking and would not have an adverse effect on the safe and efficient operation of the highway network, either individually or cumulatively with other developments.

Criteria (j) and (q) of SLP policy GD7 require that developments:

- Ensure parking areas for cars, bicycles and motorcycles are safe, accessible and sympathetic to the character of the surrounding area and that highway safety is not compromised.
- Should not prejudice highway safety, pedestrian safety, and the efficient and convenient movement of all highway users (including bus passengers, cyclists, pedestrians and horse riders).

In addition, paragraph 108 of the NPPF requires that in assessing applications for development, it should be ensured that:

- Appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
- safe and suitable access to the site can be achieved for all users; and
- any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Paragraph 109 of the Framework indicates that “development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

The application is supported by a Technical Note (TN) from SK Transport, the latest version of which is dated 26 July 2018. The TN includes a comparison between the forecasted levels of traffic growth in the area on which the threshold in condition 7 was predicated (the ‘Appeal Scenario’) and observed levels of traffic on the highway network since the appeal (the ‘Observed Scenario’).

The TN opines that the sensitivity test methodology used to forecast future year traffic demand in Warton at the appeal yielded results that represented “unrealistically high estimates of future year baseline traffic volumes.” This is attributed to the following factors:

- The methodology included application of background traffic growth in addition to traffic from committed developments to forecast future year traffic demand. The inclusion of substantial committed development assumptions and background traffic growth from the National Trip End Model (NTEM) inherently results in ‘double counting’ of additional future vehicular movements.
- If the housing element of the NTEM growth was removed then the background traffic growth would be negative. This indicates that housing development in the area accounts for the growth in traffic and in the absence of that element of development, traffic flows would be expected to reduce over time, not increase.
- The author of LCC’s forecast method (SCP) describes the approach methodology of combining committed development traffic with background traffic growth forecasts as “extremely robust”.

SCP notes that forecasts for the Enterprise Zone are based on the full estimate of 1,200 jobs to be created in the short-medium term across the Samlesbury and Warton sites all being located at Warton, rather than for this employment growth to be split between the two sites (as is proposed).

- Higher estimates of development trips (85%ile) were used for both the housing development at the former GEC site south of Lytham Road and Enterprise Zone.
- Committed developments have come forward at a slower rate than anticipated in LCC's forecast model. Only 66% of the committed development included in the sensitivity test assessment has come forward between 2013-18. In addition, LCC's model includes 17% more committed development units that will actually come forward for development.

With respect to comparisons between the 'Appeal' and 'Observed' Scenarios, the TN includes the following observations:

- Table 1 compares 2013 traffic count data against predicted traffic growth to 2024 identified in LCC's sensitivity test forecasting model at four locations.

Lytham Road Section	AM Peak Hour			PM Peak Hour		
	2013 Obs	2024 LCC	% increase	2013 Obs	2024 LCC	% increase
West of Church Road	1485	2219	49.4%	1468	2186	48.9%
Church Road to Mill Lane	1641	2474	50.8%	1518	2331	53.6%
West of old Lytham Road	1926	2612	35.6%	1885	2719	44.3%
A584 east of Warton	1649	2215	34.3%	1561	2281	46.1%

**Table 1** – Effects of sensitivity test traffic forecasts on 2013 observed traffic on Lytham Road.

- DfT traffic count data on the A584 (Lytham Road) to the west of Church Road shows there has been a general negative trend in traffic growth from 2006-16 and, accordingly, that traffic growth in the area is "stagnant".
- Automatic Traffic Count surveys were undertaken by SK Transport at four locations between 19.01.18 and 25.01.18 for the purposes of comparison with the counts taken in 2013 at the same locations as part of the original Transport Assessment for application 14/0410. The results are summarised in Table 2 below, but a comparison of peak AM and PM flows between 2013 and 2018 shows that, despite the implementation of several committed developments, there has not been a substantial increase in traffic on roads within the study area and that a number of locations have experienced a decrease in traffic.
- Traffic counts were undertaken by LCC on 31.01.18 at the junction of Lytham Road/Church Road/Highgate Lane. Table 3 shows a comparison between the results of LCC's 2018 survey with the 2013 traffic counts. This reveals limited increases in flows on Lytham Road between 2013 and 2018, with several decreases in movements over the same period.
- The evidence in Tables 1, 2 and 3 shows that the sensitivity test methodology used to forecast future year traffic levels, and subsequently utilised for assessment of network performance and hence to set the threshold level at which the improvement scheme to the junction of Lytham Road/Church Road will be required, results in a significant overestimation of the future year levels of traffic demand.

	23rd Oct 2013	24th Jan 2018	Net Change
AM 0800-0900	689	594	-95
PM 1700-1800	707	652	-55

Table 5.1: Church Road

	23rd Oct 2013	24th Jan 2018	Net Change
AM 0800-0900	1407	1513	+107
PM 1700-1800	1454	1386	-68

Table 5.2: Lytham Road West of Church Road

	23rd Oct 2013	24th Jan 2018	Net Change
AM 0800-0900	1837	1820	-17
PM 1700-1800	1883	1900	17

Table 5.3: Lytham Road West of (old) Lytham Road

	23rd Oct 2013	24th Jan 2018	Net Change
AM 0800-0900	1566	1618	+52
PM 1700-1800	1576	1580	+4

Table 5.4: Lytham Road East of (old) Lytham Road

**Table 2 – Traffic count comparison: 2013 to 2018.**

	23rd Oct 2013 (SK)	31st Jan 2018 (LCC)	Net Change
<i>AM Peak</i>			
Lytham Road (west)	1485	1631	146 (9.8%)
Church Road	679	676	-3 (-0.4%)
Lytham Road (east)	1488	1551	63 (4.2%)
Highgate Lane	565	468	-97 (-17.1%)
<i>PM Peak</i>			
Lytham Road (west)	1468	1512	44 (3.0%)
Church Road	707	641	-66 (-9.3%)
Lytham Road (east)	1587	1546	-41 (-2.6%)
Highgate Lane	579	483	-96 (-16.6%)

**Table 3 – Comparison of 2013 traffic counts with LCC's 2018 traffic count.**

In summary, the TN concludes that the sensitivity testing method used at the appeal gave an exaggerated and overly pessimistic view of forecasting the level of future traffic growth in Warton which, as shown by recent traffic counts, has not materialised. The TN includes revised traffic forecasting figures based on an alternative sensitivity test scenario which removes the effects of 'double counting' both committed development traffic and the NTEM figures for housing growth (but retains other assumptions concerning the Enterprise Zone and the use of 85%ile trip rates). The results of these revisions are shown in Table 4 below.

Lytham Road Section	AM Peak Hour			PM Peak Hour		
	2013 Obs	Revised Growth	Net Change vs Sens Test	2013 Obs	Revised Growth	Net Change vs Sens Test
West of Church Road	1485	2014	-205	1468	1975	-211
Church Road to Mill Lane	1641	2249	-225	1518	2114	-217
West of old Lytham Road	1926	2347	-265	1885	2450	-269
A584 east of Warton	1649	1988	-227	1561	2057	-224

**Table 4 – Revised sensitivity model traffic forecasts.**

Assuming that all 350 dwellings are constructed, the present 15% restriction in condition 7 would allow the occupation of up to 54 dwellings (rounded) prior to the completion and bringing into use of the package of off-site highway improvements. The proposal to increase this proportion to 33% would allow the occupation of up to 117 dwellings (rounded) – an additional 63 units. Trip generation information in the TN indicates that this uplift in dwellings is predicted to result in an additional 38 vehicle movements in the peak AM period and 42 movements in the peak PM period. The TN identifies that the additional traffic generation associated with this 63 unit uplift is significantly below the net change in the revised traffic forecasting set out in Table 4 and, accordingly, a relaxation of the condition is justified.

With reference to the evidence supplied in the TN and LCC's traffic counts undertaken as part of the Wrea Green conjoined appeal inquiry, the LHA's response dated 04.09.18 recognises that "there have been traffic changes which allow consideration of a review and variation to Condition 7" and, moreover, that "traffic assessments carried out for the recent Wrea Green conjoined Appeal highlighted traffic growth on A584 Lytham Road had not reached the level predicted at the time of the Warton conjoined Appeal Inquiry." Accordingly, the LHA offer no objection to the proposed variation of condition 7 subject to the re-wording of condition 8 to include a more detailed scope of works for the introduction of the MOVA signal upgrade at the Church Road/Lytham Road/Highgate Lane junction.

The evidence presented in the TN and by LCC provides a more accurate and up-to-date assessment of traffic flows through Warton that have occurred since the preparation of the original Transport Assessment for application 14/0410 and the appeal inquiry. Importantly, the trend in the 2018 traffic count data set out in the TN (19 January – 25 January 2018) is supported by LCC's own survey data on 31 January 2018 and shows that the level of traffic growth anticipated in LCC's sensitivity test forecasting has not been realised. Indeed, there has been a net reduction in 2013 traffic levels for several locations. When this trend is weighed in combination with the 38/42 uplift in peak AM/PM vehicle movements that would arise by increasing the proportion of development that can be occupied in advance of off-site highway improvements to 33%, it is not considered that the proposed variation of the existing condition would have a severe, residual cumulative impact on the capacity of the surrounding highway network.

*Components a) and b):*

The TN opines that tying the delivery of the development to the completion of the PWDR and re-location of the BAE Systems Gate from Mill Lane to Liberator Way/Typhoon Way/Thunderbolt Avenue makes the proposal "reliant on infrastructure that it is not within the gift or power of the applicant to deliver or influence. Item a) relies on external agencies in terms of its delivery and item b) relates to traffic that will only arise because of the delivery of further elements of the Enterprise Zone. [Furthermore] without the delivery of item b), traffic associated with further elements of the

Enterprise Zone will not be present on the highway network. However, this traffic has been taken to be present in the committed development flows and evaluation of future development used in the sensitivity test forecasting.”

Paragraphs 237 and 238 of the Inspector’s report refers to guidance warning “that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability [and that Grampian conditions] should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.” The Inspector did not, however, consider there to be conflict with that guidance when making reference to the PWDR and re-location of the BAE systems gate in condition 7 as it was “the expectation of all parties is that the actions in question will be performed.”

The LHA have advised that planning permission has been granted for the PWDR, though there is presently no certainty as to the exact programme and timetable for its construction. With respect to the re-location of the BAE Systems access, this is dependent on the development of the Enterprise Zone and, as noted in paragraph 184 of the Inspector’s report, it “has permission but there is no requirements for it to be implemented”. The inclusion of these two elements (a and b) in condition 7 means that no more than 15% of the dwellings (up to 54 units) can be occupied until both the PWDR and re-location of the BAE Systems access have been completed and brought into use. As identified in the TN, the delivery of both pieces of infrastructure is outside the control of the applicant and relies on third parties progressing both schemes. If that did not happen, then no more than 54 dwellings could be delivered as part of the development.

Although the Inspector’s report suggests that there is a high likelihood of infrastructure projects a) and b) coming forward at an early stage, paragraph 185 of the report acknowledges that “the Secretary of State may feel that the inbuilt pessimism of the traffic forecasts [62 and 74 (bullet 5)] does not justify the concern and that the short duration of any harm arising from congestion on the highway [86 (bullet 1)] does not outweigh the benefits of avoiding delays to the delivery of housing which the imposition of the conditions I recommend might bring.”

While the Secretary of State did not seek to alter the wording of condition 7 (albeit that there is no specific discussion concerning the merits of this particular condition in their decision letter), the LHA remain of the view they expressed at the appeal that “the County Council as highway authority [...] does not seek a condition limiting the implementation of the two appeal schemes to the implementation of the PWDR or to the BAE gateway relocation [paragraph 185 of the Inspector’s Report]”. This was based on the LHA’s view expressed at the inquiry that “there is a real prospect that they will be delivered in realistic timescales, so no request for a condition limiting approval of the appeals to the delivery of these road schemes. This is consistent with the view taken by the Blackfield End Farm Inspector [paragraph 86 of the Inspector’s report]”.

With respect to the PWDR (item a), as this now has planning permission it could be implemented without delay. However, with reference to paragraph 86 of the Inspector’s report it is evident that the timetable for its implementation anticipated by the LHA at the time of the inquiry (commencement in January 2018 and completion during 2020) has not been realised and so this will be delayed. Notwithstanding that, it is also made clear from the LHA’s evidence that the main purpose of the PWDR is to redirect traffic movements into and out of BAE Systems (the dominant source of peak traffic on the network through Warton) away from the western end of the settlement rather than to alleviate traffic impacts associated with this development. Indeed, paragraph 183 of the Inspector’s report notes that “Compared with [traffic from BAE Systems], the effects of development are relatively insignificant as can be seen by an examination of the traffic flow diagram

included as Appendix 15 to Mr Porter's proof of evidence". The result of this is that the PWDR will be delivered with or without this development and its construction does not rely on the implementation of planning permission 14/0410, nor is it directly required as a mechanism to relieve traffic arising from the development. Accordingly, it is considered that reference to the PWDR (criterion a) can be removed from condition 7.

In terms of the re-location of the BAE Systems access from Mill Lane to Thunderbolt Avenue, this is required principally to serve as the main access to Phase 1 of the Enterprise Zone (paragraph 42 of the Inspector's report). Although the section of Thunderbolt Avenue up to this access has been constructed as part of the Highgate Park development (former GEC Marconi site), there is presently no access into BAE from Thunderbolt Avenue. As stated in the applicant's TN, the opening of this access is dependent on development taking place within the Enterprise Zone. As no development has taken place within the Enterprise Zone to date, the access has not been opened. Similarly, the lack of any traffic entering and exiting the Enterprise Zone means that the forecasting in LCC's sensitivity model is overly pessimistic in the context of present circumstances. Notwithstanding that, it remains the case that the relocation of the BAE Systems gate is intrinsically linked to the development of the Enterprise Zone and is required to alleviate the traffic impacts associated with that development rather than those associated with this scheme for residential development. Therefore, it is not considered necessary to tie the provision of that infrastructure with this development.

#### *Comparison with Blackfield End Farm:*

The applicant has drawn attention to the inconsistencies between condition 7 of planning permission 14/0410 and condition 17 of another recovered appeal in Warton at Blackfield End Farm (BEF – appeal reference APP/M2325/A/14/2217060) which reads as follows:

*"No more than 119 dwellings shall be occupied until carriageway surfacing, footways, street furniture, landscaping, the upgrading of two bus stops, and traffic signals for drivers emerging from Highgate Lane have been implemented in accordance with the approved details required by condition No 16, and until the other alterations to the signalised junction of Lytham Road/ Church Road/ Highgate Lane and the priority junction of Lytham Road/ Harbour Lane have been implemented in accordance with plan ref 0401-F02/G."*

Specifically, the applicant points out that: (i) the Inspector for the BEF appeal did not seek to link the delivery of that development to highway infrastructure improvements to be delivered by third parties, despite their effects being taken into account as part of that appeal; and (ii) in allowing the construction of no more than 119 dwellings, effectively allowed 33% of the overall development of up to 360 dwellings to take place prior to the implementation of highway improvements at the junction of Lytham Road/ Church Road/ Highgate Lane.

The Inspector's report for the BEF decision does not specify how the threshold of 119 dwellings referred to in condition 17 of that decision was arrived at. The only rationale for this is given at paragraph 97 of his report as follows:

- "In the interest of traffic movement and highway safety, the scheme of works at the junctions of Lytham Road/ Church Road/ Highgate Lane and Lytham Road/ Harbour Lane should be implemented. The Council suggested that the alterations should have been carried out before construction works commence, but a construction management scheme would provide a means to specify the times of construction traffic, avoiding peak hours. Accordingly, I agree with the suggestion that the off-site highway works should be in place prior to occupation of the 120<sup>th</sup> dwelling."



The applicant considers that the proposed variations to condition 7 would bring their permission in line with what was permitted at BEF and, in doing so, would ensure a consistent and proportionate approach to housing delivery across Warton with respect to both the proportion of development that can come forward and the off-site highway infrastructure with which those developments are allied to. It is not considered that this is an unreasonable conclusion and, for the reasons set out above, it is recommended that the wording of condition 7 be amended to reflect the same approach adopted at BEF.

*Marketability and viability:*

Paragraph 57 of the NPPF relates to viability considerations and states that “where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force.” Similar provisions for viability testing are identified in SLP policies H4 and INF2.

A planning obligation dated 14.07.16 was entered into as part of outline planning permission 14/0410. In summary, the obligations in that agreement provide for:

1. The delivery of affordable housing on the site at a rate of 30% of the total number of dwellings.
2. A secondary school contribution – precise figure to be determined by LCC following the grant of RM approval.
3. A primary school contribution – precise figure to be determined by LCC following the grant of RM approval.
4. A sustainable travel team contribution of £24,000 payable prior to first occupation.
5. A public transport contribution of £375,000 payable in four instalments, the first of which is due on the occupation of the 126th dwelling.
6. A public realm contribution of £126,000 payable in three instalments of £42,000 due prior to the occupation of the 50th, 100th and 150th dwelling.

The present wording of condition 7 would allow the construction of up to 54 dwellings as part of an initial phase of development prior to the completion and bringing into use of a package of highway improvements. The applicant opines that this is stifling the marketability of the site and its attractiveness to developers due to the low returns that could be realised from developing only 15% of the dwellings in a first phase that is also required to bear the full cost of constructing the roundabout access from Lytham Road. The applicant has indicated that this makes any development of the site unviable and, ultimately, will prevent the site being brought forward.

Conversely, the revised wording to condition 7 would allow up to 117 dwellings to be occupied as part of an initial phase of development that would also include the construction of the roundabout junction providing access to the site off the A584. The applicant has submitted a viability appraisal which summarises anticipated costs and revenues associated with delivering 117 dwellings as a first, discreet phase of development.

While the applicant considers that the proposed rewording of condition 7 would result in a significant enhancement to the scheme’s viability in comparison to the current scenario – so much so that the appraisal makes provisions for all contributions set out in points 2-6 above to be paid in

full insofar as they would be applicable to a development of 117 dwellings – the appraisal indicates that due to start-up costs connected with the construction of the roundabout access and land assembly which will be associated with that first phase only, a development of 117 dwellings could only deliver a maximum of 14 affordable dwellings (equating to 12% of the 117 to be constructed) as part of that first phase in order to provide a competitive return to a willing land owner and willing developer which would enable the development to be deliverable. The 14 affordable dwellings are shown to be split across a mix of Social Rented (4), Shared Ownership (5) and Discounted Market Sale (5) tenures.

The costs and revenues given in the appraisal have been compared against benchmark values provided by Keppie Massie in a recent appraisal for a comparable site and, following revisions to accord with this benchmarking, are considered to provide an accurate assessment of the scheme's commercial viability. Accordingly, on the basis that all other contributions set out in points 2-6 above are paid in full insofar as they relate to a development of 117 dwellings, it is considered reasonable to limit the number of affordable homes within this first phase to 14. Importantly, this will not affect the overall provision of 30% affordable housing across the wider site. It will, instead, delay the provision of the balance of affordable homes (a further 91 units assuming the full 350 are constructed) to the later phases.

Any changes to the triggers for affordable housing contributions would need to be secured through a deed of variation to the existing planning obligation. Similarly, this deed of variation would also be required to link any new permission granted under S73 of the Town and Country Planning Act to the obligations in the extant agreement.

#### Other matters:

##### *Conditions:*

With respect to imposing conditions on S73 applications, paragraph 015 of the “flexible options for planning permissions” chapter to the NPPG advises that:

- “To assist with clarity decision notices for the grant of planning permission under section 73 should also **repeat the relevant conditions from the original planning permission, unless they have already been discharged.**”
- “As a section 73 application cannot be used to vary the time limit for implementation, **this condition must remain unchanged from the original permission.**”

In this case, no applications have been submitted to discharge conditions attached to outline planning permission 14/0410 and so the majority of conditions can be re-imposed without the need for changes to their wording. Exceptions to this are:

- **Condition 3** – The time limit for submission of an application for approval of reserved matters must be consistent with the original permission.
- **Condition 7** – To be varied by this S73 application.
- **Condition 8** – To be re-worded to clarify and expand the scope of the MOVA signal improvements required at the Church Road/Lytham Road/Highgate Lane junction (criterion a of the condition).
- **Condition 22** – Added requirement for the development to deliver an appropriate mix of housing in accordance with SLP policy H2 as set out below.

##### *Housing mix:*

SLP policy H2 requires developments to deliver “a broad mix of types and sizes of home, suitable for a broad range of age groups”. The policy states that “all developments of 10 or more dwellings will therefore be required to include at least 50% of dwellings that are 1, 2 or 3 bedroom homes”. An additional requirement for “developments within or in close proximity to the Tier 2 Smaller Rural Settlements to include at least 33% 1 or 2 bedroom homes” is included in the policy, though that is not applicable in Local Service Centres such as Warton.

As the application is in outline no details of housing mix have been provided. Nevertheless, it has been held in a series of recent appeals that, if an LPA requires an applicant to deliver a specific mix of housing in compliance with policies in its Local Plan, this requirements must be imposed through the use of a planning condition on an outline permission and cannot be introduced at reserved matters stage. For example, paragraphs 18 and 19 of appeal decision APP/X2410/W/16/3163501 conclude as follows:

- "Housing mix cannot reasonably be considered under the condition requiring, amongst other things, the submission of details of scale and appearance at reserved matters stage. I conclude that the conditions attached to [the] outline planning permission [...] do not require the agreement of an appropriate mix of housing at the reserved matters stage. Consequently, there is no need for me to consider whether the appeal proposal provides an appropriate mix of housing, having regard to the requirements of the Framework and the development plan."

At present, outline planning permission 14/0410 is not subject to a condition requiring that it delivers the mix of housing set out in SLP policy H2. For the reasons set out above, these requirements could not be introduced at reserved matters stage.

Paragraph 71 of the Inspector’s report makes clear that “the emerging local plan is at an early stage and subject to a number of objections, so it has limited weight”. This position has, however, changed significantly since the issuing of the Inspector’s report on 4 October 2016 and, as described in the ‘Relevant Planning Policy’ section above, the Council has now received the Inspector’s Local Plan Examination Report which confirms that the SLP, as modified, is sound and can be progressed to adoption, with this anticipated by the end of October 2018. Accordingly, the SLP should carry substantial weight as it has been found sound and, in all likelihood, will replace the FBLP as the statutory development plan for the Borough before the decision on this application is issued (given the need to consult with the Secretary of State and to complete a deed of variation for the extant planning obligation as set out in the resolution below).

The table in paragraph 019 of the ‘flexible options for planning permissions’ chapter to the NPPG makes clear that S73 applications are to be assessed in accordance with the provisions of the development plan and, moreover, that “local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.” The impending adoption of the SLP represents a significant material change in policy that now justifies the addition of a condition requiring the development to deliver a mix of housing that demonstrates compliance with SLP policy H2. This additional requirement is imposed by recommended condition 22.

#### *Referral to the Secretary of State:*

Bryning-with-Warton Parish Council wrote to the Secretary of State for Housing Communities and Local Government on 27.02.18 requesting that the application be called in should the Local Planning Authority be minded to grant planning permission. The Secretary of State (via the Ministry of

Housing, Communities & Local Government – MHCLG) have been made aware of the revisions to the scheme that have occurred since the Parish Council's request and have advised as follows:

- In the event the Planning Committee resolves to **refuse** the application, the MHCLG would have no further interest in the case and the LPA would not need to take any further action prior to issuing its decision.
- In the event that the Planning Committee resolves to **approve** the application, the MHCLG should be consulted in order to allow consideration to be given as to whether the applications should be called in for determination by the Secretary of State. The response from the MHCLG makes clear, however, that this consultation is distinct from a requirement for the LPA to 'refer' the application to the Secretary of State in accordance with the 2009 consultation direction. Instead, the decision should be delayed to allow the Secretary of State sufficient time to consider the case and to decide whether a call-in is warranted.

As the application is recommended for approval, the resolution below recommends that the decision be delegated to the Head of Planning and Regeneration following consultation with the Secretary of State, and subject to them not calling the application in for a decision.

### **Conclusions**

The application follows outline planning permission 14/0410 (as allowed by recovered appeal APP/M2325/W/15/3004502) relating to a residential development of up to 350 dwellings on a *circa* 12.78 hectare site to the north of the Freckleton Bypass, on the eastern periphery of Warton. Application 14/0410 was allowed as part of a conjoined appeal with an application for up to 115 dwellings at Clifton House Farm to the western end of Warton (15/0562). Condition 7 of planning permission 14/0410 reads as follows:

*"No more than 15% of the development hereby approved shall be occupied until the completion and bringing into use of:*

- a) The Preston Western Distributor Road*
- b) The relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue*
- c) The works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060."*

The current application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary condition 7 of planning permission 14/0410 as follows:

- To increase the proportion of the development that can be constructed in advance of the completion and bringing into use of a package of off site highway improvements from 15% to 33% of the overall development.
- To remove reference to highway infrastructure components (a) The Preston Western Distributor Road; and (b) the relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue, from the present wording of the condition.

Accordingly, if the application were approved, condition 7 would be varied to read as follows:

*"No more than 33% of the development hereby approved shall be occupied until the completion and bringing into use of the works at the junction of Church Road, Lytham Road and Highgate Lane*

*required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.”*

The reasons for imposing condition 7 of planning permission 14/0410 are set out in paragraphs 235-239 of the Inspector’s report. When read in conjunction with the Inspector’s conclusions at paragraphs 181-186, the report clarifies that the reason for imposing the condition related to ensuring that “with the conditions recommended, neither proposed development would cause the capacity of the highway network to accommodate the cumulative effects of development in Warton to be exceeded”. The Secretary of State did not seek to alter the wording of condition 7 when issuing their decision on the recovered appeal.

Since the issuing of the appeal decision additional traffic assessments have been undertaken by the applicant’s transport consultant and the Local Highway Authority (LHA). These assessments were prepared in early 2018 and took into account up-to-date traffic surveys, all committed developments in Warton (including the Enterprise Zone) and traffic growth factors. The LHA advise that this updated assessment reveals that “traffic growth on the A584 (Lytham Road) had not reached the level predicted” and, subject to the requirement for additional infrastructure improvements associated with a MOVA upgrade to traffic signals at the Church Road/Lytham Road/Highgate Lane junction, there are no objections to the proposed changes to condition 7.

Having regard to the evidence presented by the applicant’s transport consultant and the LHA that provides an updated analysis of traffic conditions on the highway network surrounding the site since the issuing of the appeal, it is concluded that: (i) removing reference to the highway infrastructure improvements cited in clauses (a) and (b) of the extant condition; and (ii) increasing the proportion of development that can be occupied prior to the completion of the Church Road, Lytham Road and Highgate Lane junction improvements cited in clause (c) of the condition from 15% (up to 54 dwellings based on a maximum of 350 units) to 33% (up to 117 dwellings based on a maximum of 350 units) would not result in a severe residual cumulative impact on the capacity of the surrounding highway network, nor would there be a significant adverse impact on highway safety.

The proposed variation of the condition would also assist in kick starting the delivery of housing on a strategic site which is allocated in the SLP (site reference HSS12) by improving its marketability to developers and its commercial viability. Accordingly, further benefits would arise by virtue of the proposal’s positive impact in boosting the supply of housing in the Borough. No other adverse effects would arise from the variation of the condition that would significantly and demonstrably outweigh the benefits. Therefore, when considered as a whole, the proposal is considered to represent sustainable development in accordance with the relevant policies of the FBLP, the BWNP, the SLP and the NPPF.

### **Recommendation**

That, subject to:

(i) The completion of a Deed of Variation to include the following additions/amendments to the extant planning obligation for planning permission 14/0410 dated 14.07.2016:

(a) The insertion of definitions and/or other appropriate clauses to link the provisions of the extant obligation to planning permission 17/0851; and

(b) Provisions for 14 dwellings which meet the definition of affordable housing in the National Planning Policy Framework to be delivered in connection with a first, discreet phase of development comprising no more than 117 dwellings, and for the balance of the remaining affordable housing units – equating to 30% of the overall total (including the 117 in the first phase) – to be delivered in

connection with the later development phases.

(ii) The Local Planning Authority consulting the Secretary of State (via the Ministry of Housing, Communities & Local Government) to allow them to consider whether they wish to call the application in (and Subject to the Secretary of State not calling the application in).

Authority be delegated to the Head of Planning and Regeneration to GRANT planning permission subject to the following conditions (or any amendment to the wording of these conditions or additional conditions that the Head of Planning & Regeneration believes is necessary to make otherwise unacceptable development acceptable):

1. No development shall take place until a plan detailing the phasing of development and the allocation to each phase of a share of a total open space provision of not less than 2ha including a LEAP/LAP has been submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure that any phased development of the site takes place in an appropriate sequence and to ensure adequate provision of associated infrastructure to serve the dwellings in each phase in order that the infrastructure required to support and/or mitigate the impact of the development is delivered concurrently with it, in the interests of proper planning and because no such details have been submitted as part of the application.

2. Details of the access within each phase of the site, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins on the phase in question and the development shall be carried out as approved.

Reason: The application is granted in outline only under the provisions of Article 5 of the Town and Country Planning (Development Management Procedure) Order 2015 and details of the matters referred to in the condition have not been submitted for consideration.

3. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of planning permission 14/0410 (i.e. by 13 February 2020).

Reason: To comply with the requirements of section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 and to ensure that the date of expiry of the permission is consistent with the extant planning permission.

4. The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with the requirements of section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

5. The access on to Lytham Road to the development hereby permitted shall be carried out in accordance with approved plan number SK21338-12. No dwelling shall be occupied until the details shown on the approved plan have been completed and made available for use. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any equivalent Order following the revocation or re-enactment thereof) the area indicated as an area to be kept free of obstruction to visibility shall thereafter be kept free of any obstruction higher than 0.6m above the level of the carriageway.

Reason: To ensure a suitable and safe means of access to the site and to achieve a satisfactory standard of engineering works in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National

Planning Policy Framework.

6. No greater quantity of housing shall be built than that which would give rise to traffic generated by the development no greater than that forecast in the submitted Transport Assessment 140603/SK21338/TA02 June 2014 by SK Transport Planning Ltd.

Reason: To ensure that traffic generated by the development does not overload the capacity of the surrounding highway network in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

7. No more than 33% of the development hereby approved shall be occupied until the completion and bringing into use of the works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.

Reason: To ensure that appropriate highway infrastructure is delivered at an early stage in order to mitigate the development's impact on the capacity of the surrounding highway network and to enhance provisions for the free flow of traffic through Warton in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

8. No dwelling hereby approved shall be occupied until a MOVA/UTC control has been installed and brought in to use at:

- a) the Church Road/Lytham Road/Highgate Lane junction
- b) the Lytham Road/Mill Lane junction and
- c) the junction of Lytham Road and the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue

Unless alternative details have first been submitted to and approved in writing by the Local Planning Authority, the MOVA/UTC control at location a) shall include the following measures: (i) installation of MOVA control and setup; (ii) relocation of loop locations in highway where required (in line with MOVA requirements); (iii) a new signal control box; (iv) New signal poles and signal heads; and (v) installation of remote CCTV monitoring of the junction.

Reason: To ensure that appropriate improvements to existing signalised junctions are delivered concurrently with the development in order to mitigate its impact on the capacity of the surrounding highway network and to enhance provisions for the free flow of traffic through Warton in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

9. No dwelling shall be occupied until details of travel mode share targets for the development and measures to achieve them (a Travel Plan) have been submitted to and approved in writing by the local planning authority. The development shall be carried out and retained in accordance with the approved details.

Reason: In order to promote modal shift and increased use of sustainable methods of travel in accordance with the objectives of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, TR1 and TR3, Fylde Council Local Plan to 2032 policies GD7 and T4 and the National Planning Policy Framework.

10. No dwelling shall be occupied until it has been provided with a Visitors Pack which shall have been previously submitted to and approved by the local planning authority, highlighting the sensitivity of the Ribble & Alt Estuaries to recreation activity and highlighting alternative recreational opportunities. The Visitors Pack shall thereafter be kept available in the dwelling for the use of future occupants.

Reason: To ensure that future residents and visitors to the development are made aware of the importance of and their potential to affect the integrity of nearby designated nature conservation sites – particularly the Ribble and Alt Estuaries Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), Ramsar site and land which is functionally linked to the SPA – and to ensure appropriate measures are introduced are taken to mitigate the development's potential effects on designated nature conservation sites in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP15 and EP16, Fylde Council Local Plan to 2032 policy ENV2, the National Planning Policy Framework and the Conservation of Habitats and Species Regulations 2017.

11. No development shall take place on any phase of the site until details of foul and surface water drainage for that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No dwelling shall be occupied until it is provided with its drainage as approved.

Reason: To ensure that the development is not at risk of flooding and does not increase flood risk elsewhere, and that adequate measures are put in place for the disposal of foul and surface water in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1 and CL2, and the National Planning Policy Framework.

12. No development shall take place on any phase of the site until details of finished floor levels and external ground levels of each plot on that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory relationship between the new dwellings and between the development and surrounding buildings before any ground works take place to establish site levels in the interests of residential and visual amenity in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2 and Fylde Council Local Plan to 2032 policy GD7.

13. No development shall take place on any phase of the site until an intrusive site investigation of the nature and extent of contamination and unexploded ordnance has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any new construction begins on that phase. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate that phase of the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. That phase of the site shall be remediated in accordance with the approved measures before new construction begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the relevant phase of the site shall incorporate the approved additional measures.

Reason: To prevent pollution of the surrounding environment and to ensure the safe development of the site before any groundworks take place in the interests of the amenity of future occupiers and other sensitive receptors in accordance with the requirements of Fylde Borough Local Plan policy EP29, Fylde Council Local Plan to 2032 policy GD9 and the National Planning Policy Framework.

14. No development shall take place within any phase of the site until a programme of archaeological work for that phase has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.



Reason: To ensure that a suitable programme of archaeological investigation is implemented prior to the commencement of any construction works in order to record and advance the understanding of the archaeological and historical significance of the site for archival and research purposes in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP21, Fylde Council Local Plan to 2032 policy ENV5 and the National Planning Policy Framework.

15. No development shall take place on the relevant phase until details of the pedestrian and cycle access to Canberra Way at the north-western corner of the site and to Butlers Meadow at the south-western corner of the site (both shown indicatively on the illustrative master plan accompanying the application) have been submitted to and approved in writing by the local planning authority. No dwelling on the relevant phase shall be occupied until the relevant pedestrian and cycle access shall have been completed and made available in accordance with the approved details.

Reason: In order to promote modal shift and increased use of sustainable methods of travel in accordance with the objectives of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, TR1 and TR3, Fylde Council Local Plan to 2032 policies GD7 and T4 and the National Planning Policy Framework.

16. The external fabric of any dwelling hereby approved having a direct line of sight to Lytham Road and the boundary fences around their rear or private amenity areas shall be constructed so as to comply with the sound reduction performance recommended in section 5 of the Noise Impact Assessment by Resource & Environmental Consultants Ltd reference 90342R2.

Reason: To ensure the implementation of appropriate noise attenuation measures for the proposed dwellings in order to achieve satisfactory living conditions for future occupiers of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP27, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

17. No dwelling on any particular phase shall be occupied until the public open space allocated to that phase has been laid out and made available for its intended purpose. The public open space shall be retained thereafter in accordance with a maintenance scheme which shall have been submitted to and approved by the local planning authority before development commences on the relevant phase. No dwelling on the last of any phase of the development which includes residential dwellings shall be occupied until the LEAP/LAP and all the public open space on all phases has been laid out and made available for its intended purpose.

Reason: To ensure that the development makes a proportionate contribution towards the provision and future maintenance of public open space on the site in order to avoid a deficiency in the quantity and quality of recreational open space in the locality and to ensure that the impact of the development on existing recreational open space is adequately mitigated in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy TREC17, Fylde Council Local Plan to 2032 policy ENV4 and the National Planning Policy Framework.

18. In this condition "retained tree" means an existing tree or hedgerow which is to be retained in accordance with the recommendations contained in section 5 and drawing 60072-002 of the Arboricultural and Hedgerow Assessment reference 60072P1R4 by Resource and Environmental Consultants Ltd dated 2 June 2014 and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the first occupation of the last completed dwelling for its permitted use.

- I. No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

- II. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
- III. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.

Reason: To ensure that adequate measures are put in place to protect existing trees which are to be retained as part of the development before any construction works commence and to ensure that appropriate compensatory planting is provided to mitigate the loss of any existing vegetation within the site occurring as a result of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP12 and EP14, Fylde Council Local Plan to 2032 policies GD7 and ENV1, and the National Planning Policy Framework.

- 19. None of the ponds and ditches shown on figure 2 of the Ecological Survey and Assessment reference 2013\_089 by ERAP Ltd dated September 2013 (Updated June 2014) shall be removed or filled in except in accordance with details submitted and approved in compliance with other conditions of this permission. A buffer zone of 10m around the edge of each pond shall be kept free of development.

Reason: To ensure that adequate mitigation measures are introduced as part of the development in order that it does not adversely affect the favourable conservation status of any protected species and to ensure the provision of appropriate habitat retention in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP19, Fylde Council Local Plan to 2032 policy ENV2, the National Planning Policy Framework, the Conservation of Habitats and Species Regulations 2010 and the Wildlife and Countryside Act 1981 (as amended).

- 20. No clearance of any vegetation in preparation for or during the course of development shall take place during the bird nesting season (March to July inclusive) unless an ecological survey has first been submitted to and approved in writing by the local planning authority. Should the survey reveal the presence of any nesting species, then no clearance of any vegetation shall take place during the bird nesting season until a methodology for protecting nest sites during the course of the development has been submitted to and approved in writing by the local planning authority. Nest site protection shall thereafter be provided in accordance with the approved methodology.

Reason: In order to prevent any habitat disturbance to nesting birds in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP19, Fylde Council Local Plan to 2032 policy ENV2, the provisions of the Wildlife and Countryside Act 1981 (as amended) and the National Planning Policy Framework.

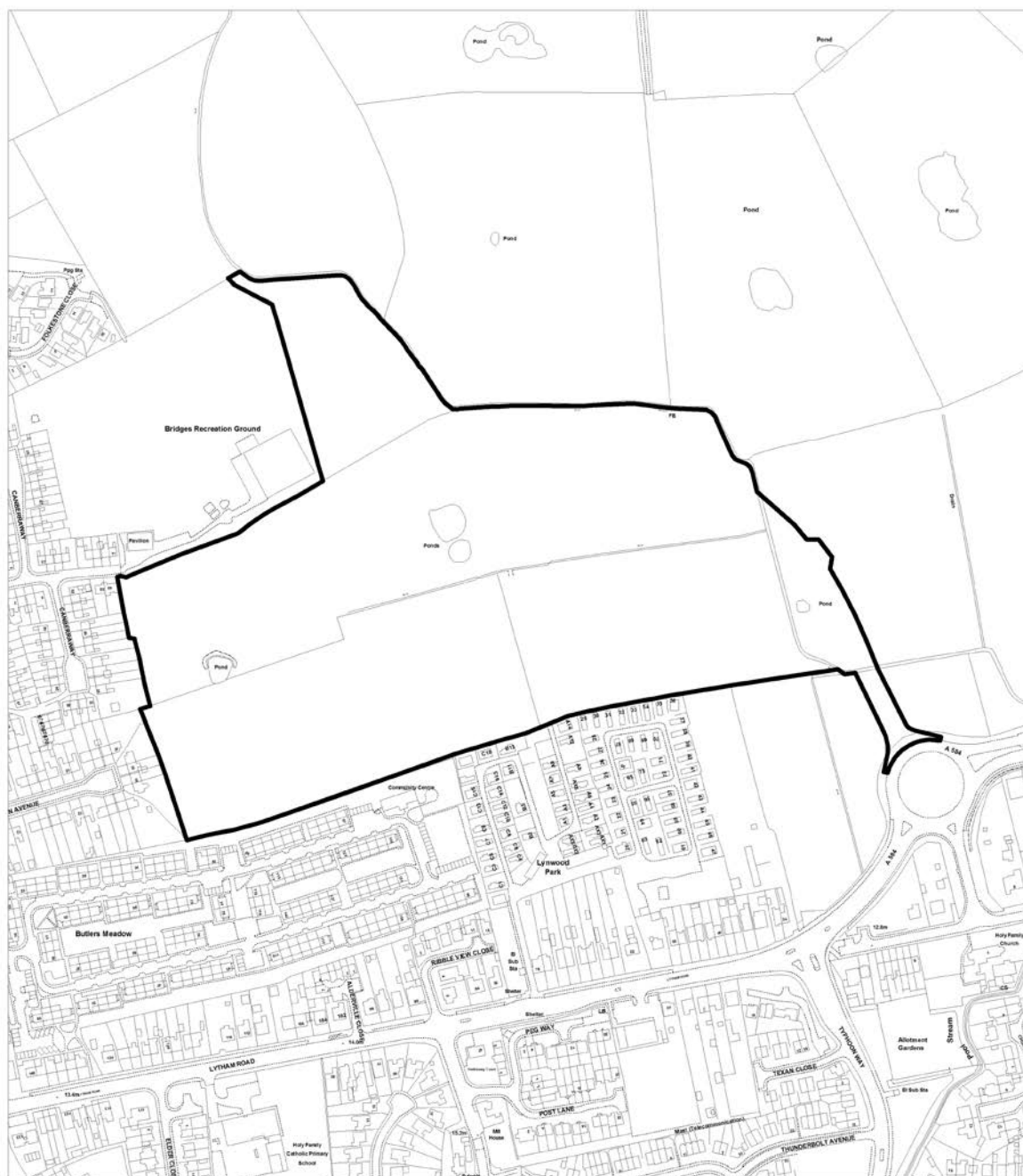
- 21. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - a) The hours of site operation;
  - b) the parking of vehicles of site operatives and visitors;
  - c) loading and unloading of plant and materials;
  - d) storage of plant and materials used in constructing the development;
  - e) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - f) wheel washing facilities;
  - g) measures to control the emission of dust and dirt during construction;

h) a scheme for recycling/disposing of waste resulting from demolition and construction works.

Reason: In order to ensure that appropriate measures are put in place before any development commences to limit noise, nuisance and disturbance to the occupiers of neighbouring properties during the construction of the development and to prevent any obstruction of the surrounding highway network in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP27, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

22. Any application which seeks approval for the reserved matters of layout, scale or appearance pursuant to condition 2 of this permission shall include details of the mix of type and size (including bedroom numbers) of the dwellings to be provided, which shall demonstrate compliance with the requirements of policy H2 of the Fylde Council Local Plan to 2032. The development shall thereafter be carried out in accordance with the duly approved details.

Reason: To ensure that the development delivers an appropriate mix of types and sizes of housing suitable for a broad range of age groups to reflect the demographics and housing requirements of the Borough as set out in the Fylde Coast Strategic Housing Market Assessment in accordance with the requirements of policy H2 of the Fylde Council Local Plan to 2032 and the National Planning Policy Framework.

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Item Number: 3

Committee Date: 10 October 2018

<b>Application Reference:</b>	17/1050	<b>Type of Application:</b>	Variation of Condition
<b>Applicant:</b>	Hallam Land Management Limited	<b>Agent :</b>	Pegasus Group
<b>Location:</b>	CLIFTON HOUSE FARM, LYTHAM ROAD, BRYNING WITH WARTON, PRESTON, PR4 1AU		
<b>Proposal:</b>	APPLICATION TO VARY CONDITION 7 OF PLANNING PERMISSION 15/0562 (OUTLINE APPLICATION WITH ACCESS FOR A RESIDENTIAL DEVELOPMENT OF UP TO 115 DWELLINGS) IN ORDER TO REMOVE COMPONENTS (A) AND (B) AND TO INCREASE THE NUMBER OF DWELLINGS THAT CAN BE CONSTRUCTED IN ADVANCE OF THE COMPLETION AND BRINGING INTO USE OF A PACKAGE OF OFF SITE HIGHWAY IMPROVEMENTS AT THE JUNCTION OF CHURCH ROAD, LYTHAM ROAD AND HIGHGATE LANE (COMPONENT (C)) FROM 15% TO 33% OF THE OVERALL DEVELOPMENT		
<b>Ward:</b>	WARTON AND WESTBY	<b>Area Team:</b>	Area Team 1
<b>Weeks on Hand:</b>	42	<b>Case Officer:</b>	Matthew Taylor
<b>Reason for Delay:</b>	Negotiations to resolve difficulties		

If viewing online this is a Google Maps link to the general site location:

<https://www.google.co.uk/maps/@53.748942,-2.9043789,554m/data=!3m1!1e3?hl=en>

**Summary of Recommended Decision:** Grant

#### **Summary of Officer Recommendation**

The application follows outline planning permission 15/0562 (as allowed by recovered appeal APP/M2325/W/15/3141398) relating to a residential development of up to 115 dwellings on a *circa* 3.74 hectare site adjacent to Clifton House Farm on the north side of the A584 (Lytham Road), to the western end of Warton.

Application 15/0562 was allowed as part of a conjoined appeal with an application for up to 350 dwellings to the eastern end of Warton (14/0410). Condition 7 of planning permission 15/0562 reads as follows:

*"No more than 15% of the development hereby approved shall be occupied until the completion and bringing into use of:*

- a) The Preston Western Distributor Road*
- b) The relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue*
- c) The works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060."*

The current application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary condition 7 of planning permission 15/0562 as follows:

- a) To increase the proportion of the development that can be constructed in advance of

the completion and bringing into use of a package of off site highway improvements from 15% to 33% of the overall development.

- b) To remove reference to highway infrastructure components (a) The Preston Western Distributor Road; and (b) the relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue, from the present wording of the condition.

Accordingly, if the application were approved, condition 7 would be varied to read as follows:

*“No more than 33% of the development hereby approved shall be occupied until the completion and bringing into use of the works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.”*

The reasons for imposing condition 7 of planning permission 15/0562 are set out in paragraphs 235-239 of the Inspector’s report. When read in conjunction with the Inspector’s conclusions at paragraphs 181-186, the report clarifies that the reason for imposing the condition related to ensuring that “with the conditions recommended, neither proposed development would cause the capacity of the highway network to accommodate the cumulative effects of development in Warton to be exceeded”. The Secretary of State did not seek to alter the wording of condition 7 when issuing their decision on the recovered appeal.

Since the issuing of the appeal decision additional traffic assessments have been undertaken by the Local Highway Authority (LHA) and transport consultants. These assessments were prepared in early 2018 and took into account up-to-date traffic surveys, all committed developments in Warton (including the Enterprise Zone) and traffic growth factors. The LHA advise that this updated assessment reveals that “traffic growth on the A584 (Lytham Road) had not reached the level predicted” and, subject to the requirement for additional infrastructure improvements associated with a MOVA upgrade to traffic signals at the Church Road/Lytham Road/Highgate Lane junction, there are no objections to the proposed changes to condition 7.

Having regard to the evidence presented by transport consultants and the LHA that provide an updated analysis of traffic conditions on the highway network surrounding the site since the issuing of the appeal, it is concluded that: (i) removing reference to the highway infrastructure improvements cited in clauses (a) and (b) of the extant condition; and (ii) increasing the proportion of development that can be occupied prior to the completion of the Church Road, Lytham Road and Highgate Lane junction improvements cited in clause (c) of the condition from 15% (up to 18 dwellings based on a maximum of 115 units) to 33% (up to 38 dwellings based on a maximum of 115 units) would not result in a severe residual cumulative impact on the capacity of the surrounding highway network, nor would there be a significant adverse impact on highway safety.

The proposed variation of the condition would also assist in kick starting the delivery of housing on a strategic site which is allocated in the SLP (site reference HSS13) by improving its marketability to developers and its commercial viability. Accordingly, further benefits would arise by virtue of the proposal’s positive impact in boosting the supply of housing in the Borough. No other adverse effects would arise from the variation of the condition that would significantly and demonstrably outweigh the benefits. Therefore, when considered as a whole, the proposal is considered to represent sustainable development in accordance with the relevant policies of the FBLP, the BWNP, the SLP and the NPPF.

### **Reason for Reporting to Committee**

The application is classified as major development and the officer recommendation is for approval. In addition, the application seeks to vary a condition on a planning permission that was not granted under delegated powers and the Parish Council have submitted representations in objection to the application and requested that it be determined by the Planning Committee.

### **Site Description and Location**

The application relates to a *circa* 3.74 hectare site comprising open agricultural land to the east of Clifton House Farm on the north side of the A584 (Lytham Road). The site is located on the western periphery of Warton and is allocated as a strategic site for the delivery of 115 homes within the Warton Strategic Location for Development under policy SL3 of the Fylde Council Local Plan to 2032 (Submission Version) – site reference HSS13. This allocation follows the granting of outline planning permission 15/0562 at appeal on 13<sup>th</sup> February 2017 (appeal reference APP/M2325/W/15/3141398).

Application 15/0562 was allowed subject to 21 conditions as part of a conjoined appeal with an application for up to 350 dwellings at Land East of Warton (14/0410) which was recovered by the Secretary of State. This application seeks to vary condition 7 of planning permission 15/0562 (granted by the Secretary of State), which reads as follows:

*“No more than 15% of the development hereby approved shall be occupied until the completion and bringing into use of:*

- a) The Preston Western Distributor Road*
- b) The relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue*
- c) The works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.”*

The junction works and appeal decision referred to in criterion (c) of condition 7 relate to planning permission 13/0674 for up to 360 dwellings at Blackfield End Farm (BEF). An application for approval of reserved matters for a total of 333 dwellings at BEF was subsequently approved on 5<sup>th</sup> March 2018 (reference 17/0129) and this permission has been implemented.

### **Details of Proposal**

The application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary condition 7 of planning permission 15/0562 as follows:

1. To increase the proportion of the development that can be constructed in advance of the completion and bringing into use of a package of off-site highway improvements from 15% to 33% of the overall development.
2. To remove reference to highway infrastructure components (a) The Preston Western Distributor Road; and (b) the relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue, from the present wording of the condition.

Accordingly, if this application were approved, condition 7 would be varied to read as follows:

*“No more than 33% of the development hereby approved shall be occupied until the completion and bringing into use of the works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.”*

When originally submitted, the application sought to vary condition 7 to allow up to 65% of the development to come forward prior to the completion of the off-site highway works cited in criterion (c) of the condition only (i.e. to also delete elements (a) and (b)).

This proposal was, however, revised to reduce the proportion of development to 33%, though continuing to including the removal of clauses (a) and (b), on 31<sup>st</sup> August 2018. Accordingly, the application is to be assessed on that basis.

#### **Relevant Planning History**

Application No.	Development	Decision	Date
15/0903	OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 115 DWELLINGS AND ASSOCIATED INFRASTRUCTURE (ACCESS APPLIED FOR WITH OTHER MATTERS RESERVED) - RESUBMISSION OF APPLICATION 15/0562	Refused	27/05/2016
15/0562	OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 115 DWELLINGS AND ASSOCIATED INFRASTRUCTURE (ACCESS APPLIED FOR WITH OTHER MATTERS RESERVED)	Appeal - non-determination	15/12/2015

#### **Relevant Planning Appeals History**

Application No.	Development	Decision	Date
15/0562	OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 115 DWELLINGS AND ASSOCIATED INFRASTRUCTURE (ACCESS APPLIED FOR WITH OTHER MATTERS RESERVED)	Allowed	13/02/2017

#### **Parish/Town Council Observations**

***Bryning with Warton Parish Council:*** Notified of the original proposal on 19.12.17 and comment (06.01.18) as follows:

1. The Parish Council believe that there is no evidence in terms of the highways schemes linked to this condition not coming forward. On the contrary there is evidence of progress being made. The Council has met with the developer for Blackfield End Farm, Miller Homes have publicly stated that the Lytham Road/Church Road scheme will be delivered in the first half of 2018. Further, the Parish Council understands that the Preston Western Distributor Road has received planning approval.
2. The applicant's supporting statement for this variation contains no new arguments beyond those exercised during the appeal or indeed capable of being exercised during the currency of the appeal. The Council therefore looks to Fylde Borough Council to refuse this application out of hand. It is also worthy of consideration that at the time of formal opening of the long awaited Broughton bypass the Lancashire County Council senior highways



representative in addressing the media clearly stated that the correct way to undertake developments is for the infrastructure to be put in place prior to the construction process getting underway. We would respectfully suggest that this cannot be argued against as representing best practice.

- The appellant did not challenge the imposition of condition 7 at the appeal which would have been the proper time to do so in fact they were a party to the drafting of the condition with the 15% agreement there was common consensus that the three highways schemes would be delivered. It is worthy of note that Lancashire County Council as the highway authority raised safety concerns relative to the Lytham Road/Church Road junction specifically in regard to ensuring completion of the remodelling prior to the developments.
- The Planning inspector imposed the condition for good reason and the Secretary of State supported the condition when granting the appeal.
- As Fylde Borough Council will be aware Pegasus and Hallam Land Management are performing the same roles on Blackfield End Farm and Clifton House Farm therefore it is somewhat disingenuous of the appellant to suggest in their supporting statement regarding this development Clifton House Farm that they have no visibility of progress of the S278 Church Road/Lytham Road/Highgate Lane scheme.

The Parish Council also wrote to the Secretary of State on 27.02.18 requesting that they exercise their powers under article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to call the application in should the Local Planning Authority by minded to approve it, citing the following reasons:

- The Inspector's Report after the inquiry held on 12, 13 and 14 July 2016 was presented to you on October 4th 2016 and you subsequently announced your recovered decision on 13th February 2017. In granting planning permission you agreed with your Inspector that the respective conditions limiting the amount of development on each site until certain highways infrastructure was provided were necessary and reasonable. The Inspector's recommendation was in the light of the case made by the Parish Council (and local residents). The conditions were not among those which had been agreed between the applicants and the local highway authority and the Inspector gave careful consideration to the need for the conditions and their reasonableness in making his recommendation. Less than a year later the appellants have submitted applications to amend these conditions arguing that circumstances have changed to such a degree that the careful consideration given at the inquiry, the Inspector's professional judgement and your own assessment have little merit or applicability.
- A fundamental argument made at the inquiry was that the likelihood the highway improvements maturing within the planning period were supportive of granting the appeal. The Inspector clearly accepted this general line of argument but recognised that until these highway improvements were fully operational there should be some constraint on the level of housing development of these two sites. This was accepted by both appellants at the time.
- More generally and perhaps more significantly, the Parish Council and the Warton community cannot easily appreciate how the applicants can seek to vary the conditions of your recovered appeal decision which was so obviously based on thorough scrutiny of all material facts. Indeed, the view was that your decision was welcomed as being the exercise of common sense and safeguarded the village from premature development activity but secured essential infrastructure enhancements before the two sites were fully developed. It would be difficult to explain to the community how a decision taken at national level can be undermined by two applications which might now not receive the full examination of the elected members should the response to these applications be delegated to officers.
- There are wider implications for the local network should the conditions be varied. Four

major housing developments (up to 650 dwellings) could be under construction at the same time within a one mile radius of the centre of Warton, with the obvious consequences for the highway network if these three highway schemes are not implemented first.

- It is also worthy of consideration that at the time of the formal opening of the long awaited Broughton bypass in October 2017 a Lancashire County Council senior highways representative emphasised that the correct way to undertake developments is for the infrastructure to be put in place prior to the construction process getting underway. We would strongly argue that consistency in the planning system is paramount.
- And finally, LCC Highways have recommended to the Local Planning Authority (Fylde Borough Council) that the applications to vary the conditions are refused and they have additionally pointed out that there will be less capacity at key points on the local network than first thought.

The Parish Council were notified of the amended proposal by letter dated 04.09.18 and made the following comments on 14.09.18 in respect of the revised proposal:

- Policy S1, Para 6.13 in the Emerging Local Plan states "It is important that development within the Strategic Locations for Development is accompanied by the timely provision of the necessary infrastructure." The supporting Infrastructure Delivery Plan (IDP) Para 2.16 states "the council will continue to work with LCC to determine the potential increase in traffic through Warton that would be generated from the development of the committed strategic sites in this location" and "that Warton will expand its role and develop a local (retail) centre including shops and community facilities" (Para 9.12).
- Bryning with Warton's 'made' Neighbourhood Development Plan (NDP) has the same legal status as the Local Plan and is part of Fylde's statutory development plan. Fylde are therefore legally required to ensure that the principles and policies in the NDP are taken into account when considering planning applications. Para 4.3 of the NDP requires the "Parish Council to work together with Lancashire County Council, Fylde Borough Council, public transport providers, local schools and developers to develop a long term sustainable strategy for improvements to the highway network and the management of traffic in and around Bryning with Warton to reduce the impact of development".
- The Applicants did not challenge Condition 7 at the public inquiry which would have been the proper time to do so; indeed, they were party to the drafting of the condition with the 15% limit and there was common consensus that the three highway schemes would be delivered. The Planning Inspector's reasoning took into account different interpretations of the modelling at the time and the Secretary of State supported the Planning Inspector's recommendation. It is important to recall the words of the Planning Inspector at Para 236 of his report "These arguments were not challenged by the appellants. Although these two schemes are outside the control of the appellants, there is common consensus that they will be implemented within the next few years in any event [86 (bullets 5, 6-9 and 18)]."
- At the formal opening of the long awaited Broughton bypass the Senior Lancashire County Council highways representative stated that the correct way to undertake developments is for the infrastructure to be put in place prior to the construction process getting underway. This cannot be argued against as representing best practice; consistency is paramount to ensure public confidence.
- The proposed variation of Condition 7 seeks to remove a) and b) and to vary the proportion of development from 15% to 33% that can be occupied prior to the need to making operational the improvement works at A584 Lytham Road/Church Road (as required by conditions 16 and 17 of the Blackfield End Farm appeal decision).
- The Parish Council can see no evidence from the applicant to support the Clifton House Farm application - Fylde's planning portal contains no justification or supporting documentation from the Applicant. On that basis we would have expected the application to have been

rejected as invalid. The reality, of course, is that this application is riding on the coat tails of 17/0851 which seeks to achieve the same outcome.

- The LCC response dated 4th Sept to 17/0851 says that the classification of Warton as a Local Service Centre and Strategic Location for Development in the Emerging Local Plan has been taken into account but this is not quantified. We are not aware that any work in support of Policy S1 and the IDP has commenced, indeed it may not until Fylde's Local Plan is finally adopted. If work has been carried out by FBC and LCC then we would have expected it to have been shared with the Parish Council on the basis of our stakeholder and NDP status. If LCC are saying that they are confident that they have factored in a projected increase in traffic generated by Warton being a Strategic Location for Development and Local Service Centre, then we would expect and request that these traffic assumptions are made explicit and transparent.
- LCC Highways response dated 6th Sept 2018 (17/1050) states that the Planning Inspector 'imposed' these conditions. At a recent meeting with the Parish Council, Fylde's Development Officer suggested that the infrastructure elements of Condition 7 had been imposed at the 'whim' of the Planning Inspector. Both views do not reflect the reality of the discussions and joint agreements reached at the public inquiry.
- It is evident that LCC and FBC have been working with the Applicant(s) and they have been encouraged to submit these applications, presumably on the basis that officers will be minded to recommend approval. The Parish Council is disappointed that it has been excluded from negotiations that impact the community of Warton; this is inconsistent with the aforementioned objectives and policies of the Local Plan, Neighbourhood Development Plan and Fylde's wider statutory development plan.
- The basis for these applications appears largely premised on Blackfield End Farm conditions rather than directly related to predicted traffic volumes. There appears to be no correlation in the evidence presented to support a figure of 33% - this suggests that the traffic modelling is (as ever) open to interpretation.
- The dependency on the three highways improvements schemes was recognised by the Planning Inspector. The three come as a package, remove either or both a) and b) and it has consequences. The PWDR will take a large proportion of BAE inbound/outbound traffic away from the centre of Warton; likewise the relocation of the BAE gate. When implemented, schemes a) and b) will create additional capacity at the critical junction of Church Road/Lytham Road which is unarguable and this in itself should be sufficient for retaining these elements.
- The applications repeat the argument that items a) and b) are reliant on infrastructure that it is not within the gift or power of the applicant to deliver or influence. And yet, as has already been noted, there were no such objections from the applicants at the public inquiry.
- LCC Highway's response highlights that: (i) the agreed measures will improve junction efficiency for motorised vehicles only; this interim improvement (MOVA etc) does not overcome the lack of pedestrian/cycle provision and additional capacity that is required to satisfy approved development within Warton; (ii) that significant progress is being made with the (now approved) PWDR.
- Fylde planning officers have emphasised to the Parish Council in recent weeks that the best way to protect communities across Fylde from inappropriate development applications is by ensuring that a 5 Year Housing Supply is delivered. The community of Warton is, however, experiencing the exact opposite - protections that were put in place for approved developments by two Planning Inspectors - Condition 7 for these two applications and Condition 16 for Blackfield End Farm - are now being cast aside.
- The elements that make up Condition 7 are the essential infrastructure building blocks in Warton that support Local Plan Policy S1 and the objectives of the NDP (and associated Masterplanning). The Parish Council strongly believe that these essential infrastructure

enablers that are required to be delivered through agreed planning conditions (Conditions 7 and 8 of these two approved sites: Conditions 16 and 17 of the Blackfield End Farm approved site) must be retained and enforced to ensuring the future viability and sustainability of Warton as a Strategic Location for Development and Local Service Area - and the wider area.

### **Statutory Consultees and Observations of Other Interested Parties**

*Local Highway Authority (LHA) – Lancashire County Council:* Objected to the original scheme proposing an increase in the proportion of development from 15% to 65% by correspondence dated 05.01.18 and recommended refusal due to the absence of any new evidence to allow a relaxation of the condition imposed by the Inspector and upheld by the Secretary of State.

Subsequently submitted comments on revised scheme dated 06.09.18 as follows:

- The proposed variation of condition 7 seeks to remove the reference to elements a) PWD; and b) BAE Systems gate/access changes and also to vary, by increasing from 15% to 33%, the proportion of development that can be occupied prior to the need to deliver and bring into use the improvement works at A584 Lytham Road/Church Road (as set by conditions 16 and 17).
- Condition 7 attached to planning application 15/0562 was not a condition suggested by LCC Highways. The condition was imposed by the Planning Inspector following full consideration of all evidence presented at the Warton conjoined Appeal Inquiry (2016). The Secretary of State subsequently supported the condition when granting the appeal.
- Having reviewed all the latest relevant documentation, including that submitted with the proposed variation of condition 7, and also other recent traffic assessment work at the A584 Lytham Road/Church Road junction (Wrea Green conjoined Appeal 2018), I consider there have been traffic changes which allow consideration of a review and variation to Condition 7.
- Traffic assessments carried out for the recent Wrea Green conjoined Appeal highlighted traffic growth on A584 Lytham Road had not reached the level predicted at the time of the Warton conjoined Appeal Inquiry. The classification of Warton as a Local Service Centre and Strategic Location for Development in the Emerging Local Plan has been taken into account when considering the proportion of development that could be brought forward and the level of traffic growth accounted for in future traffic forecasts. The latest traffic forecasts were compiled in advance of the Wrea Green conjoined Public Inquiry earlier this year and took into consideration (i) Up to date traffic surveys; (ii) All committed development such as BEF, Warton East, Clifton House Farm etc. and also included the EZ and PWD; as well as (iii) Traffic growth. This was therefore what must be considered a thorough assessment.
- Condition 8 of planning permission 15/0562 states that no dwelling shall be occupied until a MOVA/UTC control has been installed and brought into use at the Church Road/Lytham Road/Highgate Lane junction. Therefore, improvement works will still be required to be delivered at the Church Road/Lytham Road/Highgate Lane junction prior to any occupation on site, unless these works have been delivered by another developer.
- In order to be consistent with the requirements requested of development as part of the Wrea Green conjoined Appeal in regard to the Church Road/Lytham Road/Highgate Lane junction, I consider that LCC's support for the variation of condition should include a requirement for the 'Clifton House Farm' development to deliver equivalent measures, These were: (i) Installation of MOVA control and setup; (ii) A new signal control box; (iii) New signal poles and signal heads; (iv) Relocate loop locations in highway where required (in line with MOVA requirements); and (v) Installation of remote CCTV monitoring of the junction. I would note that these agreed measures will improve junction efficiency for motorised

vehicles only; this interim improvement does not overcome the lack of pedestrian/cycle provision and additional capacity that is required to satisfy approved development within Warton.

- With regard to the proposed s278 Church Road signalised junction scheme, progress has been made. However, as with all development led improvement schemes the timing of the delivery is ultimately within the control of the developer(s) for the approved development. I would also note that significant progress has also been made in regard to the Preston Western Distributor Road which now has planning permission.
- On the basis that the similar measures as requested for the Wrea Green conjoined Appeal sites are delivered at the Church Road/Lytham Road/Highgate Lane junction (as part of the wider s278 works for MOVA/UTC as required by Condition 8), then LCC Highways would offer no objection to the proposed variation of condition 7.

*Ministry of Defence* – The MOD has no safeguarding objections to the variation of Condition 7 but request that their response to application 15/0903 dated 27.01.2016 is taken into account when reviewing any reserved matters applications.

### **Neighbour Observations**

<b>Neighbours notified:</b>	19 December 2017
<b>Site notice posted:</b>	19 September 2018
<b>Press notice:</b>	20 September 2018
<b>Amended plans notified:</b>	4 September 2018
<b>No. Of Responses Received:</b>	12
<b>Nature of comments made:</b>	12 objections

The appropriate neighbouring properties were notified of the original application by letter on 19.12.2017 and, subsequently, of the amended scheme on 04.09.2018. In addition, as the application involves major development notices have also been posted on site and in the local press (the dates above reflecting publicity undertaken in respect of the amended scheme). At the time of writing, a total of nine letters had been received in objection to the application. The points of objection are summarised below. Any additional representations will be reported to the committee as late observations.

- Condition 7 of the Inspector's report was supported by the Secretary of State. Therefore, the 15% restriction prior to the completion of all highway improvements listed in a), b) and c) of the condition should be retained. The Inspector recorded the fact that this was not challenged by the appellants at the public inquiry. Similarly, the appellants did not argue at the Inquiry that the highways improvements were outside of their control, indeed, the Inspector noted that there was common consensus that the three highway schemes would be delivered.
- The Planning Inspector recommended that Condition 7 be imposed because of recognised concerns over the increased amount of traffic that would travel through the village of Warton until major road infrastructure improvements were in place. There is no justification for varying the condition as it is presently imposed. Commencing the development before the highway improvements are in place will exacerbate existing traffic congestion along Lytham Road.
- Warton is a Strategic Location for Development and significant highway infrastructure improvements are required to support housing growth before development takes place. It is not certain that the Preston Western Distributor Road, the re-design of the Lytham Road/Church Road and the re-location of the BAE entrance will have a truly significant and

positive impact on traffic management in Warton, but they should be delivered before the two housing sites on the east and west sides of Warton are developed beyond the 15% limit imposed by the Inspector.

- The planning system needs to find a balance between the need to meet housing supply figures and the wellbeing of the community. As Warton is to almost double in size up to 2032 it requires commensurate improvements in its highway infrastructure to support that level of growth. If there isn't an integrated approach then Warton will see growth in its housing stock without any supporting highway infrastructure to mitigate it, which will have an adverse effect on residents and those who travel to, from and through it.
- There has been no change in circumstances to justify a relaxation of the condition.
- As the decision on the appeal was made by the Planning Inspectorate and Secretary of State, any application to vary its conditions should also be made by those bodies, via another public inquiry is necessary, and not by the Local Planning Authority.
- The applicant has failed to make any progress with the site since receiving the Secretary of State's decision. They are contributing to their own delay. Although the applicant is challenging the 15% limit imposed by the Inspector, it remains residents' view that no houses should be built on this site until all three highway improvement schemes have been fully implemented. The residents of Warton have had to accept the decision to permit development on this site. Therefore, the developer should also accept the decision with the conditions that were imposed.
- The Planning Inspector's recommendations were based upon taking into consideration all housing and infrastructure developments planned for Warton over the coming years and had decided that in his learned experience it was necessary to impose Conditions 7a, b and c before large scale housing development could begin. If the developer is now challenging the decision made by the Planning Inspector, in effect arguing that the Planning Inspector was wrong to come to the conclusions that he had, then why were these conditions not challenged sooner.
- Traffic travelling past the site on the A584 regularly exceeds the 30mph speed limit. Increasing the number of dwellings that can be constructed ahead of proper highway improvements will only increase the risk to road safety.

### **Relevant Planning Policy**

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise. At present, the statutory adopted development plan for Fylde comprises the saved policies of the Fylde Borough Local Plan (As Altered) 2005 (the 'FBLP'). In addition, as the site falls within the Bryning with Warton Neighbourhood Development Plan (BWNP) area, the Neighbourhood Plan also forms part of the Development Plan in this case.

Fylde Borough Council submitted the "Fylde Council Local Plan to 2032" – the Emerging Local Plan (referred to hereafter as the 'Submission Local Plan' or 'SLP') – to the Secretary of State for examination on 9 December 2016. An Inspector appointed to undertake an independent examination into the soundness of the SLP held three sessions of examination hearings in March, June and December 2017. The Inspector confirmed that the Stage 3 hearings formally closed on 11 January 2018. Following those hearings a 'Schedule of Proposed Main Modifications for Consultation' was produced and the Council consulted on the "Fylde Local Plan to 2032 - Schedule of Proposed Main Modifications" between 8 February and 22 March 2018. This consultation also included a number of Additional Modifications to the SLP. These do not concern the Plan's policies or affect the soundness of SLP, but are factual updates of the supporting text. A Schedule of Proposed Policies Map modifications was also consulted on for clarity with respect to some of the

main modifications.

The Planning Inspectorate issued a letter to the Council on 18<sup>th</sup> September 2018 confirming that the Fylde Council Local Plan to 2032 (as modified) has been found sound and can be adopted by the Council at its discretion. Specifically, the Local Plan Inspector confirms at paragraph 216 of her report “that with the recommended main modifications set out in the Appendix the Fylde Council Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework.” Accordingly, the SLP (as modified) has been found sound and can be progressed for adoption without delay. It is anticipated that the Fylde Council Local Plan to 2032 will be formally adopted by the Council by the end of October and, at that point, it will replace the FBLP as the Development Plan for the Borough, which should guide decision taking. For the avoidance of doubt, references to the SLP in the remainder of the report refer to the most up-to-date (modified) version of the Fylde Council Local Plan to 2032 which has been found sound by the Inspector.

Given the above, and although the SLP has not yet been formally adopted by the Council (and, accordingly, is not yet part of the statutory development plan) it is considered that substantial weight should be afforded to it in the decision making process in accordance with the provisions of paragraph 48 of the NPPF.

**Other Relevant Policy:**

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance

**Fylde Borough Local Plan:**

SP02	Development in countryside areas
HL02	Development control criteria for new housing proposals
HL06	Design of residential estates
TR01	Improving pedestrian facilities
TR05	Public transport provision for large developments
TREC17	Public Open Space within New Housing Developments
EP10	Protection of important landscape and habitat features
EP11	Building design & landscape character
EP12	Conservation trees & woodland
EP14	Landscaping of new developments
EP18	Natural features
EP19	Protected species
EP21	Archaeology
EP22	Protection of agricultural land
EP25	Development and waste water
EP27	Noise pollution
EP29	Contaminated land
EP30	Development within floodplains
CF02	Provision of new primary schools

**Fylde Local Plan to 2032:**

S1	Proposed Settlement Hierarchy
DLF1	Development Locations for Fylde
M1	Masterplanning the Strategic Locations for Development
SL3	Warton Strategic Location for Development
GD4	Development in the Countryside

GD7	Achieving Good Design in Development
GD9	Contaminated Land
H1	Housing Delivery and the Allocation of Housing Land
H2	Density and Mix of New Residential Development
H4	Affordable Housing
INF1	Service Accessibility and Infrastructure
INF2	Developer Contributions
T4	Enhancing Sustainable Transport Choice
CL1	Flood Alleviation, Water Quality and Water Efficiency
CL2	Surface Water Run-Off and Sustainable Drainage
ENV1	Landscape
ENV2	Biodiversity
ENV4	Provision of New Open Space

### **Bryning with Warton Neighbourhood Development Plan (BWNP):**

BWNE1 – Protecting and Enhancing Local Wildlife and Habitats

BWNE2 – Protecting and Enhancing Local Character and Landscape

BWNE3 – Design to Reduce Surface Water Run Off

### **Site Constraints**

Within countryside area

Tree Preservation Order

Within countryside area

### **Environmental Impact Assessment**

The development is of a type listed within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, but does not exceed the threshold in column 2 of the table relating to category 10(b) developments. Accordingly, it is not Schedule 2 development. In addition, the Council issued a Screening Opinion under the – now superseded – Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended) in respect of the proposed development on 01.05.2015. This screening opinion also concluded that the proposal is not EIA development. Accordingly, this S73 application is also not EIA development.

### **Comment and Analysis**

#### **Background and principle of development:**

The principle of a residential development for up to 115 dwellings on the site has been established through the granting of outline planning permission 15/0562 as part of an appeal recovered by the Secretary of State (APP/M2325/W/15/3141398). No subsequent applications for approval of reserved matters or discharge of conditions on the outline permissions have been submitted.

Paragraphs 013 – 018 of the “flexible options for planning permissions” chapter to the NPPG relate to “amending the conditions attached to a permission including seeking minor material amendments (application under Section 73 TCPA 1990)”. Paragraph 15 of the NPPG makes clear that a grant of a S73 application is, in effect, the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.

Whilst applications to vary conditions on an extant permissions are to be determined in accordance



with S38 (6) of the Planning and Compulsory Purchase Act 2004, given the existence of extant permission 15/0562 it follows that attention should be focussed on national or local policies or other material considerations that have changed since the original grant of permission, as well as the effects of the proposed changes sought to the wording of the condition. Given the grant of planning permission 15/0562, the principle of development on the site has already been established and this is not a matter to be revisited as part of the S73 application.

Application 15/0562 was approved by the Secretary of State on 13<sup>th</sup> February 2017. Although the statutory, adopted development plan for Fylde remains the same (the FBLP), the SLP is at a much more advanced stage of preparation and, accordingly, it should be afforded substantial weight in the decision making process (though it does not yet have 'development plan' status). The BWNP was adopted on 24 May 2017 and is also part of the development plan. In addition, the Ministry of Housing, Communities and Local Government published the revised NPPF in July 2018. Accordingly, there have been material changes in both local and national planning policy since the issuing of planning permission 15/0562. These changes do not, however, indicate that an alternative approach should be taken with respect to the principle of development. Indeed, the application land is now allocated as a strategic site for housing development under policy SL3 of the SLP (site reference HSS13).

#### Scope of assessment:

While any grant of permission would, in effect, result in the issuing of a new outline planning permission (though the timescale for implementation must be consistent with the extant permission), given the advice in the NPPG it follows that consideration only needs to be given to those elements of the scheme which differ from the previous approval, along with any effects of the abovementioned changes in policy since the issuing of the previous decision.

Given the scenario-based nature of the wording of condition 7, the LPA has a number of options available to it when considering this application. In summary, it could either:

- Grant permission and issue a new decision that varies the wording of condition 7 in the manner proposed by the applicant, along with any changes to other conditions or additional conditions it considers to be necessary; or
- Grant permission and issue a new decision that varies the wording of condition 7 in a form that differs from that proposed by the applicant (e.g. with reference to a different proportion of development or with removal of only one of the current infrastructure projects), along with any changes to other conditions or additional conditions it considers to be necessary; or
- Refuse permission on the basis that it does not consider any change to the wording of the current condition to be appropriate.

#### Effects of the proposed variation to condition 7:

The purpose of the application is to vary condition 7 of planning permission 15/0562 in order to allow an increase in the proportion of development that can take place in advance of a package of off-site highway improvement works – from 15% to 33% – and to remove reference to two components of infrastructure – a) The Preston Western Distributor Road; and b) The relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue – from the condition.

The reasons for imposing condition 7 of planning permission 15/0562 are set out in paragraphs 235-239 of the Inspector's report on appeal APP/M2325/W/15/3141398 as follows:

- "In addition the parties have drafted a condition making progress beyond 15% of the

developments conditional on the completion of highway schemes which would be under the appellants' control through the mechanism of s278 agreements under the Highways Act. There is no suggestion but that such a condition is necessary; rather, third parties argue that the developments should also be conditional on the prior completion of the Preston Western Distributor Road and the relocation of the BAE Systems gatehouse from Mill Lane to Thunderbolt Avenue."

- "These arguments were not challenged by the appellants. Although these two schemes are outside the control of the appellants, there is common consensus that they will be implemented within the next few years in any event [86 (bullets 5, 6-9 and 18)]. Other than the obvious point that many factors can delay or stymie good intentions, I have no evidence to suggest that this expectation will be confounded and so do not recommend that permission be refused because of doubts over the eventual delivery of both these schemes. But, it is open to the Secretary of State to take a different view of the prospects for the Preston Western Distributor Road and the progress of BAE Systems reconfigurations at Warton."
- "For the reasons given in my conclusions, I tend to agree with the interested parties' arguments about the sequencing of events and so have expanded the main parties' agreed suggested condition to include the two additional system improvements (Recommended condition 7 in both appeals). Guidance warns that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability, but the condition is not phrased in that positive form."
- "Guidance advises that it may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition such as that suggested by the parties) – i.e. prohibiting development authorised by the planning permission or other aspects linked to the planning permission (e.g. occupation of premises) until a specified action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. That is not the case here, where the expectation of all parties is that the actions in question will be performed."
- "However, the Secretary of State may prefer to agree with Lancashire County Council as highway authority which is prepared to risk the consequences in highway congestion of housing development in Warton progressing faster than some of the supporting highway network, except for the scheme at the Lytham Road/Church Road junction where it is thought safety concerns would arise if the junction works were not completed before the developments [86 (bullet 18)]. If the Secretary of State prefers that approach, clauses (a) and (b) should be deleted from my recommended condition (7) in each appeal."

When read in conjunction with the Inspector's conclusions at paragraphs 181-186, the report clarifies that the reason for imposing condition 7 related to ensuring that "with the conditions recommended, neither proposed development would cause the capacity of the highway network to accommodate the cumulative effects of development in Warton to be exceeded".

Although the 15% restriction on the proportion of development to be brought forward in advance of the junction improvements at Church Road, Lytham Road and Highgate Lane formed part of the LHA's recommendation, paragraph 239 of the Inspector's report makes clear that the LHA did not request the inclusion of the Preston Western Distribution Road (PWDR) or the re-location of the BAE Systems gate within the wording of the condition. Instead, these elements were added in by the Inspector as a result of representations from third parties made at the inquiry. Paragraph 239 of the Inspector's report also invites the Secretary of State to omit these highway infrastructure projects from the condition should they be minded to agree with the LHA's approach. However, the Secretary

of State's decision maintains the Inspector's wording, albeit that there is no specific commentary concerning the merits of condition 7 in their decision.

The gist of the applicant's case is twofold. Firstly, the applicant contends that increasing the proportion of development that can be brought forward in advance of the highway infrastructure improvements from 15% to 33% and omitting infrastructure components a) and b) "should be considered acceptable given (a) the net impact of the amended condition would be imperceptible on the operation of the local highway network and (b) the traffic growth analysis contained within the Appeal process substantially over-estimated the traffic growth at the junctions along the Lytham Road corridor in Warton." Secondly, the applicant asserts that the current wording of the condition stifles the marketability of the site to potential developers and its commercial viability as the 15% limitation does not provide a competitive return for a willing landowner/developer and relies on the actions of third parties to bring forward infrastructure improvements that are outside the applicant's control before any further development can be brought forward. Each element of the applicant's case is considered below:

#### *Highway capacity:*

Criterion (9) of FBLP policy HL2 states that applications for housing will only be permitted where the development would have satisfactory access and parking and would not have an adverse effect on the safe and efficient operation of the highway network, either individually or cumulatively with other developments.

Criteria (j) and (q) of SLP policy GD7 require that developments:

- Ensure parking areas for cars, bicycles and motorcycles are safe, accessible and sympathetic to the character of the surrounding area and that highway safety is not compromised.
- Should not prejudice highway safety, pedestrian safety, and the efficient and convenient movement of all highway users (including bus passengers, cyclists, pedestrians and horse riders).

In addition, paragraph 108 of the NPPF requires that in assessing applications for development, it should be ensured that:

- Appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
- safe and suitable access to the site can be achieved for all users; and
- any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Paragraph 109 of the Framework indicates that "development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."

The application is supported by a Technical Note (TN) from Croft Transport Solutions dated December 2017. Although the TN was prepared in connection with the original proposal to increase the percentage of development to 65%, its contents remain relevant to the consideration of the proposal as amended. The TN opines that the proposed increase in the quantum of development that can be brought forward in advance of a package of highway improvements would have an "imperceptible impact" on the operation of surrounding junctions because the net impact of amending the condition would be a maximum of less than one vehicle every two minutes during even the busiest periods of the day at the Lytham Road/Church Road junction and elsewhere on the network less than an additional vehicle every 4 minutes during the busiest hour of the day. As these

figures relate to the 65% scenario, it follows that the 33% threshold now applied for would generate even fewer vehicle movements onto the highway.

Additional trip generation impacts on surrounding junctions in the 15% and 33% scenarios – including the net change – are set out in Table 1 below (the 33% scenario having been calculated by applying a proportionate figure to the 65% scenario shown in Table 1 of the TN).

Junction	15% trigger AM Peak	33% trigger AM peak	Net impact AM peak	15% trigger PM peak	33% trigger PM Peak	Net impact PM peak
Lytham Road/Church Road	7	15	+8	8	18	+10
Lytham Road/Mill Lane	4	8	+4	5	9	+4
Lytham Road/Old Lytham Road	4	8	+4	5	9	+4

**Table 1** – Trip generation summary of net impact of amendment to condition.

The TN from Crofts also makes reference to a Technical Note from SK Transport – the latest version of which is dated 26th July 2018 – that includes a comparison between the forecasted levels of traffic growth in the area on which the threshold in condition 7 was predicated (the ‘Appeal Scenario’) and observed levels of traffic on the highway network since the appeal (the ‘Observed Scenario’).

The SK Transport note concludes that LCC’s sensitivity test methodology used to forecast future year traffic demand in Warton at the appeal yielded results that represented “unrealistically high estimates of future year baseline traffic volumes.” This is attributed to factors including: (i) double counting of background traffic growth and committed development traffic; (ii) assumptions that all 1,200 jobs created by the Enterprise Zone would be based at Warton rather than being split across the Samlesbury and Warton sites; (iii) the use of higher (85%ile) estimates of development trips; (iv) assumptions of a higher quantum and rate for the delivery of committed developments. Croft’s summary of the SK Transport note indicates that “traffic growth was over-estimated within the analysis submitted during the Appeal process and that were this exercise to be varied out using up to date information then an additional 200+ vehicles during peak hour periods would be removed from the local highway network along Lytham Road.”

Although the SK Transport note has been prepared in connection with a proposal on another site the evidence presented in it is equally relevant to this scheme, particularly as both applications are subject to the same restrictive condition imposed as part of the conjoined appeal. The findings of the SK Transport Note are summarised in the agenda papers for application 17/0851 and, accordingly, are not repeated here. In summary, however, the SK Transport note concludes that the sensitivity testing method used by LCC at the appeal gave an exaggerated and overly pessimistic view of forecasting the level of future traffic growth in Warton which, as shown by recent traffic counts, has not materialised. The TN includes revised traffic forecasting figures based on an alternative sensitivity test scenario which removes the effects of ‘double counting’ both committed development traffic and the NTEM figures for housing growth (but retains other assumptions concerning the Enterprise Zone and the use of 85%ile trip rates). The results of these revisions are shown in Table 2 below.

Lytham Road Section	AM Peak Hour			PM Peak Hour		
	2013 Obs	Revised Growth	Net Change vs Sens Test	2013 Obs	Revised Growth	Net Change vs Sens Test
West of Church Road	1485	2014	-205	1468	1975	-211
Church Road to Mill Lane	1641	2249	-225	1518	2114	-217
West of old Lytham Road	1926	2347	-265	1885	2450	-269
A584 east of Warton	1649	1988	-227	1561	2057	-224

**Table 2** – Revised sensitivity model traffic forecasts (SK Transport).

Assuming that all 115 dwellings are constructed, the present 15% restriction in condition 7 would allow the occupation of up to 18 dwellings (rounded) prior to the completion and bringing into use of the package of off-site highway improvements. The proposal to increase this proportion to 33% would allow the occupation of up to 38 dwellings (rounded) – an additional 20 units. With reference to the trip generation movements for the development set out in the original Transport Assessment submitted with 15/0562, this 20 dwelling uplift is predicted to result in an additional 13 vehicle movements in the peak AM period and 14 movements in the peak PM period. The Croft TN identifies that the additional traffic generation associated with this uplift is significantly below the net change in the revised traffic forecasting set out in Table 2 and, accordingly, a relaxation of the condition is justified.

With reference to the evidence supplied in the TN and LCC's traffic counts undertaken as part of the Wrea Green conjoined appeal inquiry, the LHA's response dated 06.09.18 recognises that "there have been traffic changes which allow consideration of a review and variation to Condition 7" and, moreover, that "traffic assessments carried out for the recent Wrea Green conjoined Appeal highlighted traffic growth on A584 Lytham Road had not reached the level predicted at the time of the Warton conjoined Appeal Inquiry." Accordingly, the LHA offer no objection to the proposed variation of condition 7 subject to the re-wording of condition 8 to include a more detailed scope of works for the introduction of the MOVA signal upgrade at the Church Road/Lytham Road/Highgate Lane junction.

The evidence presented in the TN by Crofts, SK Transport and by LCC provides a more accurate and up-to-date assessment of traffic flows through Warton that have occurred since the preparation of the original Transport Assessment for application 15/0562 and the appeal inquiry. Importantly, the trend in the 2018 traffic count data set out in the SK Transport note (19<sup>th</sup> January – 25<sup>th</sup> January 2018) is supported by LCC's own survey data on 31<sup>st</sup> January 2018 and shows that the level of traffic growth anticipated in LCC's sensitivity test forecasting has not been realised. Indeed, there has been a net reduction in 2013 traffic levels for several locations. When this trend is weighed in combination with the 13/14 uplift in peak AM/PM vehicle movements that would arise by increasing the proportion of development that can be occupied in advance of off-site highway improvements to 33%, it is not considered that the proposed variation of the existing condition would have a severe, residual cumulative impact on the capacity of the surrounding highway network.

*Components a) and b):*

The Croft TN opines that tying the delivery of the development to the completion of the PWDR and re-location of the BAE Systems Gate from Mill Lane to Liberator Way/Typhoon Way/Thunderbolt Avenue is "outside the applicant's control and are not deemed to be reasonable". The following points are may in support of this assertion:

- Extensive work was carried out by the Appellant and endorsed by LCC, which led to an agreed

position in terms of the off-site highways works that would be necessary to make the development acceptable. At no stage was it part of the Appellant's or the LHA's case that the works to the new BAE access would be required. Furthermore, neither the Appellants nor LCC considered conditionality related to the delivery of PWDR a pre-requisite. This was confirmed, as stated above in Paragraph 12.5 of LCC's evidence to the Inquiry and also confirmed in the Inspector's Report in Paragraph 185.

- The effect of the BAE gateway relocation has no impact on the operation of the key junction on the network (the Lytham Road/Church Road junction) as the traffic flows do not change as a result.
- The planning application for the PWDR has been approved. This provides the Appellants with comfort that the scheme will proceed within the timescales mentioned during the Clifton House Farm appeal (i.e. to be open for use in 2020/2021). It remains the case that it is not necessary for the delivery of the appeal scheme to be subject to a specific planning condition on the permission at Clifton House Farm (CHF).
- The focus of the evidence of the CHF, and indeed the BEF Appeals, was the impact and operation of the Lytham Road/Church Road junction. It must be noted that the BAE Systems Gatehouse scheme has no effect whatsoever at this junction. As such, that element seems to have no evidential basis to be included as part of Condition 7 of the planning consent. Also, it is unclear what mechanism is envisaged for the bringing forward of the BAE Systems works.

Paragraphs 237 and 238 of the Inspector's report refers to guidance warning "that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability [and that Grampian conditions] should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission." The Inspector did not, however, consider there to be conflict with that guidance when making reference to the PWDR and re-location of the BAE systems gate in condition 7 as it was "the expectation of all parties is that the actions in question will be performed."

The LHA have advised that planning permission has been granted for the PWDR, though there is presently no certainty as to the exact programme and timetable for its construction. With respect to the re-location of the BAE Systems access, this is dependent on the development of the Enterprise Zone and, as noted in paragraph 184 of the Inspector's report, it "has permission but there is no requirements for it to be implemented". The inclusion of these two elements (a and b) in condition 7 means that no more than 15% of the dwellings (up to 18 units) can be occupied until both the PWDR and re-location of the BAE Systems access have been completed and brought into use. As identified in the TN, the delivery of both pieces of infrastructure is outside the control of the applicant and relies on third parties progressing both schemes. If that did not happen, then no more than 18 dwellings could be delivered as part of the development.

Although the Inspector's report suggests that there is a high likelihood of infrastructure projects a) and b) coming forward at an early stage, paragraph 185 of the report acknowledges that "the Secretary of State may feel that the inbuilt pessimism of the traffic forecasts [62 and 74 (bullet 5)] does not justify the concern and that the short duration of any harm arising from congestion on the highway [86 (bullet 1)] does not outweigh the benefits of avoiding delays to the delivery of housing which the imposition of the conditions I recommend might bring."

While the Secretary of State did not seek to alter the wording of condition 7 (albeit that there is no specific discussion concerning the merits of this particular condition in their decision letter), the LHA remain of the view they expressed at the appeal that "the County Council as highway authority [...] does not seek a condition limiting the implementation of the two appeal schemes to the

implementation of the PWDR or to the BAE gateway relocation [paragraph 185 of the Inspector's Report]". This was based on the LHA's view expressed at the inquiry that "there is a real prospect that they will be delivered in realistic timescales, so no request for a condition limiting approval of the appeals to the delivery of these road schemes. This is consistent with the view taken by the Blackfield End Farm Inspector [paragraph 86 of the Inspector's report]".

With respect to the PWDR (item a), as this now has planning permission it could be implemented without delay. However, with reference to paragraph 86 of the Inspector's report it is evident that the timetable for its implementation anticipated by the LHA at the time of the inquiry (commencement in January 2018 and completion during 2020) has not been realised and so this will be delayed. Notwithstanding that, it is also made clear from the LHA's evidence that the main purpose of the PWDR is to redirect traffic movements into and out of BAE Systems (the dominant source of peak traffic on the network through Warton) away from the western end of the settlement rather than to alleviate traffic impacts associated with this development. Indeed, paragraph 183 of the Inspector's report notes that "Compared with [traffic from BAE Systems], the effects of development are relatively insignificant as can be seen by an examination of the traffic flow diagram included as Appendix 15 to Mr Porter's proof of evidence". The result of this is that the PWDR will be delivered with or without this development and its construction does not rely on the implementation of planning permission 15/0562, nor is it directly required as a mechanism to relieve traffic arising from the development. Accordingly, it is considered that reference to the PWDR (criterion a) can be removed from condition 7.

In terms of the re-location of the BAE Systems access from Mill Lane to Thunderbolt Avenue, this is required principally to serve as the main access to Phase 1 of the Enterprise Zone (paragraph 42 of the Inspector's report). Although the section of Thunderbolt Avenue up to this access has been constructed as part of the Highgate Park development (former GEC Marconi site), there is presently no access into BAE from Thunderbolt Avenue. The opening of this access is, instead, dependent on development taking place within the Enterprise Zone. As no development has taken place within the Enterprise Zone to date, the access has not been opened. Similarly, the lack of any traffic entering and exiting the Enterprise Zone means that the forecasting in LCC's sensitivity model is overly pessimistic in the context of present circumstances. Notwithstanding that, it remains the case that the relocation of the BAE Systems gate is intrinsically linked to the development of the Enterprise Zone and is required to alleviate the traffic impacts associated with that development rather than those associated with this scheme for residential development. Therefore, it is not considered necessary to tie the provision of that infrastructure with this development.

#### *Comparison with Blackfield End Farm:*

The applicant has drawn attention to the inconsistencies between condition 7 of planning permission 15/0562 and condition 17 of another recovered appeal in Warton at Blackfield End Farm (BEF – appeal reference APP/M2325/A/14/2217060) which reads as follows:

*"No more than 119 dwellings shall be occupied until carriageway surfacing, footways, street furniture, landscaping, the upgrading of two bus stops, and traffic signals for drivers emerging from Highgate Lane have been implemented in accordance with the approved details required by condition No 16, and until the other alterations to the signalised junction of Lytham Road/ Church Road/ Highgate Lane and the priority junction of Lytham Road/ Harbour Lane have been implemented in accordance with plan ref 0401-F02/G."*

Specifically, the applicant points out that: (i) the Inspector for the BEF appeal did not seek to link the delivery of that development to highway infrastructure improvements to be delivered by third

parties, despite their effects being taken into account as part of that appeal; and (ii) in allowing the construction of no more than 119 dwellings, they effectively allowed 33% of the overall development of up to 360 dwellings to take place prior to the implementation of highway improvements at the junction of Lytham Road/ Church Road/ Highgate Lane.

The Inspector's report for the BEF decision does not specify how the threshold of 119 dwellings referred to in condition 17 of that decision was arrived at. The only rationale for this is given at paragraph 97 of his report as follows:

- "In the interest of traffic movement and highway safety, the scheme of works at the junctions of Lytham Road/ Church Road/ Highgate Lane and Lytham Road/ Harbour Lane should be implemented. The Council suggested that the alterations should have been carried out before construction works commence, but a construction management scheme would provide a means to specify the times of construction traffic, avoiding peak hours. Accordingly, I agree with the suggestion that the off-site highway works should be in place prior to occupation of the 120<sup>th</sup> dwelling."

The applicant considers that the proposed variations to condition 7 would bring their permission in line with what was permitted at BEF and, in doing so, would ensure a consistent and proportionate approach to housing delivery across Warton with respect to both the proportion of development that can come forward and the off-site highway infrastructure with which those developments are allied to. It is not considered that this is an unreasonable conclusion and, for the reasons set out above, it is recommended that the wording of condition 7 be amended to reflect the same approach adopted at BEF.

#### *Marketability and viability:*

A planning obligation dated 14.07.16 was entered into as part of outline planning permission 15/0562. In summary, the obligations in that agreement provide for:

1. The delivery of affordable housing on the site at a rate of 30% of the total number of dwellings, with this percentage to be applied proportionately to each phase of development.
2. A secondary education contribution - precise figure to be determined by LCC following the grant of RM approval - payable in two equal instalments prior to the occupation of 50% and 80% of the dwellings.
3. A primary education contribution - precise figure to be determined by LCC following the grant of RM approval - payable in two equal instalments prior to the occupation of 50% and 80% of the dwellings.
4. A Travel Plan contribution of £24,150 payable to the travel plan coordinator within 28 days of the targets in the Travel Plan not being met.
5. A Travel Plan Support/Monitoring contribution of £6,000 payable prior to the occupation of 25% of the dwellings.
6. A Bus Service contribution of £125,000 payable in five equal instalments, the first of which is due prior to the occupation of the 38th dwelling with the remaining instalments to be paid before the first, second, third and fourth anniversary of the first instalment.
7. A public realm contribution of £41,567 payable on or prior to the commencement of development.

The present wording of condition 7 would allow the construction of up to 18 dwellings as part of an initial phase of development prior to the completion and bringing into use of a package of highway improvements. The applicant opines that this is stifling the marketability of the site and its attractiveness to developers due to the low returns that could be realised from developing only 15%



of the dwellings in a first phase. The applicant has indicated that this makes any development of the site unviable and, ultimately, will prevent the site being brought forward.

Conversely, the revised wording to condition 7 would allow up to 38 dwellings to be occupied as part of an initial phase of development. This quantum of development would trigger contributions (1) affordable housing; (4) Travel Planning, where required; (5) Travel Plan support/monitoring; (6) Bus service; and (7) public realm as summarised above. Unlike application 17/0851 at Warton East, the applicant at Clifton House Farm has not submitted any viability appraisal to suggest that these contributions would make a first phase of development for 38 dwellings unviable unless certain contributions (specifically, affordable housing is referred to in 17/0851) are deferred for a later phase. Accordingly, the only outstanding issue with the planning obligation would be to require a deed of variation to be entered into in order to link any new permission granted under S73 of the Town and Country Planning Act to the obligations in the extant agreement.

#### Other matters:

##### *Conditions:*

With respect to imposing conditions on S73 applications, paragraph 015 of the “flexible options for planning permissions” chapter to the NPPG advises that:

- “To assist with clarity decision notices for the grant of planning permission under section 73 should also **repeat the relevant conditions from the original planning permission, unless they have already been discharged.**”
- “As a section 73 application cannot be used to vary the time limit for implementation, **this condition must remain unchanged from the original permission.**”

In this case, no applications have been submitted to discharge conditions attached to outline planning permission 15/0562 and so the majority of conditions can be re-imposed without the need for changes to their wording. Exceptions to this are:

- **Condition 3** – The time limit for submission of an application for approval of reserved matters must be consistent with the original permission.
- **Condition 7** – To be varied by this S73 application.
- **Condition 8** – To be re-worded to clarify and expand the scope of the MOVA signal improvements required at the Church Road/Lytham Road/Highgate Lane junction.
- **Condition 22** – Added requirement for the development to deliver an appropriate mix of housing in accordance with SLP policy H2 as set out below.

##### *Housing mix:*

SLP policy H2 requires developments to deliver “a broad mix of types and sizes of home, suitable for a broad range of age groups”. The policy states that “all developments of 10 or more dwellings will therefore be required to include at least 50% of dwellings that are 1, 2 or 3 bedroom homes”. An additional requirement for “developments within or in close proximity to the Tier 2 Smaller Rural Settlements to include at least 33% 1 or 2 bedroom homes” is included in the policy, though that is not applicable in Local Service Centres such as Warton.

As the application is in outline no details of housing mix have been provided. Nevertheless, it has been held in a series of recent appeals that, if an LPA requires an applicant to deliver a specific mix of housing in compliance with policies in its Local Plan, this requirement must be imposed through the use of a planning condition on an outline permission and cannot be introduced at reserved

matters stage. For example, paragraphs 18 and 19 of appeal decision APP/X2410/W/16/3163501 conclude as follows:

- Housing mix cannot reasonably be considered under the condition requiring, amongst other things, the submission of details of scale and appearance at reserved matters stage. I conclude that the conditions attached to [the] outline planning permission [...] do not require the agreement of an appropriate mix of housing at the reserved matters stage. Consequently, there is no need for me to consider whether the appeal proposal provides an appropriate mix of housing, having regard to the requirements of the Framework and the development plan.”

At present, outline planning permission 15/0562 is not subject to a condition requiring that it delivers the mix of housing set out in SLP policy H2. For the reasons set out above, these requirements could not be introduced at reserved matters stage.

Paragraph 71 of the Inspector’s report makes clear that “the emerging local plan is at an early stage and subject to a number of objections, so it has limited weight”. This position has, however, changed significantly since the issuing of the Inspector’s report on 4<sup>th</sup> October 2016 and, as described in the ‘Relevant Planning Policy’ section above, the Council has now received the Inspector’s Local Plan Examination Report which confirms that the SLP, as modified, is sound and can be progressed to adoption, with this anticipated by the end of October 2018. Accordingly, the SLP should carry substantial weight as it has been found sound and, in all likelihood, will replace the FBLP as the statutory development plan for the Borough before the decision on this application is issued (given the need to consult with the Secretary of State and to complete a deed of variation for the extant planning obligation as set out in the resolution below).

The table in paragraph 019 of the ‘flexible options for planning permissions’ chapter to the NPPG makes clear that S73 applications are to be assessed in accordance with the provisions of the development plan and, moreover, that “local planning authorities should, in making their decisions, focus their attention on national and development plan policies, and other material considerations which may have changed significantly since the original grant of permission.” The impending adoption of the SLP represents a significant material change in policy that now justifies the addition of a condition requiring the development to deliver a mix of housing that demonstrates compliance with SLP policy H2. This additional requirement is imposed by recommended condition 22.

#### *Referral to the Secretary of State:*

Bryning-with-Warton Parish Council wrote to the Secretary of State for Housing Communities and Local Government on 27.02.18 requesting that the application be called in should the Local Planning Authority be minded to grant planning permission. The Secretary of State (via the Ministry of Housing, Communities & Local Government – MHCLG) have been made aware of the revisions to the scheme that have occurred since the Parish Council’s request and have advised as follows:

- In the event the Planning Committee resolves to **refuse** the application, the MHCLG would have no further interest in the case and the LPA would not need to take any further action prior to issuing its decision.
- In the event that the Planning Committee resolves to **approve** the application, the MHCLG should be consulted in order to allow consideration to be given as to whether the applications should be called in for determination by the Secretary of State. The response from the MHCLG makes clear, however, that this consultation is distinct from a requirement for the LPA to ‘refer’ the application to the Secretary of State in accordance with the 2009

consultation direction. Instead, the decision should be delayed to allow the Secretary of State sufficient time to consider the case and to decide whether a call-in is warranted.

As the application is recommended for approval, the resolution below recommends that the decision be delegated to the Head of Planning and Regeneration following consultation with the Secretary of State, and subject to them not calling the application in for a decision.

### **Conclusions**

The application follows outline planning permission 15/0562 (as allowed by recovered appeal APP/M2325/W/15/3141398) relating to a residential development of up to 115 dwellings on a *circa* 3.74 hectare site adjacent to Clifton House Farm on the north side of the A584 (Lytham Road), to the western end of Warton.

Application 15/0562 was allowed as part of a conjoined appeal with an application for up to 350 dwellings to the eastern end of Warton (14/0410). Condition 7 of planning permission 15/0562 reads as follows:

*“No more than 15% of the development hereby approved shall be occupied until the completion and bringing into use of:*

- a) The Preston Western Distributor Road*
- b) The relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue*
- c) The works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.”*

The current application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary condition 7 of planning permission 15/0562 as follows:

- To increase the proportion of the development that can be constructed in advance of the completion and bringing into use of a package of off site highway improvements from 15% to 33% of the overall development.
- To remove reference to highway infrastructure components (a) The Preston Western Distributor Road; and (b) the relocation of BAE Systems gate from Mill Road to the road known variously as Liberator Way, Typhoon Way and Thunderbolt Avenue, from the present wording of the condition.

Accordingly, if the application were approved, condition 7 would be varied to read as follows:

*“No more than 33% of the development hereby approved shall be occupied until the completion and bringing into use of the works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.”*

The reasons for imposing condition 7 of planning permission 15/0562 are set out in paragraphs 235-239 of the Inspector's report. When read in conjunction with the Inspector's conclusions at paragraphs 181-186, the report clarifies that the reason for imposing the condition related to ensuring that “with the conditions recommended, neither proposed development would cause the capacity of the highway network to accommodate the cumulative effects of development in Warton to be exceeded”. The Secretary of State did not seek to alter the wording of condition 7 when issuing their decision on the recovered appeal.

Since the issuing of the appeal decision additional traffic assessments have been undertaken by the Local Highway Authority (LHA) and transport consultants. These assessments were prepared in early 2018 and took into account up-to-date traffic surveys, all committed developments in Warton (including the Enterprise Zone) and traffic growth factors. The LHA advise that this updated assessment reveals that “traffic growth on the A584 (Lytham Road) had not reached the level predicted” and, subject to the requirement for additional infrastructure improvements associated with a MOVA upgrade to traffic signals at the Church Road/Lytham Road/Highgate Lane junction, there are no objections to the proposed changes to condition 7.

Having regard to the evidence presented by transport consultants and the LHA that provide an updated analysis of traffic conditions on the highway network surrounding the site since the issuing of the appeal, it is concluded that: (i) removing reference to the highway infrastructure improvements cited in clauses (a) and (b) of the extant condition; and (ii) increasing the proportion of development that can be occupied prior to the completion of the Church Road, Lytham Road and Highgate Lane junction improvements cited in clause (c) of the condition from 15% (up to 18 dwellings based on a maximum of 115 units) to 33% (up to 38 dwellings based on a maximum of 115 units) would not result in a severe residual cumulative impact on the capacity of the surrounding highway network, nor would there be a significant adverse impact on highway safety.

The proposed variation of the condition would also assist in kick starting the delivery of housing on a strategic site which is allocated in the SLP (site reference HSS13) by improving its marketability to developers and its commercial viability. Accordingly, further benefits would arise by virtue of the proposal’s positive impact in boosting the supply of housing in the Borough. No other adverse effects would arise from the variation of the condition that would significantly and demonstrably outweigh the benefits. Therefore, when considered as a whole, the proposal is considered to represent sustainable development in accordance with the relevant policies of the FBLP, the BWNP, the SLP and the NPPF.

### **Recommendation**

That, subject to:

(i) The completion of a Deed of Variation to include the following additions/amendments to the extant planning obligation for planning permission 15/0562 dated 14.07.2016:

(a) The insertion of definitions and/or other appropriate clauses to link the provisions of the extant obligation to planning permission 17/1050; and

(ii) The Local Planning Authority consulting the Secretary of State (via the Ministry of Housing, Communities & Local Government) to allow them to consider whether they wish to call the application in (and Subject to the Secretary of State not calling the application in).

Authority be delegated to the Head of Planning and Regeneration to GRANT planning permission subject to the following conditions (or any amendment to the wording of these conditions or additional conditions that the Head of Planning & Regeneration believes is necessary to make otherwise unacceptable development acceptable):

1. No development shall take place until a plan detailing the phasing of development and the allocation to each phase of a share of a total open space provision of not less than 0.87ha including a play area has been submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure that any phased development of the site takes place in an appropriate sequence and to ensure adequate provision of associated infrastructure to serve the dwellings in each phase in order that the infrastructure required to support and/or mitigate the impact of the development is delivered concurrently with it, in the interests of proper planning and because no such details have been submitted as part of the application.

2. Details of the access within each phase of the site, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins on the phase in question and the development shall be carried out as approved.

Reason: The application is granted in outline only under the provisions of Article 5 of the Town and Country Planning (Development Management Procedure) Order 2015 and details of the matters referred to in the condition have not been submitted for consideration.

3. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of planning permission 15/0562 (ie by 13 February 2020).

Reason: To comply with the requirements of section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 and to ensure that the date of expiry of the permission is consistent with the extant planning permission.

4. The development hereby permitted shall begin no later than two years from the date of approval of the last of the reserved matters to be approved.

Reason: To comply with the requirements of section 92 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

5. The access on to Lytham Road to the development hereby permitted shall be carried out in accordance with approved plan number 0988-F01 revision F. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any equivalent Order following the revocation or re-enactment thereof) the area indicated as an area of verge to be kept free of all obstructions above 0.6m shall thereafter be kept free of any obstruction higher than 0.6m above the level of the carriageway. No dwelling shall be occupied until the details shown on the approved plan have been completed and made available for use.

Reason: To ensure a suitable and safe means of access to the site and to achieve a satisfactory standard of engineering works in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

6. No greater quantity of housing shall be built than that which would give rise to traffic generated by the development no greater than that forecast in the submitted Transport Assessment July 2015 by Croft Transport Solutions.

Reason: To ensure that traffic generated by the development does not overload the capacity of the surrounding highway network in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

7. No more than 33% of the development hereby approved shall be occupied until the completion

and bringing into use of the works at the junction of Church Road, Lytham Road and Highgate Lane required by conditions 16 and 17 of appeal decision APP/M2325/A/14/2217060.

Reason: To ensure that appropriate highway infrastructure is delivered at an early stage in order to mitigate the development's impact on the capacity of the surrounding highway network and to enhance provisions for the free flow of traffic through Warton in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

8. No dwelling hereby approved shall be occupied until a MOVA/UTC control has been installed and brought in to use at the Church Road/Lytham Road/Highgate Lane junction. Unless alternative details have first been submitted to and approved in writing by the Local Planning Authority, the MOVA/UTC control shall include the following measures: (i) installation of MOVA control and setup; (ii) relocation of loop locations in highway where required (in line with MOVA requirements); (iii) a new signal control box; (iv) New signal poles and signal heads; and (v) installation of remote CCTV monitoring of the junction.

Reason: To ensure that appropriate improvements to existing signalised junctions are delivered concurrently with the development in order to mitigate its impact on the capacity of the surrounding highway network and to enhance provisions for the free flow of traffic through Warton in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

9. No dwelling shall be occupied until details of travel mode share targets for the development and measures to achieve them (a Travel Plan) have been submitted to and approved in writing by the local planning authority. The development shall be carried out and retained in accordance with the approved details.

Reason: In order to promote modal shift and increased use of sustainable methods of travel in accordance with the objectives of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, TR1 and TR3, Fylde Council Local Plan to 2032 policies GD7 and T4 and the National Planning Policy Framework.

10. No dwelling shall be occupied until it has been provided with a Visitors Pack which shall have been previously submitted to and approved by the local planning authority, highlighting the sensitivity of the Ribble & Alt Estuaries to recreation activity and highlighting alternative recreational opportunities. The Visitors Pack shall thereafter be kept available in the dwelling for the use of future occupants.

Reason: To ensure that future residents and visitors to the development are made aware of the importance of and their potential to affect the integrity of nearby designated nature conservation sites – particularly the Ribble and Alt Estuaries Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), Ramsar site and land which is functionally linked to the SPA – and to ensure appropriate measures are introduced are taken to mitigate the development's potential effects on designated nature conservation sites in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP15 and EP16, Fylde Council Local Plan to 2032 policy ENV2, the National Planning Policy Framework and the Conservation of Habitats and Species Regulations 2017.

11. No development shall take place on any phase of the site until details of foul and surface water drainage for that phase and of its management have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the

approved details and retained thereafter in accordance with the approved management details. No dwelling shall be occupied until it is provided with its drainage as approved.

Reason: To ensure that the development is not at risk of flooding and does not increase flood risk elsewhere, and that adequate measures are put in place for the disposal of foul and surface water in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1 and CL2, and the National Planning Policy Framework.

12. No development shall take place on any phase of the site until details of finished floor levels and external ground levels of each plot on that phase have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure a satisfactory relationship between the new dwellings and between the development and surrounding buildings before any ground works take place to establish site levels in the interests of residential and visual amenity in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2 and Fylde Council Local Plan to 2032 policy GD7.

13. No development shall take place on any phase of the site until an intrusive site investigation of the nature and extent of contamination and unexploded ordnance has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any new construction begins on that phase. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate that phase of the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. That phase of the site shall be remediated in accordance with the approved measures before new construction begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the relevant phase of the site shall incorporate the approved additional measures.

Reason: To prevent pollution of the surrounding environment and to ensure the safe development of the site before any groundworks take place in the interests of the amenity of future occupiers and other sensitive receptors in accordance with the requirements of Fylde Borough Local Plan policy EP29, Fylde Council Local Plan to 2032 policy GD9 and the National Planning Policy Framework.

14. No development shall take place on any phase of the site until a programme of archaeological work for that phase has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.

Reason: To ensure that a suitable programme of archaeological investigation is implemented prior to the commencement of any construction works in order to record and advance the understanding of the archaeological and historical significance of the site for archival and research purposes in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP21, Fylde Council Local Plan to 2032 policy ENV5 and the National Planning Policy Framework.

15. No development shall take place on the relevant phase until details of the pedestrian and cycle accesses to the southern and eastern boundaries of the site (shown indicatively on the illustrative

master plan drawing number 013-006-P009 REV C accompanying the application) have been submitted to and approved in writing by the local planning authority. No dwelling on the relevant phase shall be occupied until the relevant pedestrian and cycle access shall have been completed and made available in accordance with the approved details.

Reason: In order to promote modal shift and increased use of sustainable methods of travel in accordance with the objectives of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, TR1 and TR3, Fylde Council Local Plan to 2032 policies GD7 and T4 and the National Planning Policy Framework.

16. The external fabric of the dwellings hereby approved and the boundary fences around their rear or private amenity areas shall be constructed so as to comply with the sound reduction performance recommended in section 5 of the Noise Assessment version number 2 by SLR global environmental solutions reference 410.02826.00007.

Reason: To ensure the implementation of appropriate noise attenuation measures for the proposed dwellings in order to achieve satisfactory living conditions for future occupiers of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP27, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

17. No dwelling on any particular phase shall be occupied until the public open space allocated to that phase has been laid out and made available for its intended purpose. The public open space shall be retained thereafter in accordance with a maintenance scheme which shall have been submitted to and approved by the local planning authority before development commences on the relevant phase. No dwelling on the last of any phase of the development which includes residential dwellings shall be occupied until the play area and all the public open space on all phases has been laid out and made available for its intended purpose.

Reason: To ensure that the development makes a proportionate contribution towards the provision and future maintenance of public open space on the site in order to avoid a deficiency in the quantity and quality of recreational open space in the locality and to ensure that the impact of the development on existing recreational open space is adequately mitigated in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy TREC17, Fylde Council Local Plan to 2032 policy ENV4 and the National Planning Policy Framework.

18. No development shall take place until details of existing trees or hedgerows which are to be retained on site and the manner of their protection have been submitted to and approved by the local planning authority and paragraphs (i) and (ii) below shall have effect until the expiration of 1 year from the date of the first occupation of the last completed dwelling for its permitted use.

i.No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).

ii.If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

iii.The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any



excavation be made, without the written approval of the local planning authority.

Reason: To ensure that adequate measures are put in place to protect existing trees which are to be retained as part of the development before any construction works commence and to ensure that appropriate compensatory planting is provided to mitigate the loss of any existing vegetation within the site occurring as a result of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP12 and EP14, Fylde Council Local Plan to 2032 policies GD7 and ENV1, and the National Planning Policy Framework.

19. No development shall take place within 6m of the ditch immediately to the east of the application site.

Reason: To ensure that measures are put in place to protect the ditch in order to preserve existing habitats and drainage infrastructure adjacent to the site in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP19, EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1, CL2 and ENV2, and the National Planning Policy Framework.

20. No clearance of any vegetation in preparation for or during the course of development shall take place during the bird nesting season (March to July inclusive) unless an ecological survey has first been submitted to and approved in writing by the local planning authority. Should the survey reveal the presence of any nesting species, then no clearance of any vegetation shall take place during the bird nesting season until a methodology for protecting nest sites during the course of the development has been submitted to and approved in writing by the local planning authority. Nest site protection shall thereafter be provided in accordance with the approved methodology.

Reason: In order to prevent any habitat disturbance to nesting birds in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP19, Fylde Council Local Plan to 2032 policy ENV2, the provisions of the Wildlife and Countryside Act 1981 (as amended) and the National Planning Policy Framework.

21. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

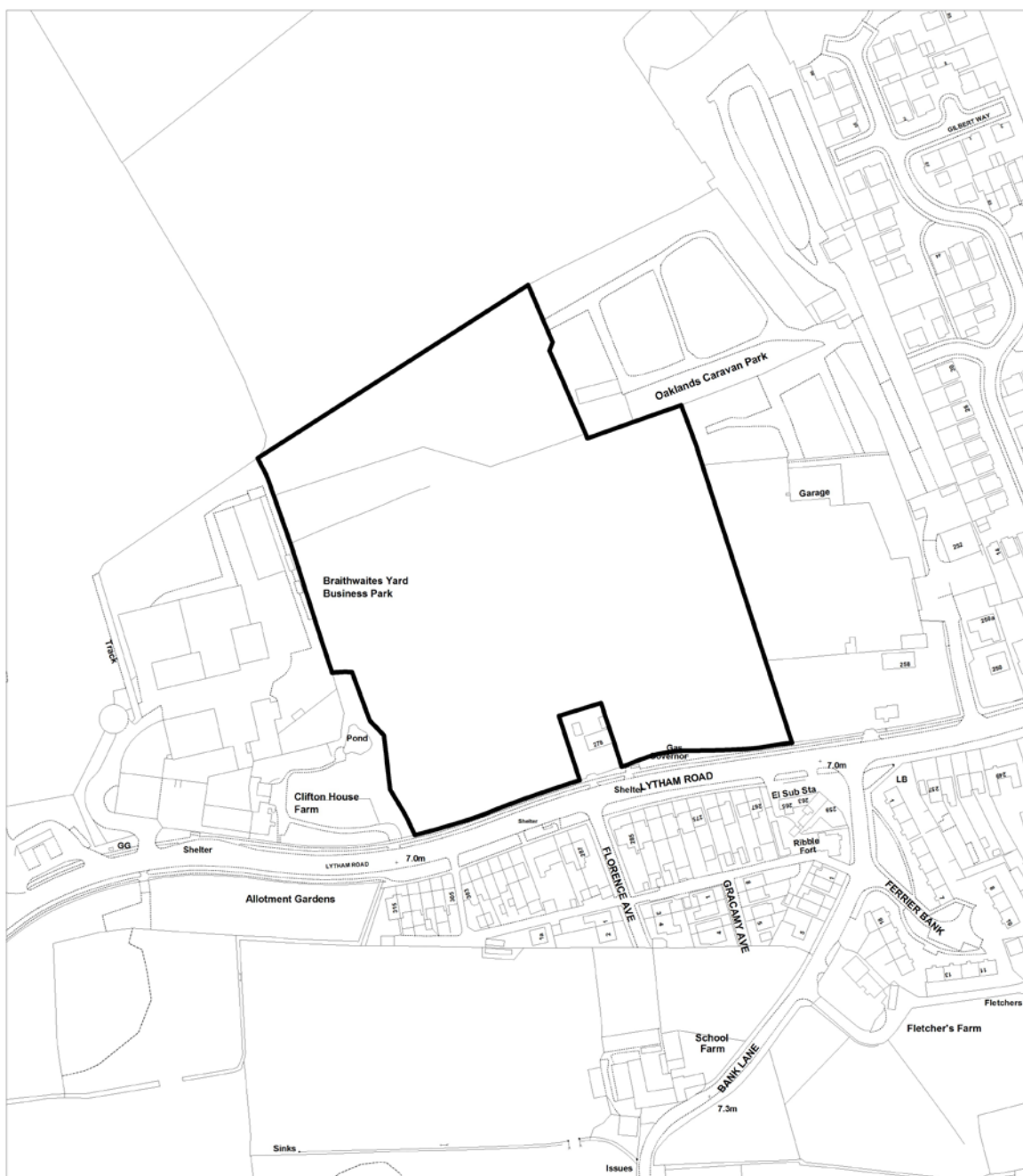
- a) The hours of site operation;
- b) the parking of vehicles of site operatives and visitors;
- c) loading and unloading of plant and materials;
- d) storage of plant and materials used in constructing the development;
- e) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- f) wheel washing facilities;
- g) measures to control the emission of dust and dirt during construction;
- h) a scheme for recycling/disposing of waste resulting from demolition and construction work.

Reason: In order to ensure that appropriate measures are put in place before any development commences to limit noise, nuisance and disturbance to the occupiers of neighbouring properties during the construction of the development and to prevent any obstruction of the surrounding highway network in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP27, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

22. Any application which seeks approval for the reserved matters of layout, scale or appearance

pursuant to condition 2 of this permission shall include details of the mix of type and size (including bedroom numbers) of the dwellings to be provided, which shall demonstrate compliance with the requirements of policy H2 of the Fylde Council Local Plan to 2032. The development shall thereafter be carried out in accordance with the duly approved details.

Reason: To ensure that the development delivers an appropriate mix of types and sizes of housing suitable for a broad range of age groups to reflect the demographics and housing requirements of the Borough as set out in the Fylde Coast Strategic Housing Market Assessment in accordance with the requirements of policy H2 of the Fylde Council Local Plan to 2032 and the National Planning Policy Framework.



Development Services Fylde Council		(c) Crown Copyright and database right (2018). Ordnance Survey (100006084).	
Application No. 5/17/1050	Address Clifton House Farm, Lytham Road, Warton	Grid Ref. E.3404 : N.4284	Scale 0 10 20 30 40 m 

**Item Number:** 4

**Committee Date:** 10 October 2018

<b>Application Reference:</b>	18/0318	<b>Type of Application:</b>	Reserved Matters
<b>Applicant:</b>	Story Homes	<b>Agent :</b>	
<b>Location:</b>	LAND NORTH OF AND ADJACENT NORCROFT FARM, MILL LANE, ELSWICK		
<b>Proposal:</b>	APPLICATION FOR APPROVAL OF RESERVED MATTERS PURSUANT TO OUTLINE PLANNING PERMISSION 16/0180 FOR THE LAYOUT, SCALE, APPEARANCE AND LANDSCAPING OF A RESIDENTIAL DEVELOPMENT COMPRISING 50 DWELLINGS WITH ASSOCIATED OPEN SPACE AND INFRASTRUCTURE		
<b>Ward:</b>	ELSWICK AND LITTLE ECCLESTON	<b>Area Team:</b>	Area Team 2
<b>Weeks on Hand:</b>	25	<b>Case Officer:</b>	Matthew Taylor
<b>Reason for Delay:</b>	Design Improvements		

**If viewing online this is a Google Maps link to the general site location:**

<https://www.google.co.uk/maps/@53.8394201,-2.8784417,277m/data=!3m1!1e3?hl=en>

**Summary of Recommended Decision:** Grant

**Summary of Officer Recommendation**

The application relates to a broadly rectangular parcel of land extending to approximately 4.7 hectares between Mill Lane and Bonds Lane on the eastern fringe of Elswick. The site presently comprises open farmland on the periphery of the village but has an extant outline planning permission (including access) for a residential development of up to 50 dwellings pursuant to planning permission 16/0180. This application seeks approval for the reserved matters of layout, scale, appearance and landscaping pursuant to outline planning permission 16/0180 for a residential development of 50 dwellings including associated open space and other infrastructure.

The development layout follows that of the illustrative masterplan referenced in planning permission 16/0180 with respect to the location of housing, landscaped areas and open space, and the siting, configuration and spacing of the proposed dwellings would be compatible with the density and character of surrounding development. All the dwellings would be two storeys in height and their scale would provide an appropriate mix and size of housing that would integrate successfully with existing properties on the periphery of the village which border the site. The dwellings would incorporate a combination of materials that would be sympathetic to the character of surrounding buildings while ensuring interest and consistency. The orientation and fenestration arrangements of dwellings – including those to corner plots – would ensure active frontages to existing and proposed highways and other public vantage points. A wide buffer of planting would be introduced to the east of the dwellings in accordance with the requirements of outline permission 16/0180 and internal landscaping would ensure the provision of tree lined streets, garden fronted aspects to the estate road and buffers of open space alongside boundaries with Mill Lane and Bonds Lane.

The layout, scale and appearance of the dwellings – having particular regard to their siting,

fenestration arrangements, level changes, orientation and spacing with neighbouring dwellings – would ensure that the development has no undue effects on the privacy and amenity of adjoining occupiers through loss of outlook, overshadowing or overlooking, and would achieve appropriate standards of amenity for future occupiers. The development would deliver a suitable mix of housing and the number, type, size and distribution of affordable dwellings would be acceptable. A suitable drainage strategy has been prepared in accordance with the requirements of the outline permission and appropriate provision is also made for the delivery of public open space (including play areas) to serve future occupiers.

Given the above, it is considered that the layout, scale, appearance and landscaping of the development is acceptable. No other adverse effects would arise with respect to the internal highway layout of the development, retention of existing trees or heritage impacts. Therefore, the proposal is considered to represent sustainable development in accordance with relevant adopted and emerging policies contained within the FBLP and SLP, and the provisions of the NPPF.

### **Reason for Reporting to Committee**

The application is classified as major development and the officer recommendation is for approval.

### **Site Description and Location**

The application relates to a broadly rectangular parcel of agricultural land measuring approximately 4.7 hectares in area between Mill Lane and Bonds Lane on the eastern fringes of Elswick. Although located within the Countryside Area as defined on the Fylde Borough Local Plan (As Altered) October 2005 Proposals Map, the site has an extant outline planning permission for a residential development of up to 50 dwellings pursuant to planning permission 16/0180 which was allowed at appeal (reference APP/M2325/W/17/3172835). This is reflected on the Fylde Council Local Plan to 2032 (Submission Version) Policies Map (as modified) which includes the site as a housing allocation under policy SL5 (Land North of Mill Lane, HS72).

The site borders the rural roads of Mill Lane and Bonds Lane to its southern and northern perimeters respectively. Dwellings on both highways are sparse in number and typically set in spacious plots fronting onto, but set back from, the roadside. An adjoining agricultural field with scattered dwellings and farm buildings to the northern and southern fringes is located to the east and the site is bordered by a collection of *circa* late 20th century two storey dwellings and bungalows on the cul-de-sacs of Ash Close and Linden Fold, and on Bonds Lane, which occupy a slightly elevated (between approximately 0.5m and 1.5m) aspect to the west. Several of these dwellings benefit from dual aspects to their side elevations where large, habitable room windows face over the existing field.

Although set at a slightly higher level to flanking highways, the site itself is relatively flat. The exception to this is a depression forming a natural pond which occupies a broadly central position within the site. The northern and southern boundaries of the site are marked by linear roadside strips of tree and hedgerow planting outside a stock-proof fence. Existing trees are deciduous specimens that vary in age, maturity and condition. A hedgerow marks the eastern boundary, with a similar feature flanking the western boundary outside the timber boundary fences of dwellings to the west.

### **Details of Proposal**

The application is submitted pursuant to outline planning permission 16/0180 (which included the detailed matter of access) and seeks approval for the remaining reserved matters of layout, scale, appearance and landscaping in connection with a residential development of 50 dwellings including associated open space and infrastructure.

The submitted layout includes a mix of detached, semi-detached and terraced houses providing 9 x 2 bed; 12 x 3 bed; 24 x 4 bed; and 5 x 5 bed dwellings across eight different house types. As access was fixed at the outline stage, the layout proposes four distinct 'parcels' of housing laid out to the west side of the main estate road which follows a north-south axis through the site and around a network of cul-de-sacs branching off to the east. The four housing parcels include:

- a. Parcel A (plots 1-19) – A linear row of properties forming a flanking corridor to the west side of the estate road and terminating at a turning head adjacent to Bonds Lane where the northernmost plot (no. 19) has a dual aspect to its side elevation facing onto Bonds Lane.
- b. Parcel B (plots 20-34) – A collection of terraced, semi-detached and detached houses fronting onto the main estate road to the western end and opening onto the adjoining field to the east. Two of the plots (nos. 20 and 28) have a dual aspect with their side elevations facing onto Bonds Lane.
- c. Parcel C (plots 35-41) – A collection of detached houses with side (dual aspect) elevations facing onto the estate road to the west and over the adjoining field to the east.
- d. Parcel D (plots 42-50) – A group of detached houses fronting an arrival green to the south, the main estate road to the west and with dual aspect elevations onto the adjacent field to the east.

A total of 3955 m<sup>2</sup> of public open space is to be provided as part of the scheme. The open space comprises: (i) an arrival green to both sides of the site access from Mill Lane to the southwest corner; (ii) amenity space encircling the retained pond to the centre of the site, including a Local Area for Play (LAP); and (iii) a strip of open space flanking the site's northern boundary with Bonds Lane. The application also includes provision for a 3.5m wide shared footpath/cycle link onto Bonds Lane branching off the estate road to the northern end of the site.

Landscaped areas include: (i) the retention of existing trees to the boundaries with Bonds Lane and Mill Lane, and hedging to the western boundary with adjacent dwellings; (ii) a wide planting buffer to the east of the dwellings running for the full depth of the site; (iii) strengthening of the tree line to the northern boundary with Bonds Lane with supplementary planting; and (iv) internal planting to provide a tree-lined aspect to the estate road. Boundary treatments comprise a mix of hedges and 1.8m high walls to the side/rear of corner plots opening onto the estate road and 1.8m high timber fencing to rear garden boundaries. Enclosures to communal areas include 1.1m high railings, a 0.6m knee rail and stock timber fencing to the edge of the landscaped buffer where it borders the open field to the east of the site.

All of the dwellings are two storeys in height, though two house types (the 'Chartwell' and 'Washington') include dormer windows to provide first floor rooms in the roof space above integral garages. Materials include a mix of red brick and rendered finishes. The distribution of materials includes predominantly facing brick to plots on the site periphery, with render typically marking nodal points around internal junctions.

Whilst the provision of affordable housing is dealt with principally through the planning obligation attached to the outline permission, the layout identifies the size and location of 15 affordable dwellings (equating to 30% of the total). These include 9 x 2 bed and 6 x 3 bed dwellings positioned within parcels A and B to the east and west sides of the main spine road.

### **Relevant Planning History**

<b>Application No.</b>	<b>Development</b>	<b>Decision</b>	<b>Date</b>
17/0247	OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 50 DWELLINGS (ACCESS APPLIED FOR WITH ALL OTHER MATTERS RESERVED)	Refused	28/07/2017
16/0180	OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 50 DWELLINGS AND ASSOCIATED INFRASTRUCTURE (ACCESS APPLIED FOR WITH ALL OTHER MATTERS RESERVED)	Refused	10/02/2017

### **Relevant Planning Appeals History**

<b>Application No.</b>	<b>Development</b>	<b>Decision</b>	<b>Date</b>
16/0180	OUTLINE APPLICATION FOR RESIDENTIAL DEVELOPMENT OF UP TO 50 DWELLINGS AND ASSOCIATED INFRASTRUCTURE (ACCESS APPLIED FOR WITH ALL OTHER MATTERS RESERVED)	Allowed	28/11/2017

### **Parish/Town Council Observations**

**Elswick Parish Council** – Initially notified of the application on 20.04.18 and of amended plans on 30.08.18. Advise by letter dated 14.06.18 that the Parish Council “resolved to register no observations in relation to this application”.

### **Statutory Consultees and Observations of Other Interested Parties**

**Lead Local Flood Authority (LLFA)** – Comments dated 17.09.18 as follows:

- The requirements of condition 7 on the outline permission relating to surface water drainage have been satisfied through the submission of the drainage strategy by Story Homes on 03.09.18. Providing the development is implemented in accordance with this strategy the requirements of that condition will be complied with.

**LCC Highways** – comments dated 21.09.18 as follows:

- The current planning application is concerned with the internal layout of the site only and the site access and impact on the surrounding highway infrastructure was approved by as part of planning application 16/0180.
- The proposed 3.5m wide footpath/cycle link with Bonds Lane is acceptable.
- The internal spine road should be designed as a 20mph road with better use of horizontal deflection. Vertical deflection such as road humps and cushions should be limited and will not be permitted where the route is to be used by buses. Typically the speed reducing features are to be at a maximum of 75m centres. At present, the ramps shown on the layout are too far apart to be effective and should be relocated.

- The recommended minimum internal single garage size to be 6x3m and this includes integral garages. This affects a total of 24 properties out of the proposed 50 properties.
- Conditions are recommended concerning: (i) a scheme for the construction of the estate roads and streets for adoption; (ii) a phasing plan for the construction of the estate roads which should require that no dwelling is occupied until the road providing access to it has been completed; (iii) a scheme for the future management and maintenance of the estate road; (iv) private car parking and manoeuvring areas to be marked out before first occupation of each dwelling; (v) removal of permitted development rights requiring retention of garages for car parking.

*School Planning Team:*

- In line with the UU for outline permission 16/0180 dated 6<sup>th</sup> November 2017, the owner is to inform LCC within 20 working days following final RM approval to enable LCC to calculate the Secondary Education contribution.

*Strategic Housing:*

- It is accepted that 80% affordable rented is not deliverable on this site.
- On all sites we look to provide a basket of tenures, to meet a range of incomes. A 100% shared ownership scheme will not achieve this.
- Evidence on housing need within Elswick is limited to MyHomeChoice Fylde Coast choice based lettings scheme, which has a number people who have indicated Elswick as an area of preference, but this does not necessarily mean they would accept or have a local connection to Elswick to be allocated accommodation.
- I do not currently accept 100% shared ownership as the affordable housing offer on this site.

**Neighbour Observations**

<b>Neighbours notified:</b>	20 April 2018
<b>Site notice posted:</b>	4 May 2018
<b>Press notice:</b>	26 April 2018
<b>Amended plans notified:</b>	30 August 2018 (21 day re-consultation)
<b>No. Of Responses Received:</b>	7
<b>Nature of comments made:</b>	7 objections

The appropriate neighbouring properties were notified of the application by letter on 20 April 2018. Additional letters were sent out on 30 August following the receipt of amended plans, and allowing an additional 21 day period for comments on the revised plans. In addition, as the application involves major development and has the potential to affect the setting of a listed building, notices have been posted on site and in the local press. A total of seven letters have been received in objection to the application. The points made in the letters are summarised as follows:

***Principle of development:***

- The appeal Inspector allowed the outline permission because Fylde was unable to demonstrate that it had achieved its housing target. This position has now changed and so the Inspector's decision should be overturned.
- The scale of development will change the character of the village. Elswick lacks the services required to cope with the influx of new residents from this development.

***Layout:***

- It is apparent that the layout has been designed to allow development on the western part of the site at a future date. This results in a cramped layout where the houses are too close



to existing dwellings to the west on Ash Close, Linden Fold and Bonds Lane. It would be better for the dwellings to be spread out across the site in order to provide a buffer with existing properties.

- The layout does not comply with the Framework Plan approved as part of the outline (drawing no. 15-063 FP02 Rev H) which clearly shows development ending in line with the front of no. 14 Bonds Lane.
- The NPPF advises that development should be of a similar type to adjacent houses. The presence of affordable homes in terraced rows do not accord with this.

***Amenity:***

- The proposed dwellings will be located in close proximity to existing houses to the west. The minimal spacing between the existing and proposed dwellings, combined with their orientation and window arrangements, will result in a loss of privacy to adjoining occupiers due to overlooking. Other Councils require a separation distance of 22m (or 25m when accounting for level changes) to be achieved between windows of neighbouring dwellings in such situations, but this development proposes only approximately 13m. Moreover, future occupiers would be able to look towards these dwellings from vantage points in their rear gardens over a distance of approximately 1m.
- Several dwellings bordering the site along its western boundary have habitable room windows serving bedrooms, lounges and kitchens/dining rooms in their side elevations overlooking the existing field. The close proximity of the proposed dwellings and their deficient spacing with these principal windows would obstruct views from existing dwellings and result in an unacceptable loss of outlook, overshadowing and privacy infringement.
- The scale and density of the development – including the number and close grouping of properties along the shared boundary with existing houses to the west – would have an oppressive and overbearing impact on the occupiers of residents who presently enjoy an outlook over the field.
- The dwelling on plot 19 is set forward of the front of no. 14 Bonds Lane and so would have views across the front of no. 14 over a minimum distance of approximately 2-3m, including from a shared passageway.
- The gardens of properties on Ash Close are elevated by approximately 4-5 feet above the development site. Therefore, the proposed 6 foot fences to the rear gardens of plots backing onto existing dwellings would not provide adequate privacy screening between existing and future occupiers. Similarly, the existing hedge is very thin in places and would not provide sufficient screening.
- Noise from the gardens of the new properties will cause disturbance to existing residents along the shared boundary.

***Landscaping:***

- The existing hedge that runs along the western site boundary adjacent to houses on Ash Close should be retained as part of the scheme and subsequently maintained by the developer. This responsibility should be made clear as part of any permission.

***Flooding and drainage:***

- The site is prone to flooding and the ground is often saturated. The proposed development would increase the site's impermeable area and would increase the runoff to surrounding land and properties.
- There is a drainage ditch running along the western boundary of the site with existing dwellings on Ash Close. This ditch is an important part of the field drainage system as water from elevated gardens on Ash Close drains into it. The submitted plans show that new rear garden boundary fencing will cross this ditch, thereby leaving future occupiers with the

responsibility for maintaining it. Water running into the ditch from neighbouring gardens is likely to cause flooding for occupiers of the new dwellings, especially if the ditch becomes blocked as a result of the development.

- The banking to the side of the ditch is also very unstable and will not take fencing posts being installed. This banking has already eroded over time. The banking should be retained and formal drainage inserted within the ditch in order to deal with any adverse effects in this regard. There should also be an access corridor between existing and proposed gardens to allow the hedge and ditch to be maintained.

**Other matters:**

- The development will devalue surrounding properties.

**Relevant Planning Policy**

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise. At present, the statutory adopted development plan for Fylde comprises the saved policies of the Fylde Borough Local Plan (As Altered) 2005 (the 'FBLP').

Fylde Borough Council submitted the "Fylde Council Local Plan to 2032" – the Emerging Local Plan (referred to hereafter as the 'Submission Local Plan' or 'SLP') – to the Secretary of State for examination on 9 December 2016. An Inspector appointed to undertake an independent examination into the soundness of the SLP held three sessions of examination hearings in March, June and December 2017. The Inspector confirmed that the Stage 3 hearings formally closed on 11 January 2018. Following those hearings a 'Schedule of Proposed Main Modifications for Consultation' was produced and the Council consulted on the "Fylde Local Plan to 2032 - Schedule of Proposed Main Modifications" between 8 February and 22 March 2018. This consultation also included a number of Additional Modifications to the SLP. These do not concern the Plan's policies or affect the soundness of SLP, but are factual updates of the supporting text. A Schedule of Proposed Policies Map modifications was also consulted on for clarity with respect to some of the main modifications.

The Planning Inspectorate issued a letter to the Council on 18th September 2018 confirming that the Fylde Council Local Plan to 2032 (as modified) has been found sound and can be adopted by the Council at its discretion. Specifically, the Local Plan Inspector confirms at paragraph 216 of her report "that with the recommended main modifications set out in the Appendix the Fylde Council Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework." Accordingly, the SLP (as modified) has been found sound and can be progressed for adoption without delay. It is anticipated that the Fylde Council Local Plan to 2032 will be formally adopted by the Council by the end of October and, at that point, it will replace the FBLP as the Development Plan for the Borough, which should guide decision taking. For the avoidance of doubt, references to the SLP in the remainder of the report refer to the most up-to-date (modified) version of the Fylde Council Local Plan to 2032 which has been found sound by the Inspector.

Given the above, and although the SLP has not yet been formally adopted by the Council (and, accordingly, is not yet part of the statutory development plan) it is considered that substantial weight should be afforded to it in the decision making process in accordance with the provisions of paragraph 48 of the NPPF.

**Fylde Borough Local Plan:**

SP02	Development in countryside areas
HL06	Design of residential estates
TR01	Improving pedestrian facilities
TREC17	Public Open Space within New Housing Developments
EP04	Alteration and adaptation of listed buildings
EP11	Building design & landscape character
EP12	Conservation trees & woodland
EP14	Landscaping of new developments
EP18	Natural features
EP25	Development and waste water
EP27	Noise pollution
EP30	Development within floodplains

#### **Fylde Local Plan to 2032:**

SL5	Development Sites outside Strategic Locations for Devt
GD7	Achieving Good Design in Development
H2	Density and Mix of New Residential Development
H4	Affordable Housing
INF2	Developer Contributions
T4	Enhancing Sustainable Transport Choice
CL1	Flood Alleviation, Water Quality and Water Efficiency
CL2	Surface Water Run-Off and Sustainable Drainage
ENV1	Landscape
ENV4	Provision of New Open Space
ENV5	Historic Environment

#### **Other Relevant Policy:**

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance

#### **Site Constraints**

Within countryside area

#### **Environmental Impact Assessment**

The development is of a type listed within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, but does not exceed the threshold in Column 2 of the table relating to category 10(b) developments. Therefore, it is not Schedule 2 development for the purposes of the Regulations and, accordingly, is not EIA development. It is also noted that the outline application (16/0180) was not EIA development.

#### **Comment and Analysis**

##### **Policy context and main issues:**

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise. This requirement is reiterated in paragraph 2 of the NPPF. The statutory development plan for Fylde comprises the saved policies of the Fylde Borough Local Plan (As Altered) (2005). In addition, for the reasons set out above and in accordance with paragraph 48 of the NPPF, it is also considered that significant weight should be given to the emerging policies in the SLP due to its advanced stage of preparation.

As outlined in paragraphs 10 and 11 of the NPPF, at the heart of the Framework is a presumption in favour of sustainable development. In terms of decision taking, criteria (c) and (d) of paragraph indicate that this means:

- approving development proposals that accord with and up-to-date development plan without delay; or
- where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
  - The application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole

As the application seeks approval for reserved matters pursuant to extant outline planning permission 16/0180 (which included 'access' as a detailed matter), issues concerning the principle of development and the access to the site (including highway capacity at and away from the site) have already been assessed and cannot be revisited at this stage. Instead, the main issues concerning this application relate to the specific impacts of the development's layout, scale, appearance and landscaping, having particular regard to:

- Its compliance with the conditions and parameters associated with outline planning permission 16/0180 with respect to the development layout, landscaping and matters relating to drainage.
- Its effects on the character and appearance of the area, including nearby heritage assets.
- Its impact on the amenity of surrounding occupiers.
- Other matters relating to the development's internal highway layout, the mix of dwellings provided, the distribution of affordable housing and the provision of open space for future occupiers.

#### Compliance with outline permission 16/0180:

##### *Layout and scale:*

Outline application 16/0180 included an illustrative masterplan (drawing no. 15-063 FP02 Rev H Framework Plan). With respect to the development layout to come forward at reserved matters stage, condition 4 of the outline permission reads as follows:

*"Any application which seeks approval for the reserved matter of layout pursuant to condition 2 of this permission shall accord with the parameters shown on amended drawing number 15-063 FP02 revision H:*

1. *the developable areas of the site.*
2. *the areas to be laid out as open space and landscape buffer.*
3. *the scale of development being no greater than 2 storeys in height."*

Objectors opine that the proposed layout fails to meet the requirements of condition 4 by virtue of the developable areas extending beyond those shown on the Framework Plan, having particular regard to the development's proximity to Bonds Lane.

While the Framework Plan for application 16/1080 identifies broad locations for development blocks, roads and landscaping/open space, it is a high level plan that lacks any detail concerning the layout of individual dwellings and associated infrastructure. The Framework Plan is instead intended

to identify those parts of the site where developable and open space areas will be focussed, with its primary objective (and that of condition 4) being to ensure that development is well related to the built-up edge of the village to the west in order that it is viewed as a continuation of the settlement rather than being detached from it. This intention, and the scope of the Framework Plan, is made clear in paragraphs 16 and 17 of appeal decision APP/M2325/W/17/3172835. It is not, as is suggested by objectors, the intention of the Framework Plan to set strict, inflexible restrictions on the precise size or exact siting of areas that can be developed for housing at reserved matters stage.

As identified in paragraph 16 of the Inspector's decision "the illustrative framework plan splits the application site in two, with housing to the village side of a deep landscape buffer which incorporates an existing pond which would be retained". The detailed layout proposed follows these principles, with houses being divided into four separate development parcels facing onto a north-south spine road and cul-de-sacs branching off to the east. A wide strip of soft landscaping – incorporating the central pond – provides an intervening buffer with the retained field parcel to the eastern end of the site. The proposed layout follows the development parameters identified in the Framework Plan with respect to the locations of developable, open space and landscaped areas and, accordingly, satisfies the first and second bullet points to condition 4.

With respect to building scale, all of the proposed dwellings are of a two storey height and, therefore, there is no conflict with the restriction in the third bullet point of condition 4.

#### *Landscaping:*

With respect to landscaping parameters at reserved matters, the first part of condition 5 of planning permission 16/0180 reads as follows:

*"Any application which seeks approval for the reserved matter of landscaping pursuant to condition 2 of this permission shall provide for a development which demonstrates compliance with the principles of the landscape strategy indicated on drawing number 15-063 FP02 revision H. The scheme shall include, but not be limited to, the following details:*

- *retention of existing trees, hedgerows and other vegetation on/overhanging the site.*
- *a compensatory planting scheme to replace any trees or hedgerows to be removed as part of the development.*
- *the introduction of a landscape buffer and public open space to the east of the built form proposed.*
- *the introduction of additional planting within the site which forms part of the internal development layout and does not fall within (1) to (3).*
- *the type, size, species, siting, planting distances and the programme of planting of hedgerows, trees and shrubs."*

The application is accompanied by a detailed landscaping scheme (drawing no. 5656.01 Rev F) which provides for: (i) the retention of existing tree belts flanking the northern and southern boundaries to Bonds Lane and Mill Lane, and of existing hedgerows along the eastern and western boundaries; (ii) as no existing trees or hedgerows are to be removed there is no specific requirement for compensatory planting; (iii) The provision of a wide planting buffer to the east of the buildings which would intervene between the housing and a retained parcel of open land to the eastern end of the site. Landscaped open space buffers are also shown alongside the southern (an arrival green) and northern (flanking Bonds Lane) borders of the housing; (iv) the introduction of tree, hedge and shrub planting within the site to provide tree-lined streets and soft landscaped aspects to gardens bordering the estate road; (v) a detailed specification concerning the type, size, species, siting, planting distances and the programme of planting of hedgerows, trees and shrubs.

The submitted landscaping scheme satisfies the requirements of condition 5 of planning permission 16/0180 and the location, coverage, mix, size and species of plants, hedges and shrubs proposed is considered to provide an appropriate balance of hard and soft landscaping in order that the development's visual impact by virtue of its edge of settlement location is suitably minimised in accordance with the parameters identified by the Framework Plan.

#### *Drainage:*

Condition 7 of planning permission 16/0180 requires that "as part of any reserved matters application and prior to the commencement of any development, a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions shall be submitted to and approved in writing by the Local Planning Authority." The condition goes on to identify eight specific requirements of any such scheme and indicates that "the scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings, or completion of the development, whichever is the sooner. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details."

A detailed surface water drainage scheme has been submitted in support of the application in order to address condition 7 which requires these details to be provided at reserved matters stage. In summary the surface water drainage scheme includes the following provisions:

- A hydrobrake will be used in order that the post-development surface water run-off rate will be restricted to the pre-development (greenfield) rate of 13.7 l/s.
- Soakaway tests suggest very limited soakage potential for infiltration drainage systems within the underlying glacial clay strata. Therefore, it is not recommended that soakaways are used for disposal of surface water runoff.
- The drainage strategy is designed to contain a 1 in 30 year storm event and the 1 in 100 year event + a 40% allowance for climate change. Surface water flows will be attenuated through the provision of a 2m deep retention pond to the northeast corner of the site.
- A foul water pumping station will be located between the existing and proposed ponds (with a 15m standoff) to direct foul waters towards the existing combined sewer on Lodge Lane.
- A flood routing plan indicates that flood flows are to be directed away from the dwellings towards: (i) an existing pond to the east of the site; and (ii) along the estate road.

The LLFA have indicated that the plans and documents submitted in connection with the requirements of condition 7 of outline permission 16/0180 provide an appropriate surface water drainage strategy for the site in order to address each point in the condition. Accordingly, the requirements of condition 7 have been satisfied.

Objectors have raised concerns regarding the future operation of a drainage ditch which runs along the western boundary of the site and takes surface water from the gardens of existing dwellings at a higher level. The applicant has advised that, following investigations by their drainage engineer, it is Story Homes' intention to retain the ditch, though it is not part of the site-wide drainage strategy and is not required to drain surface water from the development. The applicant has confirmed that there is no intention to alter the position of or infill the ditch and so it will continue to take runoff from neighbouring gardens, without having any implications for the new dwellings.

#### Character and appearance:

Criterion (2) of FBLP policy HL2 states that that housing developments will be permitted where they

“would be in keeping with the character of the locality in terms of scale, space around buildings, materials and design”.

FBLP policy HL6 indicates that well designed housing schemes which respect the character of the area and provide an attractive, safe and crime free environment for residents will be permitted. Proposals involving poor designs and/or layouts which would prejudice the character of the area or increase the potential for crime will not be permitted.

FBLP policy EP11 states that new development in rural areas should be of a high standard of design, with their scale, features and building materials reflecting the local vernacular style. In addition, policies EP12, EP14 and EP18 require developments to make suitable provision for landscape planting, including the retention of trees, hedgerows and other natural features that contribute to the character of the area.

SLP policy GD7 requires that development proposals demonstrate a high standard of design in accordance with 15 guiding principles (a – o). Criteria (a), (b), (d), (f), (g), (h), (i), (k) and (l) are of greatest relevance in this case and require developments to take account of the character and appearance of the local area by:

- Promoting community cohesion by delivering active street frontages which bring together all those who live, work and play in the vicinity.
- Ensuring densities of new residential development reflect and wherever possible enhance the local character of the surrounding area.
- Ensuring the siting, layout, massing, scale, design, materials, architectural character, proportion, building to plot ratio and landscaping of the proposed development relates well to the surrounding context.
- Conserving and enhancing the built and historic environment.
- Applying Secured by Design principles to all new developments.
- Being sympathetic to surrounding land uses and occupiers, and avoiding demonstrable harm to the visual amenities of the local area.
- Taking the opportunity to make a positive contribution to the character and local distinctiveness of the area through high quality new design that responds to its context and using sustainable natural resources where appropriate.
- Ensuring the layout, design and landscaping of all elements of the proposal, including any internal roads, pedestrian footpaths, cycleways and open spaces, create user friendly, sustainable and inclusive connections between people and places resulting in the integration of the new development into the built and historic environment.
- Creating safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion, and there are clear and legible pedestrian and cycle routes and high quality public space, which encourages the active and continual use of public areas.

SLP policy ENV1 requires that development has regard to its visual impact within its landscape context and the landscape type in which it is situated. Criteria (a) to (e) of the policy require developments to conserve and enhance landscaped areas and features by introducing and strengthening landscaped buffers in order to limit a development’s visual impact.

Paragraph 127 of the NPPF sets out six principles of good design (a – f). Paragraph 129 of the Framework indicates that local planning authorities should ensure that they have access to, and make appropriate use of, tools and processes for assessing and improving the design of development, including design advice and review arrangements, and through the use of assessment frameworks such as Building for Life.

Paragraph 130 of the NPPF indicates that “permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions”.

*Layout, scale, appearance and landscaping:*

The layout follows the principles established under the outline permission with respect to the siting of housing alongside the built-up edge of the village to the west and the containment of development parcels to the western portion of the site behind a wide buffer of landscaping and open space to the central and eastern areas. Although dwellings bordering the site to the west include a collection of detached, two storey houses, a mix of terraced and semi-detached properties are apparent elsewhere within the village.

The main access to the site is from Mill Lane to the southwest corner. The site access would be flanked by a deep area of landscaped open space forming an ‘arrival green’ which would ensure a sense of spaciousness to the entrance and a substantial setback of development from Mill Lane, thus preserving the tree-lined frontage and rural character of this thoroughfare. While a narrower strip of open space would flank the northern boundary with Bonds Lane, existing roadside trees to this route would be supplemented by new tree planting and dwellings with a side facing aspect to the road (plots 19, 20 and 28) would present active frontages to the roadside by virtue of their bespoke fenestration arrangements, ensuring that this highway is addressed.

Dwellings are arranged to present an outward, front-facing aspect to public vantage points on Mill Lane, Bonds Lane and overlooking the field to the east. Where this is not the case (e.g. on corner plots), interest is added to these elevations through the use of well-proportioned windows and or other protruding features such as canopies and porches to create active frontages. Dwellings are laid out at a higher density along the main spine road running through the site, with densities reducing along the eastern frontage bordering open fields. A spacious, garden-fronted aspect to estate roads would be achieved through the setback of dwellings from the roadside to both front and rear elevations, with houses laid out to follow a consistent building line that affords a sense of openness to the highway and allows the creation of tree lined streets.

All dwellings would be two storeys in height, though two of the detached house types would present 1.5 storeys to their front elevations through the provision of rooms in the roofspace served by single front dormers above integral garages. Houses would incorporate well-proportioned façades with interest added by projecting gables, bay windows and canopies, and window arrangements would ensure a strong rhythm and symmetry to elevations with apertures emphasised by a combination of stone heads, sills and architraves, and brick arch headers.

Neighbouring dwellings to the west are laid out in a relatively rigid pattern with a strong emphasis on linearity. While this is also true of the proposed layout with respect to ensuring a consistent building line – especially to the western portion – the curvature of the main spine road and cul-de-sacs facing open fields, combined with the staggered arrangement of dwellings facing over the open field, ensures a more organic layout to the development’s rural fringe.

This transition between suburban and rural landscapes is marked by the wide buffer of landscaping which follows a meandering profile to the east of the development. The retained pond to the centre of the site provides a focal point for this, with a footpath on its eastern fringe linking cul-de-sacs to the north and south to provide a short walking route through this space. A LAP is located to the



south of the pond. Significant natural surveillance of this recreational space is afforded by the outward, front-facing aspects of dwellings on plots 28-34 & 37-41 over this area. Similarly, the front facing orientation of dwellings over the arrival green to the southern end of the site and the shared footpath/cycle link with Bonds Lane to the northern end ensures that communal areas are made focal points of the development layout.

For the reasons given above, the development is considered to demonstrate compliance with the principles of good design set out in FBLP policies HL2, HL6 EP11, EP12, EP14 and EP18, SLP policies GD7 and ENV1, and the NPPF.

#### *Effects on heritage assets:*

A grade II listed building – Elswick Memorial United Reform Church – is located on Lodge Lane approximately 58m south of the site. This is a “designated heritage asset” for the purposes of the definition in Annex 2 of the NPPF.

Paragraphs 194 and 195 of the NPPF make clear that any development causing substantial harm to or loss of the significance of a designated heritage asset (including development within its setting) should be refused, other than in exceptional circumstances. Paragraph 196 of the Framework indicates that where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. This approach is supported by FBLP policy EP4 which states that development which would prejudice the setting of a listed building will not be permitted. Similarly, SLP policy ENV5 indicates that developments resulting in harm to or loss of significance of a listed building and/or its setting will only be permitted where any harm is justified by the public benefits of the proposal.

In addition, Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that:

- In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

The nearby listed building is separated from the site by the highways of Lodge Lane and Mill Lane, with four dwellings on Lodge Lane intervening between the heritage asset and the site’s entrance off Mill Lane. Further screening is provided by the mature tree line along the site’s southern boundary which – with the exception of those specimens to be removed to create the access – is to be retained. From within the site, only the belfry and spire of the church are readily visible above the tree line to the southern boundary. No adverse effects on the listed building or its setting were identified at the time of the outline permission and there is no reason to conclude that this situation has changed as a result of the development’s layout, scale, appearance or landscaping.

Although the listed building is visible from within the site, its separation with the proposed dwellings, combined with the screening afforded by intervening buildings and planting, would avoid any harmful effects on its setting. Accordingly, the proposed development would not diminish its significance as a designated heritage asset.

#### Impact on amenity:

Criteria (1) and (4) of FBLP policy HL2 state that applications for housing will be permitted where they:

- Are acceptable in principle and compatible with nearby and adjacent land uses.

- Would not adversely affect the amenity and privacy of neighbouring properties.

SLP policy GD7 (c) requires that development proposals facilitate good design by “ensuring that amenity will not be adversely affected by neighbouring uses, both existing and proposed”. In addition, criterion (o) states that “all new housing developments should result in a high standard of amenity for occupiers. The standard of amenity for occupiers should not be compromised by inadequate space, poor layout, poor or lacking outlook or inconvenient arrangements for waste, access or cycle storage. Developments should include adequate outside amenity space for the needs of residents.”

Furthermore, paragraph 127 (f) of the NPPF indicates that planning decisions should ensure developments “create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.”

*Existing occupiers:*

The western boundary of the site is bordered by dwellings on Linden Fold, Ash Close and Bonds Lane. There are also properties fronting onto Lodge Lane to both sides of the site access, though the siting of the arrival green means that these houses would not be bordered by the proposed dwellings. A split level dormer bungalow with a two storey element on its west side (‘The Bungalow’) faces onto the site from Bonds Lane to the north, as does the bungalow at Ash Farm. Objectors have raised concerns regarding a lack of spacing between existing and proposed dwellings, opining that this would result in a loss of privacy, overshadowing, an oppressive outlook and loss of views over the existing field.

The Framework Plan to outline permission 16/0180 identifies the positioning of a development parcel alongside neighbouring dwellings to the west in order to relate the development to this built-up fringe of the village. In allowing the appeal for the outline permission, paragraph 19 of the Inspector’s decision indicates that “with regard to the outlook and privacy of existing dwellings, the application is in outline and I consider that, with adequate separation distances which is a matter within the planning authority’s control, the amenity of existing residents could be protected. I acknowledge that some residents would lose their outlook over an open field. However, it is not the role of the planning system to existing protect private views.

While dwellings on Linden Fold and Bonds Lane have a side-facing aspect to the site, these properties also have habitable room windows in their side elevations. In addition, no. 14 Bonds Lane has a lean-to extension on the east side and lounge/bedroom windows in a rear extension that overlook the field. Dwellings on Ash Close back onto the site and are orientated with their principal, rear elevations overlooking the site. The exception to this is no. 19 Ash Close which is a bungalow with a side-facing aspect containing a single, central window. With the exception of this bungalow, the remaining dwellings bordering the site are two storeys in height. Neighbouring dwellings to the west are set at a higher level to the site. This level difference varies between approximately 0.5m at the southern end of the site (adjacent to no. 10 Linden Fold) to *circa* 1.5m at the northern end (adjacent to no. 14 Bonds Lane). The shared boundary with these dwellings is formed by a combination of scattered hedging with occasional tree planting backed by timber garden fences of varying height.

The layout proposes the following separation distances between the existing and proposed dwellings:

- 12-14m between the side elevations of plots 1 & 2 and nos. 9 & 10 Linden Fold that have a side-on aspect to the site.

- 20-24m between the rear elevations of plots 4-10 and nos. 21-29 Ash Close backing onto the site.
- 14-16m between the rear elevations of plots 12-19 and nos. 19 Ash Close and 14 Bonds Lane that have a side-facing aspect to the site.
- 26-32m between the side elevations of plots 19, 20 & 28 and the front elevations of the two dwellings to the north side of Bonds Lane facing onto the site.

The applicant has also confirmed that, in addition to erecting rear garden fences, it is intended to maintain and supplement the existing hedgerow along the western site boundary by planting new sections to fill existing gaps in order to provide enhanced screening between the new houses and existing dwellings. A condition requiring the retention and strengthening of the existing hedgerow to the western boundary is recommended in this regard.

It is recognised that the outlook from neighbouring dwellings to the west who presently have open views over the field will change significantly as a result of the development. This is, however, the case with all edge-of-settlement expansions onto greenfield sites and does not automatically result in adverse amenity impacts. Objectors have referred to spacing standards adopted by other Councils in opining that the development would result in substandard separation between existing and proposed dwellings, but those standards are not applicable to Fylde Borough Council and there are no equivalent standards for new residential development set out in the adopted or emerging local plans, or any supplementary planning guidance/documents. Instead, the level of spacing between the existing and proposed dwellings must be considered in the context of what is characteristic in the surrounding area.

Although several dwellings with a side-facing aspect onto the field benefit from habitable room windows in their eastern elevations facing the site it is, in many cases, also true that these provide a second opening to the rooms in question (i.e. in addition to a window on the front/rear) and/or that windows do not lead to habitable rooms (e.g. some appear to serve garages and landings). In any case, as the opposing side elevations of dwellings on plots 1 and 2 do not contain habitable room windows, the level of separation between these dwellings and nos. 9 and 10 Linden Fold – in combination with the size/positioning of proposed garden buffers, the screening and/or offset position between them – would ensure that the dwellings do not appear unacceptably oppressive in the outlook from those neighbouring dwellings by virtue of their proximity.

Plots 4-10 would have a 'back to back' relationship with nos. 21-29 Ash Close. While this would place buildings in view from the rear windows of existing houses, the level of separation achieved between the existing and proposed dwellings would be commensurate with that available between existing dwellings within the group to the west where 'back to back' spacing distances between houses on Lodge Lane, Linden Fold, Ash Close and Bonds Lane vary between *circa* 21m and 23.5m. Any effects in terms of loss of outlook and overshadowing would be further mitigated by the difference in levels between the existing and proposed dwellings (the existing properties being elevated). Although the 'back to back' relationship between the properties would introduce a degree of mutual overlooking, the proposed dwellings would have elongated gardens with a minimum depth of 12m to provide a buffer with existing garden areas and the level of spacing between opposing rear elevations would reflect the density and character of surrounding development in order that the amenity of adjoining occupiers would not be unduly affected.

Dwellings on plots 12-19 would be orientated with their rear elevations backing onto the side elevations of a bungalow at no. 19 Ash Close and a two storey dwelling at no. 14 Bonds Lane. Number 14 Bonds Lane has a lean-to extension with glazing on its east side that the owner reports has replaced an original ground floor kitchen/dining room window. A flat-roofed extension to the

rear of no. 14 also contains windows in the east side which serve a rear living room and bedroom – though those windows are offset from the rear of plots 17-19 and would achieve a separation of *circa* 19m from the rear of plot 16.

The level of separation achieved between plots 12-19 and these dwellings would be greater than comparable ‘rear to side’ relationships between existing dwellings in the group to the west. For example, minimum spacing distances of *circa* 13.5m and 12m are apparent between nos. 1 Linden Fold (a two storey dwelling) and 2 Ash Close (a bungalow) & nos. 9 Linden Fold and 29 Ash Close respectively. In combination with the approximate 1.5m difference in levels between the existing and proposed dwellings at this point, the depth of rear gardens and the strengthening of hedgerow planting along this boundary, the siting of plots 12-19 would not give rise to undue effects on the amenity of these adjoining occupiers through loss of outlook, overshadowing or overlooking.

Two dwellings to the north on the opposite side of Bonds Lane are orientated with their front elevations facing over the site. The level of spacing achieved between these dwellings and plots 19, 20 and 28 (though containing habitable room windows), combined with the screening provided by the intervening tree line, would ensure that the development has no unacceptable impact on the privacy and amenity of these occupiers.

#### *Future occupiers:*

Separation distances between dwellings within the site would replicate those achieved with existing dwellings to the west and, accordingly, would ensure a continuation in the density, pattern and character of surrounding development. Where side-facing windows are proposed to corner plots there would be defensible space between these openings and the roadside in the form of side gardens enclosed by hedging in order that these windows are not unduly exposed to the roadside. In addition, there are no unique, site-specific effects associated with surrounding land uses that would generate nuisances to future occupiers in terms of noise or odour. Therefore, it is considered that the development would provide appropriate levels of amenity for future occupiers.

#### Other matters:

##### *Internal highway layout:*

Criterion (9) of FBLP policy HL2 states that applications for housing will only be permitted where the development would have satisfactory access and parking and would not have an adverse effect on the safe and efficient operation of the highway network, either individually or cumulatively with other developments.

FBLP policy TR1 encourages measures to be put in place to improve facilities for pedestrians and to encourage walking as an alternative means of travel

SLP policy GD7 (j) indicates that developments should achieve good design by “ensuring parking areas for cars, bicycles and motorcycles are safe, accessible and sympathetic to the character of the surrounding area and that highway safety is not compromised.”

As access has been approved at outline stage, consideration of the development’s effects on highway grounds are limited to the internal highway layout. The Local Highway Authority made observations concerning: (i) the need for changes to the location of speed reducing surfaces on the proposed estate road to create a 20mph road through the development; and (ii) recommended minimum internal garage sizes for parking of vehicles in their response dated 21.09.18.

These issue raised in point (i) can be addressed through the imposition of a planning condition requiring details of the estate road construction to be submitted, as well as through the S38 adoption process undertaken by the Local Highway Authority. With respect to internal garage dimensions, as all plots with integral garages would benefit from two in-curtilage car parking spaces on driveways, these dwellings do not rely on garage parking in order to provide the two off-road parking spaces required. For the same reason, it is not considered expedient to impose a condition withdrawing permitted development rights for conversion of garages to additional living accommodation as the NPPG advises that conditions withdrawing permitted development rights should only be imposed in “exceptional circumstances” (paragraph 21a-017-20140306).

Each dwelling would be provided with two in-curtilage parking spaces. In the case of detached house types these would form driveway approaches to integral garages. Semi-detached and terraced houses would incorporate parking within their front gardens, though uninterrupted hardstanding frontages to the street would be avoided through a combination of concealing parking alongside gable ends or through the introduction of hedging strips between spaces. Block paving would also distinguish parking spaces from the tarmac finish of the estate road.

The shared footway/cycleway onto Bonds Lane would provide permeability through the site for sustainable transport modes and provide a linkage between the site and nearby Public Rights of Way to the east. Conditions have been imposed relating to the design, construction and phasing for this route, with an expectation that it will be brought forward at an early stage. The condition also requires details of how the use of this route by vehicular traffic is to be prevented.

The internal highway layout would ensure safe and suitable access and circulation arrangements for all road users and a suitable level of parking provision for the proposed dwellings in order that the development would not have any adverse effects on highway safety.

#### *Housing mix:*

SLP policy H2 requires developments to deliver “a broad mix of types and sizes of home, suitable for a broad range of age groups”. The policy states that “all developments of 10 or more dwellings will therefore be required to include at least 50% of dwellings that are 1, 2 or 3 bedroom homes” and includes an additional requirement for “developments within or in close proximity to the Tier 2 Smaller Rural Settlements [which includes Elswick] to include at least 33% 1 or 2 bedroom homes”.

The proposed housing mix includes 9 two-bed and 12 three-bed homes, equating to 42% of the total. In addition, the 9 two-bed homes proposed could equate to 18% of the overall number of dwellings. Accordingly, the proposed housing mix does not accord with the requirements of SLP policy H2. It is not, however, considered that permission could be refused due to the development’s failure to satisfy the housing mix identified in SLP policy H2. This is because the outline permission did not include a condition requiring a specific mix of housing to be delivered and such a requirement cannot be introduced at reserved matters stage. This principle has been established in recent case law and appeal decisions. In particular, paragraphs 18 and 19 of appeal decision APP/X2410/W/16/3163501 conclude as follows:

- Housing mix cannot reasonably be considered under the condition requiring, amongst other things, the submission of details of scale and appearance at reserved matters stage. I conclude that the conditions attached to [the] outline planning permission [...] do not require the agreement of an appropriate mix of housing at the reserved matters stage. Consequently, there is no need for me to consider whether the appeal proposal provides an

appropriate mix of housing, having regard to the requirements of the Framework and the development plan.”

Therefore, in the absence of any condition on outline permission 16/0180, it is not considered that this application for approval of reserved matters is required to deliver the mix of 1, 2 and 3 bed homes in the Tier 2 settlement of Elswick that would normally be required by SLP policy H2.

*Affordable housing:*

In accordance with the requirements of SLP policy H4, outline application 16/0180 includes a planning obligation which requires the development to deliver 30% of the dwellings as affordable housing. The obligation controls the mix (including the number, location, size and tenure) of the affordable housing units through a requirement to submit an Affordable Housing Scheme to discharge the obligations of that agreement.

Although matters relating to affordable housing provision are to be dealt with principally through the planning obligation, this application for reserved matters includes details of the number, location and size of the affordable dwellings and so those matters are relevant to the assessment of the application.

The layout includes provision for 15 affordable dwellings in order that the quantitative requirement of 30% is met. These include a mix of 9 two-bed and 6 three-bed dwellings located to the east (5) and west (10) sides of the main spine road. The affordable units would comprise a mix of semi-detached and terraced houses positioned in two separate clusters to either side of the main spine road. Paragraph 26-040-20140306 of the NPPG states that “in well-designed places affordable housing is not distinguishable from private housing by its design, nor is it banished to the least attractive part of the site.”

The affordable units would be positioned between market dwellings on both sides of the main spine road. As SLP policy H4 identifies a need for smaller (1, 2 and 3 bed) dwellings to enhance affordable housing provision, this is reflected in the dwelling size and mix shown on the layout. The affordable units would be constructed to the same specification and materials as the market housing and their distribution across the site would ensure that they are appropriately integrated with the market housing. While matters concerning tenure and other eligibility criteria are dealt with through the planning obligation, the number, location, size and type of affordable dwellings shown as part of the application for approval of reserved matters are considered to be acceptable for the purposes of SLP policy H4.

*Public open space:*

FBLP policy TREC17 states that, within new housing developments, the provision of amenity open space (including facilities for children’s play where appropriate) will be required in accordance with the following standards:

- 16 sq m per 1 bedroom dwelling.
- 24 sq m per 2 bedroom dwelling.
- 32 sq m per 3 bedroom dwelling.
- 40 sq m per 4 bedroom dwelling.
- 48 sq m per 5 bedroom dwelling.

Aside from clarifying that the requirement for amenity open space provision will only apply to housing developments “comprising ten or homes”, the same standards of open space provision are

identified in SLP policy ENV4. Policies TREC17 and ENV4 require the abovementioned provision to be doubled in respect of developments involving 100 homes or more (though this is not applicable for the 50 dwellings proposed in this case).

Having regard to the above standards, the proposed mix of dwelling sizes would generate a cumulative requirement for the delivery of 1,800 square metres of amenity open space on the site. The application is accompanied by a plan identifying 3 parcels of Public Open Space (POS) with a total area of 3955 square metres. These POS areas include: (i) the arrival green to the southern end of the site; (ii) open space surrounding the central pond; and (iii) a corridor of open space flanking the northern boundary with Bonds Lane.

While the narrow width and planting to be introduced within the open space mentioned in (iii) provides limited opportunities for outdoor recreation, the POS in (i) and (ii) would provide usable areas with genuine recreational potential in order to satisfy the quantitative requirement in FBLP policy TREC17 and SLP policy ENV4.

The application also includes the provision of a Local Area for Play (LAP) to the south of the pond. Latest guidance from Fields in Trust – ‘Guidance for Outdoor Sport and Play: Beyond the Six Acre Standard’ (October 2015) – indicates, at Table 4, that LAPs should have minimum dimensions of 10m x 10m (a minimum activity zone of 100 sqm). The indicative size of the LAP satisfies this size requirement. Matters concerning the qualitative specification of the LAP can be addressed through condition, as can future maintenance arrangements (for both the LAP and informal POS).

## **Conclusions**

The application relates to a broadly rectangular parcel of land extending to approximately 4.7 hectares between Mill Lane and Bonds Lane on the eastern fringe of Elswick. The site presently comprises open farmland on the periphery of the village but has an extant outline planning permission (including access) for a residential development of up to 50 dwellings pursuant to planning permission 16/0180. This application seeks approval for the reserved matters of layout, scale, appearance and landscaping pursuant to outline planning permission 16/0180 for a residential development of 50 dwellings including associated open space and other infrastructure.

The development layout follows that of the illustrative masterplan referenced in planning permission 16/0180 with respect to the location of housing, landscaped areas and open space, and the siting, configuration and spacing of the proposed dwellings would be compatible with the density and character of surrounding development. All the dwellings would be two storeys in height and their scale would provide an appropriate mix and size of housing that would integrate successfully with existing properties on the periphery of the village which border the site. The dwellings would incorporate a combination of materials that would be sympathetic to the character of surrounding buildings while ensuring interest and consistency. The orientation and fenestration arrangements of dwellings – including those to corner plots – would ensure active frontages to existing and proposed highways and other public vantage points. A wide buffer of planting would be introduced to the east of the dwellings in accordance with the requirements of outline permission 16/0180 and internal landscaping would ensure the provision of tree lined streets, garden fronted aspects to the estate road and buffers of open space alongside boundaries with Mill Lane and Bonds Lane.

The layout, scale and appearance of the dwellings – having particular regard to their siting, fenestration arrangements, level changes, orientation and spacing with neighbouring dwellings – would ensure that the development has no undue effects on the privacy and amenity of adjoining

occupiers through loss of outlook, overshadowing or overlooking, and would achieve appropriate standards of amenity for future occupiers. The development would deliver a suitable mix of housing and the number, type, size and distribution of affordable dwellings would be acceptable. A suitable drainage strategy has been prepared in accordance with the requirements of the outline permission and appropriate provision is also made for the delivery of public open space (including play areas) to serve future occupiers.

Given the above, it is considered that the layout, scale, appearance and landscaping of the development is acceptable. No other adverse effects would arise with respect to the internal highway layout of the development, retention of existing trees or heritage impacts. Therefore, the proposal is considered to represent sustainable development in accordance with relevant adopted and emerging policies contained within the FBLP and SLP, and the provisions of the NPPF.

### **Recommendation**

That Approval of Reserved Matters be GRANTED subject to the following conditions (or any amendment to the wording of these conditions or additional conditions that the Head of Planning & Regeneration believes is necessary to make otherwise unacceptable development acceptable):

1. This permission relates to the following plans:
  - Drawing no. 15-063 LP01 – Location plan.
  - Drawing no. 40025.03.01 Rev J – General arrangements layout.
  - Drawing no. 40025.03.02 Rev E – Elevations treatments.
  - Drawing no. 40025.03.03 Rev E (updated version received 24.09.18) – Boundary treatments.
  - Drawing no. 40025.03.04 Rev C – Hard surfaces layout.
  - Drawing no. 40025.03.07 Rev A – POS plan.
  - Drawing no. 5656.01 Rev F – Landscape structure plan.
  - House type plans – The Camberley – Drawing nos. CBY-PLP1 Rev C; CBY-PLE 1/1 Rev D & CBY-PLE 1/2 Rev D.
  - House type plans – The Chartwell – Drawing nos. CHA-PLP1 Rev B; CHA-PLE 1-1 Rev B & CHA-PLE 1-2 Rev B.
  - House type plans – The Hastings v3 – Drawing nos. HAS-PLP1-NW; HAS-PLE 1/2 NW Rev A & HAS-PLE 1/3 NW Rev A.
  - House type plans – The Hawthorn – Drawing nos. HAW-PLP2-NW Rev A; HAW-PLP5-NW Rev A; HAW-PLE 2/2-NW Rev A; HAW-PLE 2/3-NW Rev A; HAW-PLE 5/2-NW Rev A & HAW-PLE 5/3-NW Rev A.
  - House type plans – The Kettering – Drawing nos. KET-PLP1 Rev C; KET-PLE 1/1 Rev C & WNT-PLE 1/2 Rev C.
  - House type plans – The Rowan – Drawing nos. ROW-PLP1; ROW-PLE 1/2 Rev B & ROW-PLE 1/3 Rev B.
  - House type plans – The Washington – Drawing nos. WSH-PLP1 Rev A; WSH-PLE 1/1 & WSH-PLE 1/2.
  - House type plans – The Worcester – Drawing nos. MID-PLP1 Rev C; MID-PLE 1/2 Rev B & MID-PLE 1/1 Rev C.
  - Boundary detail plans – Drawing nos. BD-06; BD-15; BD-25; BD-29 & BD-64.

Except as provided for by other conditions to this permission, the development shall be carried out in complete accordance with the approved drawings.

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development in accordance with the policies contained within the Fylde Borough Local Plan (As Altered) October 2005, Fylde Council Local Plan to 2032 (Submission Version) and the National Planning Policy



Framework.

2. Notwithstanding any description of materials in the application and the requirements of condition 1 of this permission, no above ground works shall take place until samples or full details of all materials to be used on the external surfaces of the dwellings have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the type, colour and texture of the materials. The development shall thereafter be implemented in accordance with the duly approved details.

Reason: To ensure use of appropriate materials which are sympathetic to the character of surrounding buildings and the street scene in the interests of visual amenity in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

3. Unless alternative details have first been submitted to and approved in writing by the Local Planning Authority, the landscaping scheme for the site shown on drawing no. 5656.01 Rev F shall be carried out during the first planting season after the development is substantially completed and the areas which are landscaped shall be maintained as landscaped areas thereafter in accordance with the details shown on the approved plan. Any trees, hedges or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced by trees, hedges or shrubs of similar size and species to those originally required to be planted.

Reason: To ensure appropriate landscaping of the site in the interests of visual amenity, to enhance the character of the street scene and to provide biodiversity enhancements in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP14, Fylde Council Local Plan to 2032 (Submission Version) policy ENV1 and the National Planning Policy Framework.

4. Unless alternative details have first been submitted to and approved in writing by the Local Planning Authority, boundary treatments to each plot shall be erected in accordance with the details (including their siting, height, design, materials and finish) shown on drawing nos. 40025.03.03 Rev E, BD-06, BD-15, BD-25, BD-29 and BD-64 before the dwelling on that plot is first occupied, and shall be retained as such thereafter.

Reason: In the interests of the security of future occupiers, to ensure adequate levels of privacy between neighbouring dwellings and to achieve an acceptable relationship with the street scene in accordance with the requirements of Fylde Borough Local Plan policy HL2, and the National Planning Policy Framework.

5. Notwithstanding any details shown on the approved plans and the requirements of conditions 1, 3 and 4 of this permission, no development associated with the construction of the dwellings on plots 1-19 (as identified on drawing no. 40025.03.01 Rev J) shall take place until a scheme for the retention, replacement and/or introduction of supplementary planting along the western boundary of the site (adjacent to existing dwellings on Linden Fold, Ash Close and Bonds Lane) has been submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of:

- all trees, hedgerows and any other vegetation on/overhanging the site to be retained;
- compensatory planting to replace any trees or hedgerows to be removed as part of the development;
- the introduction of additional trees, hedgerows and shrubs alongside the western boundary to supplement that which does not fall within (i) or (ii); and

- the type, size, species, siting, planting distances and the programme of planting of hedges, trees and shrubs.

The duly approved landscaping scheme shall be carried out before the dwelling on each associated plot is first occupied and the areas which are landscaped shall be retained as landscaped areas thereafter. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted.

Reason: To ensure an appropriate treatment of the mutual boundary between the development and existing dwellings to the west in order to provide enhanced screening for occupiers of existing and proposed dwellings in the interests of ensuring a good standard of amenity for existing and future occupiers and appropriate landscaping of the site in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP14, Fylde Council Local Plan to 2032 (Submission Version) policies GD7 and ENV1, and the National Planning Policy Framework.

6. Unless alternative details have first been submitted to and approved in writing by the Local Planning Authority, surface water from the development shall be drained in accordance with the surface water drainage scheme detailed in the following plans and documents:
  - a) Drawing no. 40-01 Rev P3 – Drainage Layout.
  - b) Drawing no. 40-02-01 Rev P2 – Road & Sewer Longitudinal Sections Sheet 1 of 2.
  - c) Drawing no. 40-02-02 Rev P2 – Road & Sewer Longitudinal Sections Sheet 2 of 2.
  - d) Drawing no. 40-03 Rev P2 – PDS Manhole Schedule.
  - e) Drawing no. 40-06 Rev P2 – Pond Detail.
  - f) Drawing no. 40-07 Rev P1 – Impermeable Areas Plan.
  - g) Drawing no. 40-08 Rev P2 – Flood Routing Plan.
  - h) Drawing no. 40-09 Rev P2 – S13 Hydrobrake Detail.
  - i) Micro Drainage calculations dated 31.08.18 titled 'File SW1.MDX'.
  - j) Permeability Assessment by 'e3p' dated 14.10.2015 (report reference 10-743-L1).

The surface water drainage scheme shall be implemented in accordance with the approved details prior to first occupation of any of the dwellings, or completion of the development, whichever is the sooner. Thereafter the drainage system shall be managed and maintained in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority pursuant to condition 8 of planning permission 16/0180.

Reason: To ensure that the development is not at risk of flooding and does not increase flood risk elsewhere, and that adequate measures are put in place for the disposal of surface water in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 (Submission Version) policies CL1 and CL2, and the National Planning Policy Framework.

7. None of the dwellings hereby approved shall be occupied until a scheme for the provision and future maintenance of the areas of Public Open Space identified on drawing no. 40025.03.07 Rev A has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:
  - Details of future maintenance arrangements for the areas of informal open space to be laid out in accordance with the landscaping scheme detailed on drawing no. 5656.01 Rev F.
  - Details of the siting, size, layout, design and materials of the Local Area for Play (including associated play equipment), which shall demonstrate compliance with the guidance set out in the Fields in Trust publication 'Guidance for Outdoor Sport and Play: Beyond the Six Acre Standard' (October 2015).

- A timetable for the provision and programme for the ongoing maintenance of the areas of Public Open Space.

The areas of Public Open Space shall thereafter be provided, retained and subsequently maintained in accordance with the duly approved scheme and the timetable contained therein.

Reason: To ensure that the development makes an appropriate contribution towards the provision and future maintenance of recreational open space in order to avoid a deficiency in the quantity and quality of recreational open space in the locality and to ensure that the impact of the development on existing recreational open space is adequately mitigated in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy TREC17, Fylde Council Local Plan to 2032 (Submission Version) policy ENV4 and the National Planning Policy Framework.

8. No development associated with the construction of the pumping station shown on drawing no. 40025.03.01 Rev J shall take place until details of its size, height, materials and design of the apparatus and any associated means of enclosure have been submitted to and approved in writing by the Local Planning Authority. The pumping station shall thereafter be constructed in full accordance with the duly approved details.

Reason: For the avoidance of doubt and as no such details have been submitted as part of the application, to ensure an appropriate appearance for ancillary structures to be erected as part of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

9. None of the dwellings hereby approved shall be occupied until a scheme for the installation of fencing to the perimeter of the on-site ponds to be retained and introduced as part of the development (the locations of which are shown on drawing no. 40025.03.01 Rev J) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the height (which shall be no less than 1 metre), positioning, design, materials and finish (including colour treatment) of the fencing. The fencing shall be installed in accordance with the details in the duly approved scheme before any of the dwellings are first occupied, and shall be retained as such thereafter.

Reason: In the interests of public safety for future occupiers/users of the development in order to minimise the risk of accidents occurring and to ensure a satisfactory appearance in the interests of visual amenity in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

10. No above ground works shall take place until a scheme for the design, construction, drainage and phasing of all new estate roads and associated footways has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include full engineering, drainage, street lighting and constructional details. Each estate road and their associated footways shall be provided in full accordance with the duly approved scheme before any of the dwellings to be served by that road are first occupied.

Reason: To ensure a satisfactory standard of engineering works for the construction of roads and footways to serve the development and to provide satisfactory facilities for access and circulation of all road users in the interests of highway safety in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and TR1, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

11. No above ground works shall take place until a scheme setting out arrangements for the future

management and maintenance of the estate roads and associated footways to be constructed pursuant to condition 10 of this permission has been submitted to and approved in writing by the Local Planning Authority. The estate roads and footways shall thereafter be managed and maintained in accordance with the duly approved scheme.

Reason: To ensure that satisfactory measures are put in place for the management and maintenance of estate roads and footways to serve the development in order to provide satisfactory facilities for access and circulation of all road users in the interests of highway safety in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and TR1, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

12. Before each dwelling hereby approved is first occupied, a scheme for the design and construction (including surface treatment) of its associated parking areas shall be submitted to and approved in writing by the Local Planning Authority. The parking areas shall be constructed in accordance with the duly approved scheme before each associated dwelling is first occupied, and shall be retained as such thereafter for the parking of vehicles.

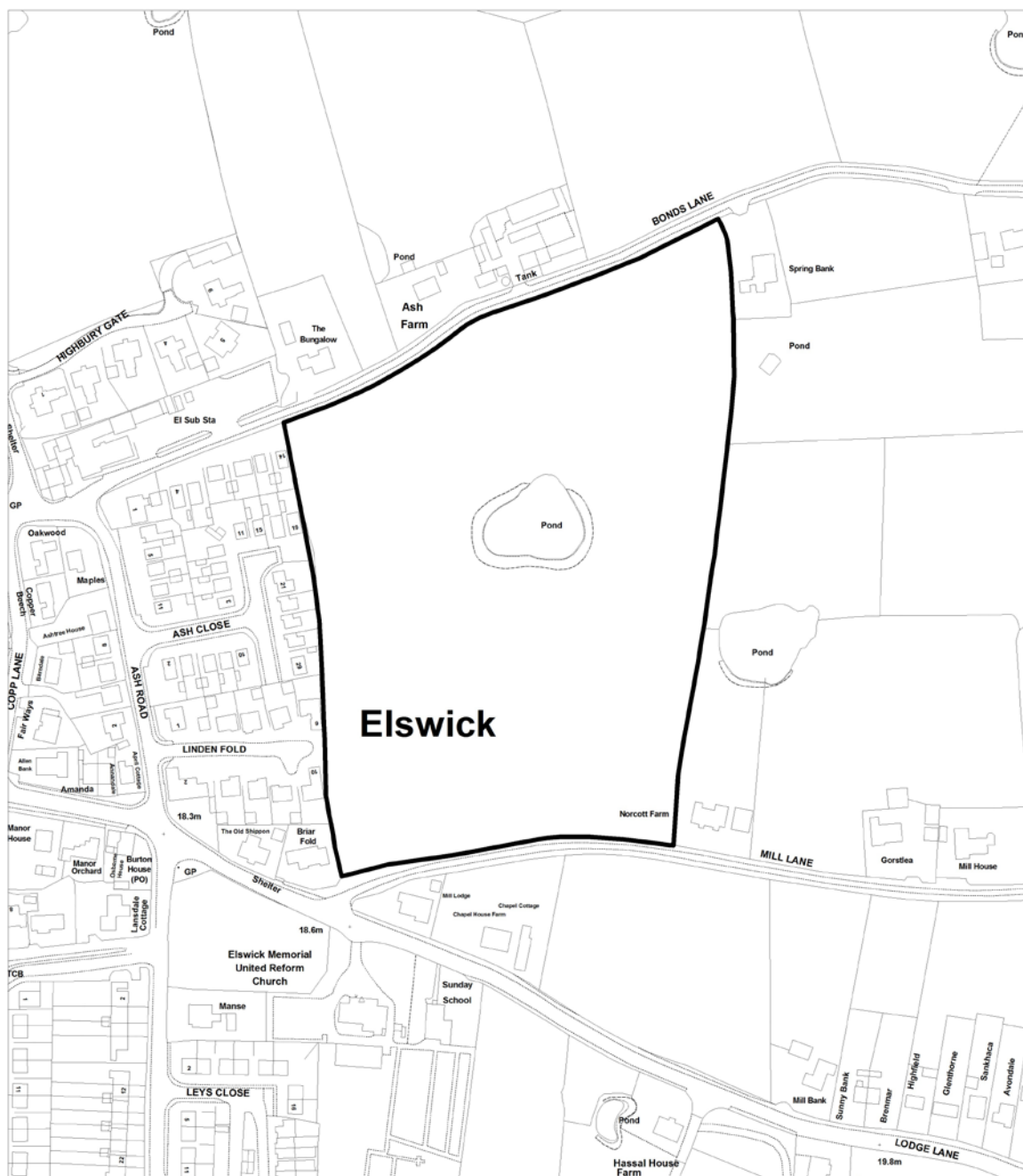
Reason: In order that there is adequate provision for vehicles to be parked clear of the highway, to ensure appropriate surface treatment of parking areas in the interests of visual amenity and to ensure that satisfactory provisions are made for the disposal of surface water in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, EP25 and EP30, Fylde Council Local Plan to 2032 (Submission Version) policies GD7 and CL2, and the National Planning Policy Framework.

13. None of the dwellings hereby approved shall be occupied until a scheme for the provision of the 3.5 metre wide shared footpath/cycle link (the location of which is shown on drawing no. 40025.03.01 Rev J) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- a) A specification for its design, construction (including surface treatment) and illumination.
- b) Details of the layout and design of its junction onto Bonds Lane, including any associated change in levels, gradients and road markings.
- c) Details of any trees or other vegetation to be removed in order to allow its construction.
- d) Details of the siting, layout, height, design, materials and finish of a vehicle barrier to prevent its use by vehicular traffic.
- e) A timetable for its completion.

The shared footpath/cycle link shall be provided and made available for use in accordance with the details and timetable in the duly approved scheme, and shall be retained as such thereafter.

Reason: To encourage access to and from the site via sustainable modes of transport by ensuring that the shared footpath/cycle link provides a safe and attractive route for pedestrians and cyclists and in the interests of highway safety in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy TR1, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.



Development Services Fylde Council		(c) Crown Copyright and database right (2018). Ordnance Survey (100006084).	
Application No. 5/18/0318	Address Land north of and adjacent Norcroft Farm, Mill Lane, Elswick	Grid Ref. E.3423 : N.4385	Scale 0 10 20 30 40 m 

**Item Number:** 5

**Committee Date:** 10 October 2018

<b>Application Reference:</b>	18/0467	<b>Type of Application:</b>	Full Planning Permission
<b>Applicant:</b>	BAE Systems	<b>Agent :</b>	Cassidy + Ashton
<b>Location:</b>	BAE SYSTEMS WARTON AERODROME, LYTHAM ROAD, BRYNING WITH WARTON, PRESTON, PR4 1AX		
<b>Proposal:</b>	ERECTION OF TWO STOREY MODULAR OFFICE (CLASS B1) BUILDING NEAR 439 BUILDING		
<b>Ward:</b>	WARTON AND WESTBY	<b>Area Team:</b>	Area Team 1
<b>Weeks on Hand:</b>	17	<b>Case Officer:</b>	Rob Clewes
<b>Reason for Delay:</b>	Need to determine at Committee		

**If viewing online this is a Google Maps link to the general site location:**

<https://www.google.co.uk/maps/@53.7471314,-2.8928184,555m/data=!3m1!1e3?hl=en>

**Summary of Recommended Decision:** Grant

#### **Summary of Officer Recommendation**

The proposal involves the erection of a new modular building within the BAE site at Warton, in the area that is to the northern side of the runway closest to the village of Warton. This is a two storey structure providing office accommodation and high-bay manufacturing / research space associated with the core aircraft business undertaken at the site.

The site is allocated for employment purposes in the adopted and emerging Local Plans where the erection of a new building is acceptable in principle. It is sited on an existing car park area within the complex and adjacent an existing cluster of buildings and hangars. Whilst the application submission indicates a functional and utilitarian appearance a condition is proposed to require the external materials and finish to be agreed prior to construction so that a more appropriate finished appearance will be delivered.

The proposal is intended to replace a series of existing buildings which are to be decommissioned due to their age, and the staff redeployed to the new building. The LCC highways surveyor has confirmed that this will ensure that the development does not result in additional pressures on the capacity of the road network, and so he raises no objection to the proposal.

Taking the above into account it is considered that the proposal is acceptable and that it complies with the NPPF and Policies EMP2, EP11 and EP17 of the adopted Fylde Borough Local Plan and Policies EC2, ENV2 and GD7 of the submission version of the Fylde Local Plan to 2032 and so is recommended for approval.

#### **Reason for Reporting to Committee**

The proposal involves major development and so the Scheme of Delegation requires that the

application be determined at Committee given that the recommendation is to grant planning permission.

### **Site Description and Location**

The application site is part of the BAE systems complex at the Warton Aerodrome. The site specific to this application is located in the north western side of the complex, to the north of the runway and to the south of the main cluster of buildings located at this part of the site. The overall complex consists of various size buildings used for differing purposes including as hangars and office use. The BAE site is surrounded by varying classes of land as designated by the adopted local plan with Green Belt to the west, Warton settlement to the north and open countryside to the east with the River Ribble estuary to the south.

### **Details of Proposal**

The proposal is for the erection of a two-storey modular building of a rectangular footprint measuring 23.9m by 41.5m. It has a flat roof 7.3m high. The building provides 1846m<sup>2</sup> of B1(a) floor space.

It is located to the north of the runway on a section of land that is currently used for car parking to the south of buildings 429 and 439. Its external appearance consists of the following:

- (i) Walls: Plastisol-coated, galvanised steel cladding
- (ii) Roof: Profiled plastisol-coated, galvanised steel
- (iii) Doors: Polyester powder coated aluminium frames
- (iv) Gutting and rainwater goods: Steel-faced doors with anodised aluminium frames

### **Relevant Planning History**

Application No.	Development	Decision	Date
17/0992	INSTALLATION OF NINE CABINS WITH BULKHEAD LIGHTING.	Granted	17/01/2018
17/0074	NON MATERIAL AMENDMENT TO PLANNING PERMISSION 16/0904 TO MAKE A MINOR RELOCATION OF OFFICE POD AT LOCATION A (TO FRONT OF BUILDING 423 NEAR SOUTH GATE)	Granted	24/03/2017
16/0904	INSTALLATION OF SIX NEW OFFICE PODS	Granted	05/01/2017
15/0795	PROPOSED ERECTION OF DETACHED TWO STOREY BUILDING TO PROVIDE ENGINEERING CENTRE TO SOUTHERN SIDE OF RUNWAY	Granted	21/04/2016
15/0591	ERECTION OF A TWO STOREY BUILDING AS EXTENSION TO BUILDING W374 TO PROVIDE FLIGHT SIMULATOR FACILITY AND SUPPORTING OFFICES	Granted	20/10/2015
14/0803	PROPOSED ERECTION OF SINGLE STOREY BUILDING TO REPLACE EXISTING BUILDING W356.	Granted	06/01/2015
14/0527	PROPOSED INSTALLATION OF 11 No. CYCLE SHELTERS AT VARIOUS LOCATIONS WITHIN SITE	Granted	15/09/2014
12/0201	PROPOSED UPGRADE OF SITE ENTRANCE AT MAIN GATE INCLUDING ERECTION OF NEW GATEHOUSE WITH ELECTRONIC INFORMATION	Granted	28/05/2012

DISPLAY ON NORTH AND SOUTH SIDES,  
SECURITY FENCE, PEDESTRIAN TURNSTILES,  
VEHICLE BARRIERS, PROPOSED LIGHTING AND  
ASSOCIATED INTERNAL ROAD ALTERATIONS.

There is an extensive site history and so older applications omitted for clarity.

### **Relevant Planning Appeals History**

None to report.

### **Parish/Town Council Observations**

**Bryning with Warton Parish Council** notified on 15 June 2018 and comment:

*“The Parish Council have no objection or specific observations to make on the application.”*

### **Statutory Consultees and Observations of Other Interested Parties**

#### **BAE Systems**

No objections

#### **Ministry of Defence - Safeguarding**

No objections

#### **Lancashire County Council - Highway Authority**

Initially raised objection to the application due to the lack of any supporting transport statement with the submission. This has subsequently been provided and further comments offered which conclude:

*“With consideration for the further information provided within the Transport Statement, LCC are satisfied that the applicant has demonstrated that there will be no net impact of the development proposal on the highway network and as such I can confirm that there are no highway objections to the proposal. I do not consider it necessary for any highway planning conditions to be imposed.”*

### **Neighbour Observations**

<b>Neighbours notified:</b>	No neighbours notified due to location of building remote from any site boundary and so off-site view
<b>Site Notice Date:</b>	22 June 2018
<b>Press Notice Date:</b>	21 June 2018
<b>Number of Responses</b>	None

### **Relevant Planning Policy**

#### **Fylde Borough Local Plan:**

EMP2	Existing business & industrial uses
EP11	Building design & landscape character
EP17	Dev't in or near Biological & Geological Heritage Sites



**Fylde Local Plan to 2032:**

EC2	Employment Opportunities
ENV2	Biodiversity
GD7	Achieving Good Design in Development
EC3	Lancashire Advanced Engineering and Manufacturing (AEM) Enterprise Zone at BAE Systems, Warton

**Other Relevant Policy:**

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance
BWNP	Bryning with Warton Neighbourhood Plan

**Site Constraints**

None

**Environmental Impact Assessment**

This development does not fall within Schedule 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

**Comment and Analysis**

The main issues regarding this application are:

- The principle of the development
- Design and impact to visual amenity of the area
- Impact to residential amenity
- Impact to highway safety
- Impact to the nearby Biological Heritage Site (BHS)

**The principle of the development**

The proposed building is located within the existing boundary of the BAE Systems site of which the entirety is classed as existing employment land as defined under Policy EMP2 of the adopted Fylde Borough Local Plan and Policy EC2 of the submission version of the Fylde Local Plan to 2032. These policies seek to support proposals that would result in development that encourage business and employment growth in accessible and sustainable areas. In addition the site is also a fully adopted Enterprise Zone (as of April 2012) and as such Policy EC3 of the submission version of the Fylde Local Plan to 2032 is relevant.

The application site forms part of the overall BAE complex and therefore as the proposal is to be used in connection with an existing well established business use on the site the principle of the development is considered acceptable. The above Policy is particularly supportive of employment development in such locations and so confirms the acceptability of such development in principle.

The site falls within the boundaries of the Bryning with Warton Neighbourhood Plan and the BAE complex is defined as an existing employment area. Policy BWE1 of the neighbourhood plan seek to protect these designated sites for employment uses (Classes B1, B2 and B8). As the proposal is for a Class B1 use, and is in connection with the existing function of the site it is considered that the proposal complies with this policy.

#### Design and Impact to visual amenity of the area

The proposed building is of a sectional modular construction and its external appearance is therefore dictated by this means of construction. The result is a building of little character that would not positively contribute to the character of the immediate area. However its location within the BAE complex means that views of it from outside the site would be restricted and therefore there would be no detrimental impact to the character of the wider area. Notwithstanding this, the design and appearance of the building within the site is still nevertheless a material consideration.

The BAE site comprises varying designs of buildings with the more recent larger buildings being of a high quality and contributing positively to the character of the site and the areas adjacent it. The size and location of the proposed building means that it will be clearly visible to staff and visitors to the site and as such its external appearance should contribute positively to the character of the site and its immediate surroundings. It is possible for modular buildings to be clad in a variety of ways that will add visual interest to their appearance without compromising the construction method. This is effectively the same approach as taken when using a condition to agree the construction materials for a traditional property and so a condition requiring the external finish/materials of the building to be agreed prior to construction is appropriate. This will ensure that the building has an appropriate appearance and so impact on the visual amenity of the area.

#### Impact to residential amenity

Due to its position within a cluster of buildings and separation distance of 270m from the nearest residential properties, which are on Pool Lane to the east, there will be no impact to the amenity of these properties.

#### Impact to highway safety

The application has been assessed by Lancashire County Council as the local highway authority. They initially raised concerns over the impact to the existing highway network, in particular along Lytham Road, in the belief that the development would bring additional employees to the site. In response to these concerns a transport statement has been submitted that confirms that the proposal is to replace buildings elsewhere on the site that are being decommissioned as part of a rolling upgrade of buildings. The effect is that existing staff currently employed within the Warton site are to be relocated to this facility. As no new staff are to be employed as a consequence of the development there should be no material increase in traffic movements and therefore no additional pressure on the capacity of the road network. A planning condition is appropriate to ensure that the buildings referred to are actually decommissioned concurrent with the bringing of the new building into use.

#### Parking Provision

As the new building is to replace other existing offices there will not be any additional demand for on-site parking. However, the scheme will remove the existing 65 spaces provided on the application site. To assess the impact of this the Transport Statement now supplied includes a survey of parking provision on site located within a 5 minute walk of the building and concludes that there are regularly several hundred parking spaces available within the site. As such the loss of the spaces provided on the application site will not have a material impact on overall parking provision on the site. LCC highways have confirmed that they are content with the information provided on this.

Accordingly no highway objection is raised to the development. Whilst LCC Highways have confirmed that they are not requesting any highway related conditions it is considered that a condition requiring the identification and subsequent decommissioning of the building(s) mentioned

in the transport statement is required to ensure that it is enacted during the development to protect the capacity of the A584.

#### Impact to the nearby Biological Heritage Site (BHS)

The southernmost part of the BAe site is within and adjacent a BHS and therefore an assessment as to the impact of the BHS is required. The proposed building is approximately 180m away from the nearest part of the BHS boundary. This separation distance added with the fact that there are existing buildings closer to the boundary and that this site is previously developed ensures that there will be no detrimental impact to the BHS or any protected species. The proposal is therefore considered to comply with Policy EP17 of the Fylde Borough Local Plan.

#### Conclusions

The proposal involves the erection of a new modular building within the BAE site at Warton, in the area that is to the northern side of the runway closest to the village of Warton. This is a two storey structure providing office accommodation and high-bay manufacturing / research space associated with the core aircraft business undertaken at the site.

The site is allocated for employment purposes in the adopted and emerging Local Plans where the erection of a new building is acceptable in principle. It is sited on an existing car park area within the complex and adjacent an existing cluster of buildings and hangars. Whilst the application submission indicates a functional and utilitarian appearance a condition is proposed to require the external materials and finish to be agreed prior to construction so that a more appropriate finished appearance will be delivered.

The proposal is intended to replace a series of existing buildings which are to be decommissioned due to their age, and the staff redeployed to the new building. The LCC highways surveyor has confirmed that this will ensure that the development does not result in additional pressures on the capacity of the road network, and so he raises no objection to the proposal.

Taking the above into account it is considered that the proposal is acceptable and that it complies with the NPPF and Policies EMP2, EP11 and EP17 of the adopted Fylde Borough Local Plan and Policies EC2, ENV2 and GD7 of the submission version of the Fylde Local Plan to 2032 and so is recommended for approval.

#### Recommendation

That Planning Permission be GRANTED subject to the following conditions:

1. The development must be begun not later than the expiration of three years beginning with the date of this permission.

Reason: To comply with the requirements of section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. This permission / consent relates to the following details:

#### Approved plans:

- Site Location Plan - L01 Rev P1
- Proposed Site Plan (Option B) - P01 Rev P1

- Proposed Elevations - SK06 Rev P1
- Proposed Plans - P02 Rev P1
- Schematic Drainage Layout - L(52)01 Rev P1

Supporting Reports:

- Design Statement - (Prepared by Cassidy + Ashton)
- Transport Statement - Ref: 1447/2 (Prepared by ashleyhelme)

Reason: To provide clarity to the permission.

3. Notwithstanding any denotation on the approved plans the colour and design of the external materials/cladding to be used on the elevations of the building hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any building operations. Thereafter only those approved materials shall be used in the development.

Reason: To ensure that the design and external appearance of the building represents a high quality design appropriate for this employment site in accordance with Policy EP11 of the Fylde Borough Local Plan and Policy GD7 of the Fylde Local Plan to 2032.

4. The foul and surface water drainage scheme as shown of plan ref: L(52)01 Rev P1 (Prepared by Cassidy + Ashton) shall be implemented and completed prior to the first use of the building hereby approved.

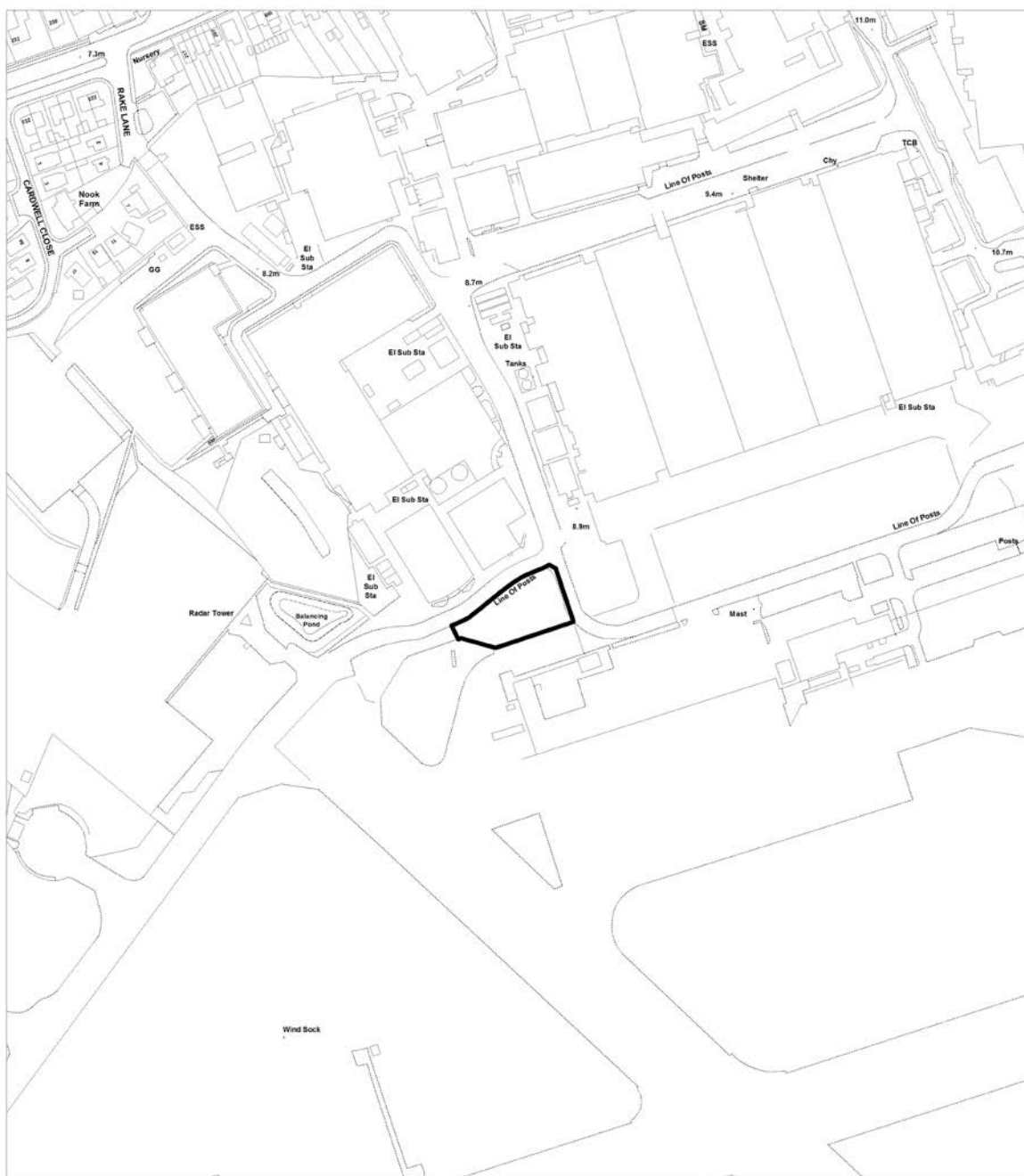
Reason: To ensure adequate drainage of the site.

5. Prior to the commencement of any development a plan to identify the building(s) to be decommissioned shall be submitted to and approved in writing by the Local Planning Authority. This building(s) shall be decommissioned within 2 months of the office building hereby approved being first brought into use.

Reason: To ensure there is no net increase in office space provided on site that could impact on highway network and junction capacity on the A584 and other surrounding roads.

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any equivalent Order following the revocation and re-enactment thereof (with or without modification), the building shall be used for B1a (office) purposes (as defined in the Town and Country Planning (Use Classes) Order 1987 (as amended)) only, and for no other purpose.

Reason: To restrict the use of the building to an operation which is compatible with the nature of surrounding uses and to prevent future changes of use which have the potential to detract from the character of the area and/or harm the amenities of surrounding occupiers in accordance with the requirements of Fylde Borough Local Plan policy EMP2 and the National Planning Policy Framework.



Development Services Fylde Council		(c) Crown Copyright and database right (2018). Ordnance Survey (100006084).	
Application No. 5/18/0467	Address BAE Systems Warton Aerodrome, Lytham Road, Warton	Grid Ref. E.3410 : N.4280	Scale 0 15 30 45 60 m 

<b>Application Reference:</b>	18/0544	<b>Type of Application:</b>	Variation of Condition
<b>Applicant:</b>	Kensington Developments Ltd	<b>Agent :</b>	
<b>Location:</b>	LAND FORMING KENSINGTON DEVELOPMENTS SITE, QUEENSWAY, LYTHAM ST ANNES		
<b>Proposal:</b>	APPLICATION TO VARY CONDITIONS 18 AND 19 OF PLANNING PERMISSION 17/0861 TO: (1) ALLOW UP TO 165 DWELLINGS TO BE OCCUPIED PRIOR TO THE COMPLETION OF A PROGRAMME OF HIGHWAY WORKS (CONDITION 18); AND (2) DELAY THE BLOCKING UP OF THE TEMPORARY VEHICLE ACCESS TO QUEENSWAY UNTIL PRIOR TO THE CONSTRUCTION OF THE 166TH DWELLING (CONDITION 19)		
<b>Ward:</b>	HEYHOUSES	<b>Area Team:</b>	Area Team 2
<b>Weeks on Hand:</b>	10	<b>Case Officer:</b>	Matthew Taylor
<b>Reason for Delay:</b>	Need to determine at Committee		

If viewing online this is a Google Maps link to the general site location:

<https://www.google.co.uk/maps/@53.7660049,-3.0102451,277m/data=!3m1!1e3?hl=en>

**Summary of Recommended Decision:** Grant subject to revised s106 agreement

#### **Summary of Officer Recommendation**

The application follows outline planning permissions 08/0058 (as allowed by recovered appeal APP/Q2371/V/11/2157314) and 17/0861 (a subsequent S73 application) relating to a residential development of up to 1150 dwellings including the provision of a 1.1ha school site and 34ha parkland at land to the south and east of the B5261 (Queensway), Lytham St Annes.

Conditions 16 and 18 of the original outline planning permission (08/0058) were varied pursuant to a S73 application granted on 12th December 2017 (17/0861). These variations are set out in conditions 18 and 19 of planning permission 17/0861, which read as follows:

18. *No more than 65 dwellings shall be occupied until the new Queensway/ TR5 junction (including all pedestrian, cycling and equestrian provision), all other pedestrian, cycling and equestrian provision on the B5261, the western section of the east-west access road (TR5) up to and including the second (development) access and the bridleway to the south of the access road, together with all supporting infrastructure required to link into existing routes at either end, have been completed in accordance with the approved scheme.*
19. *The temporary vehicular access to Queensway as detailed on drawing number KD63/ 10 rev E of planning approval 17/0862 shall be blocked up prior to construction of the 66th dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with a scheme which shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall make provision for landscaping, and*

*a footpath and cycle path link to Queensway. The approved scheme shall be implemented in accordance with the aforementioned timescales.*

The current application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary conditions 18 and 19 of planning permission 17/0861 as follows:

- **Condition 18** – To increase the maximum number of dwellings that can be occupied prior to the completion of the Queensway/TR5 junction (and other highway works associated with the delivery of that junction) from 65 to 165, and to allow up to 165 dwellings to be occupied prior to the construction of the first (rather than the first and second) development access off the TR5 road (the east-west Heyhouses bypass).
- **Condition 19** – To delay the blocking up of the temporary vehicle access onto Queensway until the point prior to the construction of the 166<sup>th</sup> dwelling.

Accordingly, the applicant proposes that conditions 18 and 19 be varied to read as follows (changes highlighted):

18. No more than **165** dwellings shall be occupied until the new Queensway/ TR5 junction (including all pedestrian, cycling and equestrian provision), all other pedestrian, cycling and equestrian provision on the B5261, the western section of the east-west access road (TR5) up to and including the **first** (development) access and the bridleway to the south of the access road, together with all supporting infrastructure required to link into existing routes at either end, have been completed in accordance with the approved scheme.
19. The temporary vehicular access to Queensway as detailed on drawing number KD63/ 10 rev E of planning approval 17/0862 shall be blocked up prior to construction of the **166th** dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with a scheme which shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall make provision for landscaping, and a footpath and cycle path link to Queensway. The approved scheme shall be implemented in accordance with the aforementioned timescales.

Full planning permission 17/0862 allowed the construction of 66 dwellings to be served via a temporary access with a priority (give way) junction onto Queensway. S73 application 17/0861 varied the wording of conditions 16 and 18 on the original outline permission (08/0058) to reflect the change in access arrangements permitted by application 17/0862 in order that a limited number of dwellings implemented under that permission could also be served by the temporary access off Queensway rather than via a new junction with the TR5 bypass (the 'Queensway Roundabout'), with a cap of 65 dwellings across both permissions being applicable.

This application seeks to increase the number of dwellings that can take access from the temporary, priority junction onto Queensway from 65 to 165 units (phases 1 and 2 of the development), along with delaying the construction of the first access to the development off the TR5 east-west bypass until the occupation of the 166<sup>th</sup> dwelling (condition 18). The revised wording of condition 19 would also require the temporary access to be blocked up prior to the construction of the 166<sup>th</sup> dwelling, with the development then to be accessed via

the new Queensway/TR5 junction and the first development access off the TR5 at that point.

The proposed variations to the conditions are required in order to allow the continued delivery of housing on the site in advance of a scheme for the final design of the Queensway/TR5 junction – which is proposed, subject to planning permission, to be varied from a roundabout to a signalised junction – being approved and implemented. The Local Highway Authority have advised that the layout, design and capacity of the temporary access onto Queensway, as approved by application 17/0862, is capable of serving a development of up to 165 dwellings and, accordingly, the proposed variations to conditions 18 and 19 would have no adverse impact on the safe and efficient operation of the surrounding highway network.

No other adverse effects would arise from the variation of the conditions that would significantly and demonstrably outweigh the benefits arising from the continued and accelerated delivery of housing on a strategic site allocated in the Emerging Local Plan. Therefore, when considered as a whole, the proposal is considered to represent sustainable development in accordance with the relevant policies of the FBLP, the SANDP, the SLP and the NPPF.

#### **Reason for Reporting to Committee**

The application is classified as major development and the officer recommendation is for approval.

#### **Site Description and Location**

The application relates to the Kensington Developments site (named 'Richmond Point') located to the south and east of the B5261 (Queensway), Lytham St Annes. The site benefits from extant planning permissions and reserved matters approvals which allow the construction of up to 948 dwellings, along with associated infrastructure including land reserved for a new school and nature park.

Although the site is shown to fall within the Countryside Area, and – with respect to the bypass and nature park – partially within the Green Belt, on the Fylde Borough Local Plan (As Altered) October 2005 Proposals Map, the land is allocated as a strategic site for residential development (reference HSS1) in the Fylde Council Local Plan to 2032 (Submission Version).

The original outline planning permission (08/0058) included access to the site to be taken from a roundabout junction with Queensway which was to merge with a 'bypass' (named as 'T5' and/or 'TR5') running in an east-west direction to connect the site with a new link road (named 'T6') to the M55 following the route of the B5410 (North Houses Lane).

Outline planning permission 08/0058 was followed by applications for approval of reserved matters (references 13/0257 and 15/400) which, in combination, allowed the construction of up to 992 dwellings across the site. Following these approvals, a separate full planning permission (reference 17/0862) was granted for a residential development of 66 dwellings on the part of site subject to reserved matters approval 13/0257. Planning permission 17/0862 includes the construction of a temporary access off Queensway for the 66 dwellings permitted via a priority (give way) junction onto the B5261 which included a dedicated right hand turn lane into the site. A S73 application (17/0861) was granted in tandem with full planning application 17/0862 and allowed a variation to the wording of conditions 16 and 18 of outline planning permission 08/0058 in order to delay the



triggers for the delivery of the Queensway/TR5 junction and associated bypass in order that up to 65 dwellings could take access from the temporary junction onto Queensway permitted by application 17/0862. Conditions 18 and 19 of planning permission 17/0861 read as follows:

18. *No more than 65 dwellings shall be occupied until the new Queensway/ TR5 junction (including all pedestrian, cycling and equestrian provision), all other pedestrian, cycling and equestrian provision on the B5261, the western section of the east-west access road (TR5) up to and including the second (development) access and the bridleway to the south of the access road, together with all supporting infrastructure required to link into existing routes at either end, have been completed in accordance with the approved scheme.*
19. *The temporary vehicular access to Queensway as detailed on drawing number KD63/ 10 rev E of planning approval 17/0862 shall be blocked up prior to construction of the 66th dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with a scheme which shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall make provision for landscaping, and a footpath and cycle path link to Queensway. The approved scheme shall be implemented in accordance with the aforementioned timescales.*

Planning permission 17/0862 and reserved matters approval 15/0400 have now been implemented. In combination, these implemented permissions will allow the construction of 948 dwellings across the site. A phasing plan (drawing no. 4113-15 Rev B) submitted with application for approval of details reserved by condition reference 18/0243 (in connection with 15/0400) shows housing to be delivered in 8 sequential phases travelling in a south-easterly direction away from Queensway. Phases 1 and 2 involve the construction of 165 dwellings in two separate parcels as follows:

- **Phase 1** – A collection of 65 dwellings bordering the site's north-western boundary with Queensway.
- **Phase 2** – A collection of 100 dwellings to the east of Phase 1 and to the south of the TR5 bypass.

### **Details of Proposal**

The application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary conditions 18 and 19 of planning permission 17/0861 as follows:

- **Condition 18** – To increase the maximum number of dwellings that can be occupied prior to the completion of the Queensway/TR5 junction (and other highway works associated with the delivery of that junction) from 65 to 165, and to allow up to 165 dwellings to be occupied prior to the construction of the first (rather than the first and second) development access off the TR5 road (the east-west bypass).
- **Condition 19** – To delay the blocking up of the temporary vehicle access onto Queensway until the point prior to the construction of the 166<sup>th</sup> dwelling.

Accordingly, if the application were approved in the manner applied for by the applicant, conditions 18 and 19 would be varied to read as follows (proposed changes highlighted below):

18. No more than **165** dwellings shall be occupied until the new Queensway/ TR5 junction (including all pedestrian, cycling and equestrian provision), all other pedestrian, cycling and

equestrian provision on the B5261, the western section of the east-west access road (TR5) up to and including the **first** (development) access and the bridleway to the south of the access road, together with all supporting infrastructure required to link into existing routes at either end, have been completed in accordance with the approved scheme.

19. The temporary vehicular access to Queensway as detailed on drawing number KD63/ 10 rev E of planning approval 17/0862 shall be blocked up prior to construction of the **166th** dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with a scheme which shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall make provision for landscaping, and a footpath and cycle path link to Queensway. The approved scheme shall be implemented in accordance with the aforementioned timescales.

With reference to phasing plan 4113-15 Rev B submitted with condition discharge application 18/0243 the application seeks, in effect, to allow the construction of all 165 dwellings on phases 1 and 2 prior to the construction and bringing into use of the Queensway/TR5 junction and the associated first and second development accesses off the TR5 bypass. Instead, all 165 dwellings in these two phases are to take access off the temporary junction onto Queensway as approved by application 17/0862.

### **Relevant Planning History**

<b>Application No.</b>	<b>Development</b>	<b>Decision</b>	<b>Date</b>
17/1026	APPLICATION UNDER S106A TO MODIFY PLANNING OBLIGATION RELATING TO PLANNING PERMISSION 08/0058	Granted	12/12/2017
17/0862	APPLICATION FOR RESIDENTIAL DEVELOPMENT COMPRISING OF 66 NO. DETACHED DWELLINGS AND GARAGES.	Approved with 106 Agreement	12/12/2017
17/0886	APPLICATION UNDER S106A TO MODIFY PLANNING OBLIGATION RELATING TO PLANNING PERMISSION 08/0058	Withdrawn by Applicant	12/12/2017
17/0861	VARIATION OF CONDITION 16 (SCHEME DESIGN FOR ALL SITE ACCESS MEASURES AND OFF-SITE HIGHWAY WORKS/IMPROVEMENTS) AND CONDITION 18 (IMPLEMENTATION OF AGREED SITE ACCESS MEASURES AND OFF-SITE HIGHWAY WORKS/IMPROVEMENTS) OF PLANNING APPROVAL 08/0058.	Granted	12/12/2017
16/0511	APPLICATION TO DISCHARGE DETAILS ASSOCIATED WITH CONDITIONS 10, 11, 13, 14, 15, 17, 23, 24, 26, 27 AND 29 ON PLANNING PERMISSION 08/0058 RELATING TO LANDSCAPING, SOIL CONSERVATION, DRAINAGE, FLOOD STORAGE, MOVEMENT STRATEGY, SITE PREPARATION, CONSTRUCTION MANAGEMENT PLAN AND RENEWABLE ENERGY PRODUCTION.	Advice Issued	29/09/2016
16/0513	APPLICATION TO DISCHARGE DETAILS ASSOCIATED WITH CONDITION 13 ON	Advice Issued	22/09/2016

15/0400	PLANNING PERMISSION 13/0257 PHASE ONE CONSTRUCTION PLAN, RECYCLED AGGREGATES REPORT, SITE PREPARATION PLAN. APPLICATION FOR APPROVAL OF RESERVED MATTERS PURSUANT TO OUTLINE PLANNING PERMISSION 08/0058 FOR THE LAYOUT, SCALE, APPEARANCE AND LANDSCAPING OF A DEVELOPMENT FOR 882 DWELLINGS AND ASSOCIATED INFRASTRUCTURE	Granted	13/10/2017
13/0767	APPLICATION FOR REMOVAL OF THE AFFORDABLE HOUSING REQUIREMENT FOR THE FIRST 300 DWELLINGS ON THE SITE WITH A REQUIREMENT TO UNDERTAKE VIABILITY REAPPRAISAL BEFORE 300TH, 600TH, 900TH AND 1150TH OCCUPATIONS TO ALLOW POTENTIAL FOR THE FUTURE AFFORDABLE HOUSING CONTRIBUTION TO BE ASSESSED	Granted	24/12/2013
13/0528	APPLICATION FOR THE MODIFICATION OR DISCHARGE OF PLANNING OBLIGATIONS : REMOVAL OF AFFORDABLE HOUSING REQUIREMENT ON 08/0058	Returned Invalid Application	27/05/2014
13/0257	APPLICATION FOR APPROVAL OF RESERVED MATTERS FOR CONSTRUCTION OF 110 DWELLINGS AND ASSOCIATED WORKS FORMING PHASE 1 OF DEVELOPMENT APPROVED UNDER OUTLINE PLANNING PERMISSION 08/0058.	Granted	02/04/2015
13/0259	APPLICATION FOR SITE AND ECOLOGY PREPARATION WORKS ASSOCIATED WITH ENABLING THE FUTURE CONSTRUCTION OF THE QUEENSWAY ROUNDABOUT, PHASE ONE OF THE TR5 BYPASS, AND PHASE ONE OF THE QUEENSWAY RESIDENTIAL DEVELOPMENT. THE SCOPE OF THE WORKS TO INCLUDE THE FORMATION OF A TEMPORARY ACCESS TO QUEENSWAY, THE ERECTION OF 2M HIGH HOARDINGS TO QUEENSWAY FRONTAGE, THE PROVISION OF A TEMPORARY SITE COMPOUND, REMOVAL AND STORAGE OF TOPSOIL, AND SURCHARGING OF SITE.	Withdrawn by Applicant	13/08/2015
13/0261	PROPOSED CHANGE OF USE AND CREATION OF AN ORNAMENTAL GARDEN	Withdrawn by Applicant	21/10/2013
13/0275	APPLICATION TO DISCHARGE CONDITIONS 4, 7, 8, 9, & 16 OF OUTLINE PLANNING PERMISSION 08/0058 FOR ERECTION OF 1,150 DWELLINGS, PROVISION OF A SCHOOL SITE, AND PARKLAND	Advice Issued	
08/0058	THE DEVELOPMENT OF 1150 DWELLINGS, PROVISION OF A 1.1HA SCHOOL SITE AND A 34HA PARKLAND.	Appeal against non-determine	29/04/2009

#### **Relevant Planning Appeals History**

<b>Application No.</b>	<b>Development</b>	<b>Decision</b>	<b>Date</b>
08/0058	THE DEVELOPMENT OF 1150 DWELLINGS,	Allowed	21/06/2012

PROVISION OF A 1.1HA SCHOOL SITE AND A  
34HA PARKLAND.

**Parish/Town Council Observations**

***St Annes on the Sea Town Council:*** Notified of the application on 02.08.18 and comment 17.08.18 as follows:

- “Fylde Borough Council stipulated these conditions obviously for good reason and we will support their decision.”

**Statutory Consultees and Observations of Other Interested Parties**

*Environmental Health Officer (EHO):*

- No objections.

*Environment Agency:*

- No objections as the conditions being varied were not requested by the Environment Agency.
- We understand that the above variation of conditions applications relate solely to the residential area of the site and not the T5 Heyhouses Bypass (and internal spine road), which requires a flood storage scheme to compensate for the loss of floodplain storage as a result of its construction in the Flood Zone. This is dealt with under condition 15 of planning permission 08/0058 and condition 20 of planning permission 17/0862.

*GMEU: (Ecology)*

- The proposed variation of condition to delay the completion of the junction works and stopping up of the temporary access road into the site will not have any significant ecological impacts. Therefore, there are no objections to the application.

*Local Highway Authority (LHA) – Lancashire County Council:*

- LCC officers continue to work closely with Kensington Developments Limited (KDL) to ensure suitable infrastructure is delivered to mitigate against the development's impacts and provided when required. The latest position is that KDL are progressing with delivery of dwellings and internal infrastructure within their site, all accessed via the temporary priority junction with Heyhouses Lane.
- The M55 to Heyhouses Link Road when delivered will provide a new link between Lytham St Annes and the Strategic Road network. The Link Road and the East/West access road (which connects to Queensway) will provide the necessary traffic relief to congested parts of the local network through improved routing opportunities and also contribute further by providing high quality linkages for sustainable modes. Discussions and scheme progression have been ongoing for some time between key stakeholders including LCC, KDL, HE and FBC to secure agreement and funding to deliver the infrastructure in advance of the triggers set by planning condition/within the unilateral undertaking when the Kensington site was approved.
- To date some significant funds have been secured and committed to deliver the link road scheme including agreement with KDL on their level of contribution (for construction of the link road). Notwithstanding the accelerated approach being actively progressed to deliver the road regard must be had to the original KDL legal unilateral undertaking (UU) dated 9th January 2012 in paragraph 22.4 states that 'Prior to 150th Occupation to pay the full cost of

the T6 from point D to Annas Road...' the undertaking also provides other trigger points. Until legal agreements, land and funding is in place etc, the changes proposed by KDL do not impact on delivery of the link road as it remains as per the UU.

- The application seeks to alter the trigger for the delivery of the Queensway junction from prior to commencement, to prior to occupation of phases 1 and 2 (165 dwellings in total), to continue to use the temporary priority junction onto Queensway for phases 1 and 2.
- Although limited evidence has been submitted to support the change, having regard to that submitted for the earlier application for the use of the temporary access to serve phase 1 LCC are satisfied that the additional requirements of this temporary priority access can be accommodated from an operational perspective and will not cause severe impact at the location of temporary junction. Right turn vehicles exiting and entering the adopted network via the temporary junction for the duration that it is required can be undertaken with the benefit of opportunities released through the lost time at the Kilnhouse Lane signalised junction, which is located circa 125m to the north east of the temporary access, by breaking up the westbound stream of traffic during peaks.
- Background traffic conditions will increase over time, thus influencing the reliability of the priority junction. To this end this junction is temporary. The temporary junction is supported for phases 1 and 2 only and must be permanently closed (for all motorised movements) prior to the 166<sup>th</sup> unit. This requires the new signalised junction at Queensway/Kilnhouse Lane/T5/Heyhouses Lane be completed and fully operation (for the site as a whole, including use by phases 1 and 2), and as a minimum the East/West access road including the first access into the Queensway site open for use prior to the first unit on phase 3 (166<sup>th</sup> unit). These changes need to be controlled through planning conditions.
- With regard to the phasing plan the 2<sup>nd</sup> access on T5 should be open for use prior to the first unit on phase 4 (276<sup>th</sup> unit) being occupied. T5 linking to the operational M55 Heyhouses Link Road should be completed and open for use for all transport modes prior to the occupation of the 451<sup>st</sup> unit. With regard to the 3<sup>rd</sup> access onto T5, this is in the gift of KDL to deliver in line with the build out of their site. This access was not linked to a trigger by the Inspector or Secretary of State at the public inquiry.
- It is important that all residents who purchase a dwelling in this phase of development are fully aware that the access is temporary and that it will be removed. It is suggested that the properties are sold on a either a leasehold or freehold basis with a clause within the leasehold/freehold title deeds identifying the planning permission and interim and future access arrangements. This should form part of a planning condition and or within a s106/UU.
- The proposed change does not negatively influence delivery of the M55 Heyhouses Link Road, Queensway signalised junction or the East/West access road (T5).

*Natural England:*

- Advise they have no comments to make concerning the variation of conditions 18 and 19.

**Neighbour Observations**

<b>Neighbours notified:</b>	2 August 2018
<b>Site notice posted:</b>	10 August 2018
<b>Press notice:</b>	16 August 2018
<b>Amended plans notified:</b>	N/A
<b>No. Of Responses Received:</b>	Four
<b>Nature of comments made:</b>	Four objections

The appropriate neighbouring properties were notified of the application by letter. In addition, as the application involves major development and is accompanied by an Environmental Statement,

notices have also been posted on site and in the local press. A total of four letters have been received in objection to the application. The points of objection are summarised below.

***Principle of development:***

- If the development required a separate access onto Queensway then this should have been included as part of the original application. The developer should not now be allowed to vary the requirement for the new Queensway junction to be introduced as the original permission was not granted on that basis.
- This application will set a precedent for allowing further delays to the delivery of the new Queensway junction through subsequent applications and, ultimately, will mean that the developer fails to deliver the highway works promised as part of the original application.

***Highways:***

- Traffic on Queensway is already gridlocked, especially during the summer months. It is not acceptable to increase the number of vehicles utilising the temporary access onto Queensway without any upgrading of the existing highway infrastructure in the vicinity.
- Additional vehicles from another 100 dwellings taking access to and from Queensway, along with construction traffic, would create an increased road safety hazard and a heightened risk of collisions.
- The development does not appear to deliver safe access arrangements or a crossing for pedestrians.

***Amenity impacts:***

- The development has already created disamenity issues for neighbouring residents due to noise from the timing of construction works and piling operations, movement of dust and debris and trailing of mud onto the highway.

***Prejudicial effects on neighbouring development sites:***

- The Land north of Kilnhouse Lane is allocated for business and industrial development by FBLP policies EMP1 and EMP2, and emerging local plan policy EC1. The new roundabout junction onto Queensway which was shown to serve as the access for the Kensington development under application 08/0058 is also required to open up access to the adjacent employment site. Without this roundabout being constructed, there is no means of accessing the Kilnhouse Lane site. This access constraint and the potential for associated delays to the delivery of the Kilnhouse Lane site was identified in paragraph 50 of the Inspector's decision on appeal reference APP/M2325/W/16/3164516 (an application for the erection of 115 dwellings).
- It is understood that an alternative arrangement to replace the originally approved Queensway roundabout with a signalised junction is being pursued by Kensington. This will require the submission of a new planning application and, accordingly, further delays and uncertainty as to the means of access to the Kilnhouse Lane site.
- The delay to the construction of the new Queensway junction which would arise if this application were permitted would jeopardise the delivery of an allocated employment site, which could undermine the spatial strategy for Lytham and St Annes and the overall provision of employment land in both the adopted and emerging local plans. Kensington are not progressing the development at a fast pace and, at current build out rates, it could take another 5 years or so to reach the revised (166 dwelling) trigger for the construction of the formal junction that would open access to the Kilnhouse Lane site.
- There is no commitment or any indication by Kensington of the proposed timescales for submitting an application to amend the approved junction or to physically construct the junction on site. The currently approved situation (i.e. only allowing 65 dwellings to be

occupied), whilst not ideal, provides some degree of certainty that the junction will be implemented within the short term and that further marketing of the Kilnhouse Lane site is warranted and justified.

- These matters have also been brought to the attention of the Local Plan Inspector.

### **Relevant Planning Policy**

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise. At present, the statutory adopted development plan for Fylde comprises the saved policies of the Fylde Borough Local Plan (As Altered) 2005 (the 'FBLP'). In addition, as the site falls within the Saint Anne's on the Sea Neighbourhood Development Plan (SANDP) area, the Neighbourhood Plan also forms part of the Development Plan in this case.

Fylde Borough Council submitted the "Fylde Council Local Plan to 2032" – the Emerging Local Plan (referred to hereafter as the 'Submission Local Plan' or 'SLP') – to the Secretary of State for examination on 9 December 2016. An Inspector appointed to undertake an independent examination into the soundness of the SLP held three sessions of examination hearings in March, June and December 2017. The Inspector confirmed that the Stage 3 hearings formally closed on 11 January 2018. Following those hearings a 'Schedule of Proposed Main Modifications for Consultation' was produced and the Council consulted on the "Fylde Local Plan to 2032 - Schedule of Proposed Main Modifications" between 8 February and 22 March 2018. This consultation also included a number of Additional Modifications to the SLP. These do not concern the Plan's policies or affect the soundness of SLP, but are factual updates of the supporting text. A Schedule of Proposed Policies Map modifications was also consulted on for clarity with respect to some of the main modifications.

The Planning Inspectorate issued a letter to the Council on 18<sup>th</sup> September 2018 confirming that the Fylde Council Local Plan to 2032 (as modified) has been found sound and can be adopted by the Council at its discretion. Specifically, the Local Plan Inspector confirms at paragraph 216 of her report "that with the recommended main modifications set out in the Appendix the Fylde Council Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework." Accordingly, the SLP (as modified) has been found sound and can be progressed for adoption without delay. It is anticipated that the Fylde Council Local Plan to 2032 will be formally adopted by the Council by the end of October and, at that point, it will replace the FBLP as the Development Plan for the Borough, which should guide decision taking. For the avoidance of doubt, references to the SLP in the remainder of the report refer to the most up-to-date (modified) version of the Fylde Council Local Plan to 2032 which has been found sound by the Inspector.

Given the above, and although the SLP has not yet been formally adopted by the Council (and, accordingly, is not yet part of the statutory development plan) it is considered that substantial weight should be afforded to it in the decision making process in accordance with the provisions of paragraph 48 of the NPPF.

### **Fylde Borough Local Plan:**

SP02	Development in countryside areas
SP03	Development in green belt
HL02	Development control criteria for new housing proposals
HL06	Design of residential estates
EMP1	Business & industrial land allocations

EMP2	Existing business & industrial uses
TR01	Improving pedestrian facilities
TR02	Increasing provision of bridleways
TR03	Increasing provision for cyclists
TR05	Public transport provision for large developments
TREC17	Public Open Space within New Housing Developments
EP10	Protection of important landscape and habitat features
EP11	Building design & landscape character
EP12	Conservation trees & woodland
EP14	Landscaping of new developments
EP15	Protection of European wildlife sites
EP16	Development in or near SSSI's
EP18	Natural features
EP19	Protected species
EP21	Archaeology
EP22	Protection of agricultural land
EP23	Pollution of surface water
EP25	Development and waste water
EP27	Noise pollution
EP29	Contaminated land
EP30	Development within floodplains
CF02	Provision of new primary schools

#### **Fylde Local Plan to 2032:**

S1	Proposed Settlement Hierarchy
DLF1	Development Locations for Fylde
M1	Masterplanning the Strategic Locations for Development
SL1	Lytham and St Annes Strategic Location for Development
GD1	Settlement Boundaries
GD2	Green Belt
GD7	Achieving Good Design in Development
GD9	Contaminated Land
EC1	Overall Provision of Empty Land and Existing Sites
H1	Housing Delivery and the Allocation of Housing Land
H2	Density and Mix of New Residential Development
H4	Affordable Housing
INF1	Service Accessibility and Infrastructure
INF2	Developer Contributions
T1	Strategic Highway Improvements
T4	Enhancing Sustainable Transport Choice
CL1	Flood Alleviation, Water Quality and Water Efficiency
CL2	Surface Water Run-Off and Sustainable Drainage
ENV1	Landscape
ENV2	Biodiversity
ENV4	Provision of New Open Space

#### **Other Relevant Policy:**

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance

#### **Saint Anne's on the Sea Neighbourhood Development Plan 2016-2031 (SANDP) & Design Guide**



## **Supplementary Neighbourhood Plan Document**

- GP1 – Settlement boundary
- EN2 – Green Infrastructure
- EN4 – Urban trees supply
- DH1 – Creating a distinctive St Anne's
- DH2 – Corridors and Gateways
- TR1 – Accessibility for all
- TR2 – Better public transport
- TR3 – Residential care parking
- TR4 – Getting around St Anne's
- HOU1 – Housing development
- HOU4 – Residential design
- SU1 – Incorporate sustainable urban drainage into new development
- DEL1 – Developer contributions

### **Environmental Impact Assessment**

Outline application 08/0058 was EIA Development. Paragraph 016 of the 'flexible options for planning permissions' chapter to the NPPG makes clear that "a section 73 application is considered to be a new application for planning permission under the 2011 Environmental Impact Assessment Regulations. [...] Where an Environmental Impact Assessment was carried out on the original application, the planning authority will need to consider if further information needs to be added to the original Environmental Statement to satisfy the requirements of the Regulations. Whether changes to the original Environmental Statement are required or not, an Environmental Statement must be submitted with a section 73 application for development which the local planning authority considers to be Environmental Impact Assessment development.

As the extant outline permissions involved EIA development, this S73 application is also EIA development. Accordingly, the application is accompanied by an Environmental Statement (ES) which provides an addendum update to the original ES in order to assess the effects of the proposed variations to conditions 18 and 19 of planning permission 17/0861.

### **Comment and Analysis**

#### **Background and principle of development:**

The principle of a residential development for up to 1150 dwellings, including a 1.1ha school site and 34ha parkland, has been established through the granting of outline planning permission 08/0058 (as varied by application 17/0861). Moreover, development has now commenced on site pursuant to subsequent applications for approval of reserved matters (15/0400) and a separate full planning permission (17/0862) which, in combination, allow the construction of a total of 948 dwellings across the site.

Paragraphs 013 – 018 of the "flexible options for planning permissions" chapter to the NPPG relate to "amending the conditions attached to a permission including seeking minor material amendments (application under Section 73 TCPA 1990)". Paragraph 15 of the NPPG makes clear that a grant of a S73 application is, in effect, the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.

The granting and subsequent implementation of extant permissions at the site have established the

principle of development and this is not a matter to be revisited as part of the S73 application.

Whilst applications to vary conditions on extant permissions are to be determined in accordance with the Development Plan under S38 (6) of the Planning and Compulsory Purchase Act 2004, given the existence of extant permissions 08/0058 (as varied by 17/0861), 15/0400 and 17/0862, it follows that attention should be focussed on national or local policies or other material considerations that have changed since the original grant of permission, as well as the effects of the proposed changes sought to the wording of the condition.

While outline planning permission 08/0058 was granted on 21<sup>st</sup> June 2012, the subsequent S73 application (17/0861) which is the subject of this variation was approved on 12<sup>th</sup> December 2017. Although the statutory, adopted development plan for Fylde remains the same (the FBLP), the SLP has been subject to additional modifications and is at a more advance stage of preparation. Accordingly, the SLP should be afforded substantial weight in the decision making process (though it does not yet have 'development plan' status). The SANDP was adopted on 24 May 2017 and is also part of the development plan (though that was also the case when planning permission 17/0861 was granted). In addition, the Ministry of Housing, Communities and Local Government published the revised NPPF in July 2018.

Given the above, there have been material changes in both local and national planning policy since the issuing of planning permission 17/0861. These changes do not, however, indicate that an alternative approach should be taken with respect to the principle of development. Indeed, the application land is allocated as a strategic site for housing development under policy SL1 of the SLP (site reference HSS1). It must also be kept in mind that, in this case, extant planning permissions and reserved matters approvals for all 948 dwellings have already been implemented. Therefore, while any grant of permission would, in effect, result in the issuing of a new outline planning permission, it follows that consideration only needs to be given to those elements of the scheme which differ from the previous approval, alongside any effects of the abovementioned changes in policy since the issuing of the previous decision, insofar as they relate to the specific changes sought as part of this S73 application.

#### Effects of the proposed variation to conditions 18 and 19:

The purpose of the application is to vary the requirements of conditions 18 and 19 of outline planning permission 17/0861 (which was, in itself, a variation of the original outline permission 08/0058) in order to allow:

- **Condition 18** – An increase in the maximum number of dwellings that can be occupied prior to the completion of the Queensway/TR5 junction (and other highway works associated with the delivery of that junction) from 65 to 165, and to allow up to 165 dwellings to be occupied prior to the construction of the first (rather than the first and second) development access off the TR5 road (the east-west bypass).
- **Condition 19** – A delay in the blocking up of the temporary vehicle access onto Queensway until the point prior to the construction of the 166<sup>th</sup> dwelling.

In essence, the application seeks to allow all 165 dwellings in phases 1 and 2 of the development to take access from the temporary junction onto Queensway which was approved as part of full planning permission 17/0862.

Criterion (9) of FBLP policy HL2 states that applications for housing will only be permitted where the

development would have satisfactory access and parking and would not have an adverse effect on the safe and efficient operation of the highway network, either individually or cumulatively with other developments.

Criteria (j) and (q) of SLP policy GD7 require that developments:

- Ensure parking areas for cars, bicycles and motorcycles are safe, accessible and sympathetic to the character of the surrounding area and that highway safety is not compromised.
- Should not prejudice highway safety, pedestrian safety, and the efficient and convenient movement of all highway users (including bus passengers, cyclists, pedestrians and horse riders).

The SANDP identifies Queensway as an important gateway and corridor into the town. SANDP policy DH2 states that “development proposals adjoining these corridors and gateways must respond in design terms and have regard to the principles and detailed guidance set out in the St. Anne’s Design Guide SPD and the accompanying Corridors and Gateways Companion Document. All development will be required to make a positive contribution towards the implementation of the strategy and improvement of the access corridors and gateways.”

In addition, paragraph 108 of the NPPF requires that in assessing applications for development, it should be ensured that:

- Appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
  - safe and suitable access to the site can be achieved for all users; and
- any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Paragraph 109 of the Framework indicates that “development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

The construction of the temporary access in the form of a priority (give way) junction onto the B5261 was permitted as part of application 17/0862. The siting and design of the access is shown on drawing no. KD63/10 Rev E (as referred to in condition 19) and is also indicated in an enclosure to Technical Note 3794/01 by Cole Easdon (drawing titled ‘Plan 3794/231’). In summary, the temporary access and priority junction includes:

- Visibility splays of 2.4m x 90m in both directions at the junction of the site access with Queensway.
- A ghost island right hand turn lane into the site from Queensway including associated carriageway widening.
- The provision of a 3m wide shared footway/cycleway along the site’s frontage with Queensway and extending around both sides the junction before narrowing to 2m within the site.

Additional requirements for the delivery of a toucan crossing to the south of the access and a temporary crossing between the temporary access and the existing Queensway/Kilnhouse Lane junction via a pedestrian refuge are set out in condition 21 of planning permission 17/0862.

The Technical Note (TN) by Cole Easdon which accompanied application 17/0862 included details of anticipated vehicle trip generation and junction capacity assessments based on a scenario where 65 dwellings would take access from the temporary junction onto Queensway and the remaining 1085 dwellings (as permitted by application 08/0058) would be accessed from the Queensway/T5

junction.

With reference to vehicle trip rates used in the 2011 Transport Assessment for the original outline application, Table 3.3 of the TN estimates that a development of 65 dwellings would generate a total of 42 two-way vehicle trips through the temporary junction during the peak AM period (08:00 – 09:00), rising to 45 two-way vehicle trips during the peak PM period (17:00 – 18:00). Using the vehicle trip rates in Table 3.2 of the TN, these figures would rise to 106 trips in the peak AM period and 115 trips in the peak PM period if 165 dwellings were permitted to use the temporary access. The differences between the two scenarios are set out in Table 1 below.

Period	65 dwellings	165 dwellings	Variance
AM peak (08:00-09:00)	42	106	+64
PM peak (17:00 – 18:00)	45	115	+70
Daily	386	979	+593

**Table 1 – Vehicle trip generation comparison**

While the use of the temporary access by an additional 100 dwellings would result in a significant increase in the number of vehicle trips into and out of the junction, the Local Highway Authority (LHA) consider the design of the access – a priority junction off the B5261 in the position approved by application 17/0862 – to be sufficient to deal with the number of vehicle trips associated with a development of up to 165 dwellings in advance of the formal Queensway/T5 junction being delivered. Similarly, the LHA consider that the level of traffic generated by a development of 165 dwellings utilising the temporary access would not result in a severe impact on network capacity or highway safety. Given the proximity of the site access to the junction of Queensway and Kiln House Lane and the temporary nature of the access, the local highway authority does not consider that it will be necessary to incorporate the ghost island, which was incorporated into the original junction design when the developer was seeking to retain this access to the site on a permanent basis.

Although the LHA consider the design of the temporary access as approved by application 17/0862 to be sufficient to serve up to 165 dwellings as proposed in phases 1 and 2 of the development, their response makes clear that this assessment is based on the temporary nature of the junction and that future increases in background traffic levels will affect the reliability of the junction in the longer term. Accordingly, the LHA reiterate their position set out during application 17/0862 that the permitted access arrangements are suitable only as a temporary measure to serve a limited number of dwellings. In this case, the LHA consider that the applicant's proposal for a maximum of 165 dwellings to be served by the temporary junction is appropriate, but that this junction must be closed for all motorised movements prior to the occupation of the 166<sup>th</sup> dwelling or the completion and bringing into use of the Queensway/T5 junction (whichever occurs first). This requirement (albeit for up to 65 dwellings) is reflected in condition 19 of planning permission 17/0861 and is to be carried over for the 165 dwellings now proposed to be served by the temporary access, as advised by the LHA.

For the reasons set out above, it is considered that the proposed variation to conditions 18 and 19 of planning permission 17/0861 which would allow up to 165 dwellings to take access from the temporary junction onto Queensway (in accordance with the design approved under application 17/0862) prior to this being blocked up at the point of construction of the 166<sup>th</sup> dwelling, would not conflict with the requirements of FBLP policy HL2, SLP policy GD7, the SANDP or the NPPF.

The application also seeks to vary condition 18 in order to delay the trigger for the construction of the "second (development) access" to the western section of the bypass (TR5) by substituting this wording to refer to the "first (development) access". The effects of this revision must be considered

in combination with application 18/0545 which has been submitted in tandem with this application and seeks to vary a Unilateral Undertaking dated 09.01.12 (entered into as part of application 08/0058) under S106A of the Town and Country Planning Act. Specifically, proposed 'modification 2' of application 18/0545 seeks to set new triggers for the provision of the Queensway/T5 junction and the T5 bypass (including the first and second development accesses off the T5 into the site) as follows:

- a) Not to occupy any dwellings other than those on phases 1 and 2 of the development (a maximum of 165 dwellings) until the Queensway Roundabout (or any other approved junction arrangement) and the part of the T5 up to and including the first vehicular entrance to the development is constructed and open for use.
- Not to occupy any dwellings on phases 4, 5, 6, 7 and 8 until the part of the T5 bypass up to and including the second entrance into the development is constructed and open for use.
- To construct and make available for use the remainder of the T5 bypass from the Queensway Roundabout (or any other junction arrangement) to the T6 prior to the occupation of the 451<sup>st</sup> dwelling.

The modifications to the phasing of the T5 road in the UU would have the effect of:

- Allowing up to 165 dwellings to be occupied prior to the construction of any part of the T5 road and the Queensway Junction (as is proposed by this S73 application).
- Triggering the requirement to construct the Queensway Junction and the part of the T5 road up to and including the first entrance upon occupation of the first dwelling in phase 3 (i.e. on occupation of the 166<sup>th</sup> dwelling).
- 1. Triggering the requirement to construct the part of the T5 road up to and including the second entrance prior to the occupation of any dwellings on phases 4-8 (inclusive) – i.e. prior to the occupation of the 271<sup>st</sup> dwelling.
- 2. Triggering the requirement for the remainder of the T5 to be constructed up to the T6 road (the north-south link road with the M55) prior to the occupation of any dwellings on phases 5, 6, 7 and 8 (i.e. prior to the occupation of the 451<sup>st</sup> dwelling).

When considered in combination with the revised phasing proposed by the S106A application (18/0545) which will secure the implementation of the T5 bypass concurrently with the separate phases of development required to be served by that road, the proposed amendment to the wording of condition 18 which delays the construction of the Queensway/TR5 junction and the "second (development) access" is considered acceptable and would have no adverse effects on the safe and efficient operation of the surrounding highway network.

#### Other matters:

##### *Addendum Environmental Statement:*

The application is accompanied by an addendum to the ES which provides an update to that submitted with the previous applications and deals with the effects of increasing the number of dwellings that can take access from the temporary junction onto Queensway. With reference to the eight topics covered by the ES for outline application 08/0058, the addendum ES concludes that the proposed variation of condition "does not introduce any new negative effects on receptors" beyond those already assessed by other ES' and mitigated for through conditions and the planning obligation.

The addendum ES also makes reference to a Shadow Habitat Regulations Assessment prepared in October 2017 which included an "appropriate assessment" to examine the effectiveness of

measures introduced by the Farmland Conservation Area to mitigate the development's effect (as a whole) on the integrity of the Ribble and Alt Estuaries SPA. The appropriate assessment concludes that the residual and in-combination effects of the scheme would not have an adverse effect on the integrity of the SPA, due primarily to the fact that the full mitigation measures for both the Queensway and M55 link road projects "have already been implemented, meaning that there would be no temporal overlap of adverse effects arising from multiple projects in combination with Queensway/M55 Link Road."

All relevant statutory consultees have been notified of the application. None of these (including Natural England and the Environment Agency) have raised any objections to the scheme or the conclusions in the ES. As this application seeks only to alter the access arrangements to the first 2 phases of a wider residential development which already benefits from extant planning permissions, and given that the mitigation measures associated with the Farmland Conservation Area have already been implemented, the conclusions in the ES are considered to soundly demonstrate that the proposal would not conflict with relevant policies in the FBLP, SANDP, SLP and the NPPF, as well as the Conservation of Habitats and Species Regulations.

#### *Effects on surrounding land use allocations:*

Objections have been received on behalf of the owners of a nearby site on the north side of Kilnhouse Lane which is allocated for employment use in both the FBLP and SLP (site reference ES1 in the latter). The basis of the objection is that the delay in the construction of the formal Queensway/TR5 junction arising as a result of this proposal would jeopardise the delivery of employment development on site ES1 due to the absence of a suitable access which, in turn, would prevent the employment allocation in the SLP being brought forward. It is not, however, considered that this provides a cogent argument against the application for the following reasons:

- Notwithstanding that the owner's preferred means of access to the employment site may be off the Queensway/TR5 junction, there is nothing to prevent the owner of site ES1 applying for a different means of access to the land. Indeed, the Council received an application for the construction of a separate access onto Queensway for site ES1 on 18.09.18 (application 18/0723).
- Despite the site's allocation for employment use in the Emerging Local Plan, the only applications submitted on the site since work started on the preparation of the new local plan have been for residential development (applications 16/0524 and 17/0296 – the former of which was dismissed at appeal). Accordingly, and notwithstanding the above, there is no extant permission for employment development on site ES1 which could be seen as being prejudiced by the delayed construction of the formal Queensway junction.
- While SLP policy EC1 identifies sites for 62 ha of new employment land "to be delivered during the plan period" (of which site ES1 contributes 3.8 ha), it does not include a trajectory or anticipate a timeframe for their delivery. The SLP runs to 2032 and, for the reason set out above, there is no reason to suggest that employment development on site ES1 is imminent in the short term or would be unduly frustrated by delaying the construction of the formal Queensway/TR5 junction.
- While the objector considers that Kensington are delivering the housing at a slow rate and could take 5 years to reach the revised trigger of 166 dwellings for the delivery of the Queensway junction, this runs contrary to the position set out in the Housing Trajectory to Appendix 3 of the Council's latest Housing Land Supply Statement (published August 2018) which, instead, indicates that the 166 dwelling trigger will be reached in early-mid 2021 (i.e. in less than 3 years). The response from the LHA indicates that progress has been made with respect to the detailed design of a new signalised junction onto Queensway to serve the development and,

although this will need to be the subject of a separate application, there is no reason to conclude that this should result in undue delays to the construction of the junction, particularly as the LHA are undertaking the detailed design.

- Despite the objections being brought to the attention of the Local Plan Inspector, paragraphs 108-111 of the Inspector's report state the reasons why the employment allocation on site ES1 has been retained and does not seek to modify the wording of SLP policy EC1 to exclude this site on any of the grounds put forward by objectors.

*Conditions:*

With respect to imposing conditions on S73 applications, paragraph 015 of the "flexible options for planning permissions" chapter to the NPPG advises that:

- "To assist with clarity decision notices for the grant of planning permission under section 73 should also **repeat the relevant conditions from the original planning permission, unless they have already been discharged.**"
- "As a section 73 application cannot be used to vary the time limit for implementation, **this condition must remain unchanged from the original permission.**"

In this case, extant planning and reserved matters approvals across the site have already been granted and implemented. Accordingly, there is no need to re-impose conditions relating to time limits for the submission of applications for reserved matters or the implementation of the development (conditions 1 and 2). Similarly, conditions relating to the illustrative masterplan for outline permission 08/0052 (condition 3) and requiring details of ground levels as part of any application for approval of reserved matters (condition 4) are superfluous as approval of reserved matters has already been granted and the timeframe for submission of any further applications for reserved matters permitted by 08/0052 has now expired.

Two separate applications have been submitted to discharge conditions on outline planning permission 08/0052 as follows:

- 13/0275 – Conditions 4, 7, 9 and 16.
- 16/0511 – Conditions 6, 10, 11, 13, 14, 15, 17, 23, 24, 26, 27 and 29.

Accordingly, with the exception of condition 4 (for the reasons explained above and in the decision notice to 13/0275) those conditions have, where appropriate, been re-worded to make reference to the details approved as part of each relevant condition discharge application. Where no application has been submitted to discharge conditions (e.g. for conditions 5, 8, 12, 20, 21, 22, 25 and 28), those conditions are imposed in substantially the same form that they appear on the decision notices for applications 08/0052 and 17/0861.

Additional applications have been submitted to discharge conditions on planning permission 17/0862 (application reference 18/0241) and reserved matters approval 15/0400 (application reference 18/0243). However, these applications are not directly related to the extant outline permissions and relate, instead, principally to the 65 dwellings in phase 1. In any case, as there are still outstanding details to be agreed as part of those condition discharge applications they have not yet been determined and, accordingly, do not require the extant conditions to be reworded.

Conditions 18 and 19 of planning permission 17/0861 (conditions 16 and 17 in the schedule below) have been re-worded to reflect the variations sought by this application, though the applicant's suggested wording has been updated for clarity and completeness to refer to the access and other off-site highway works approved by planning permission 17/0862 (and subsequent S73 application

18/0546) and to make clear that the dwelling threshold set out in the conditions is to be calculated based on the totality of any dwellings constructed within the site across different permissions, and not just those allowed by this permission. Recommended conditions 14 and 15 have also been carried over from planning permission 17/0862 to clarify the access arrangements and other highway works upon which this decision is based, and the scope of highway works required to serve a development of up to 165 dwellings in phases 1 and 2.

#### *Developer contributions:*

A planning obligation (in the form of a Unilateral Undertaking) dated 09.01.12 was entered into as part of outline planning permission 08/0058. This obligation has previously been varied by applications 13/0767 and 17/1026, the latter of which altered the definition of "Planning Permission" to include reference to S73 application 17/0861 and of the "Queensway Roundabout" to refer to "the Queensway/TR5 highway junction [...] or any alternative junction arrangement which has been granted planning permission".

A further application to vary the Unilateral Undertaking has been submitted in tandem with this S73 application under application reference 18/0545. This variation is submitted in accordance with the provisions of S106A of the Town and Country Planning Act and seeks, among other things, to vary the definition of "Planning Permission" to include reference to this application (18/0544).

Notwithstanding that changes are required to the wording of the modifications proposed by application 18/0545 which will require the withdrawal of 18/0545 and the subsequent submission of a fresh application to vary the UU, S106A of the Act provides a suitable mechanism to vary the extant UU in order that the obligations contained within it (as alerted) are linked and remain equally applicable to this S73 application. The requirement for an application under S106A to be approved prior to this S73 application being granted is set out in the resolution below.

#### **Conclusions**

The application follows outline planning permissions 08/0058 (as allowed by recovered appeal APP/Q2371/V/11/2157314) and 17/0861 (a subsequent S73 application) relating to a residential development of up to 1150 dwellings including the provision of a 1.1ha school site and 34ha parkland at land to the south and east of the B5261 (Queensway), Lytham St Annes.

Conditions 16 and 18 of the original outline planning permission (08/0058) were varied pursuant to a S73 application granted on 12th December 2017 (17/0861). These variations are set out in conditions 18 and 19 of planning permission 17/0861, which read as follows:

18. *No more than 65 dwellings shall be occupied until the new Queensway/ TR5 junction (including all pedestrian, cycling and equestrian provision), all other pedestrian, cycling and equestrian provision on the B5261, the western section of the east-west access road (TR5) up to and including the second (development) access and the bridleway to the south of the access road, together with all supporting infrastructure required to link into existing routes at either end, have been completed in accordance with the approved scheme.*
19. *The temporary vehicular access to Queensway as detailed on drawing number KD63/ 10 rev E of planning approval 17/0862 shall be blocked up prior to construction of the 66th dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with a scheme which shall be*



*submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall make provision for landscaping, and a footpath and cycle path link to Queensway. The approved scheme shall be implemented in accordance with the aforementioned timescales.*

The current application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary conditions 18 and 19 of planning permission 17/0861 as follows:

- **Condition 18** – To increase the maximum number of dwellings that can be occupied prior to the completion of the Queensway/TR5 junction (and other highway works associated with the delivery of that junction) from 65 to 165, and to allow up to 165 dwellings to be occupied prior to the construction of the first (rather than the first and second) development access off the TR5 road (the east-west Heyhouses bypass).
- **Condition 19** – To delay the blocking up of the temporary vehicle access onto Queensway until the point prior to the construction of the 166th dwelling.

Accordingly, the applicant proposes that conditions 18 and 19 be varied to read as follows (changes highlighted):

18. No more than **165** dwellings shall be occupied until the new Queensway/ TR5 junction (including all pedestrian, cycling and equestrian provision), all other pedestrian, cycling and equestrian provision on the B5261, the western section of the east-west access road (TR5) up to and including the **first** (development) access and the bridleway to the south of the access road, together with all supporting infrastructure required to link into existing routes at either end, have been completed in accordance with the approved scheme.
19. The temporary vehicular access to Queensway as detailed on drawing number KD63/ 10 rev E of planning approval 17/0862 shall be blocked up prior to construction of the **166th** dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with a scheme which shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall make provision for landscaping, and a footpath and cycle path link to Queensway. The approved scheme shall be implemented in accordance with the aforementioned timescales.

Full planning permission 17/0862 allowed the construction of 66 dwellings to be served via a temporary access with a priority (give way) junction onto Queensway. S73 application 17/0861 varied the wording of conditions 16 and 18 on the original outline permission (08/0058) to reflect the change in access arrangements permitted by application 17/0862 in order that a limited number of dwellings implemented under that permission could also be served by the temporary access off Queensway rather than via a new junction with the TR5 bypass (the 'Queensway Roundabout'), with a cap of 65 dwellings across both permissions being applicable.

This application seeks to increase the number of dwellings that can take access from the temporary priority junction onto Queensway from 65 to 165 units (phases 1 and 2 of the development), along with delaying the construction of the first access to the development off the TR5 east-west bypass until the occupation of the 166<sup>th</sup> dwelling (condition 18). The revised wording of condition 19 would also require the temporary access to be blocked up prior to the construction of the 166th dwelling, with the development then to be accessed via the new Queensway/TR5 junction and the first development access off the TR5 at that point.

The proposed variations to the conditions are required in order to allow the continued delivery of housing on the site in advance of a scheme for the final design of the Queensway/TR5 junction – which is to be varied from a roundabout to a signalised junction – being approved and implemented. The Local Highway Authority have advised that the layout, design and capacity of the temporary access onto Queensway, as approved by application 17/0862, is capable of serving a development of up to 165 dwellings and, accordingly, the proposed variations to conditions 18 and 19 would have no adverse impact on the safe and efficient operation of the surrounding highway network.

No other adverse effects would arise from the variation of the conditions that would significantly and demonstrably outweigh the benefits arising from the continued and accelerated delivery of housing on a strategic site allocated in the Emerging Local Plan. Therefore, when considered as a whole, the proposal is considered to represent sustainable development in accordance with the relevant policies of the FBLP, the SANDP, the SLP and the NPPF.

### **Recommendation**

That, subject to:

- The Council's approval of an application made under S106A of the Town and Country Planning Act which provides for a modification to the definition of "Planning Permission" in the Unilateral Undertaking dated 09.01.12 to include reference to planning application 18/0544 and, in doing so, ties this permission to the obligations within that Unilateral Undertaking (as varied by any other necessary modifications).

Authority be delegated to the Head of Planning and Regeneration to GRANT planning permission subject to the following conditions (or any amendment to the wording of these conditions or additional conditions that the Head of Planning & Regeneration believes is necessary to make otherwise unacceptable development acceptable):

1. Tree felling, vegetation clearance works, demolition work or other works that may affect nesting birds shall be avoided between the months of March to August inclusive unless the absence of nesting birds has been confirmed by further surveys or inspections. Such surveys shall be carried out by a suitably qualified and experienced ecologist. If nesting birds (or dependant young) are found to be present, works shall be delayed until such time as nesting is complete and young have fledged.

Reason: In order to prevent any habitat disturbance to nesting birds in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP19, Fylde Council Local Plan to 2032 policy ENV2, the provisions of the Wildlife and Countryside Act 1981 (as amended) and the National Planning Policy Framework.

2. Measures for the creation of habitats in the areas specified in drawing number D1879.01.001L (Habitat enhancement scheme) shall be implemented in full accordance with the details approved under application reference 16/0511 (as identified in the decision notice dated 29.09.2016).

Reason: To ensure that appropriate measures are put in place to mitigate the development's effects on the Ribble and Alt Estuaries Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), Ramsar site and land which is functionally linked to it in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP15 and EP16, Fylde Council Local Plan to 2032 policy ENV2, the National Planning Policy Framework and the Conservation of Habitats and Species Regulations 2017.

3. The construction environment management plan approved under application reference 13/0275 (details of which are identified in the decision notice dated 15.10.2015) shall be implemented in full accordance with the details and timetable contained therein.

Reason: To ensure that appropriate measures are put in place during the construction period to mitigate the development's potential effects on sensitive conservation sites, habitats and species of biodiversity value in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP15, EP16, EP18 and EP19, Fylde Council Local Plan to 2032 policy ENV2 and the National Planning Policy Framework.

4. Prior to any works affecting ditches or watercourses, or within 5m of the top of any associated watercourse bank, the developer shall submit the results of a survey for water voles to the local planning authority for approval in writing. The survey shall have been carried out in accordance with established survey guidelines and shall have been carried out within the preceding 24 months. If water voles are found to be present, a method statement detailing measures that will be implemented for the protection of water voles and their habitat shall also be submitted for approval in writing. Approved details shall be implemented in full.

Reason: To ensure that adequate mitigation measures are introduced as part of the development in order that it does not adversely affect the favourable conservation status of any protected species in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP19, Fylde Council Local Plan to 2032 policy ENV2, the National Planning Policy Framework, the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended).

5. Prior to the commencement of development or site clearance works for each phase of development hereby approved a further water vole survey shall be carried out in accordance with the methodology approved under application reference 13/0275 (details of which are identified in the decision notice dated 15.10.2015). If water voles are found to be present on the site, details of appropriate measures for mitigation and compensation, including appropriate timetables for implementation, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable.

Reason: To ensure that adequate mitigation measures are introduced as part of the development in order that it does not adversely affect the favourable conservation status of any protected species and to ensure provision for appropriate habitat compensation in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP19, Fylde Council Local Plan to 2032 policy ENV2, the National Planning Policy Framework, the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended).

6. Prior to the commencement of development phases numbered B and C, E and F, and G and H on drawing number D1879.01.008C (Phasing of mitigation and habitat enhancement in relation to development) landscaping schemes of the residential development area shall be submitted to the local planning authority for approval in writing. The approved schemes shall be implemented in full. Schemes shall include details of seed and plant specifications, seeding rates, planting densities, establishment methods, aftercare, design of culverts to facilitate wildlife connectivity, swales and embankments. Landscaping schemes of the T5 roadside, school and playing fields shall be implemented in full accordance with the details approved under application reference 16/0511 (as identified in the decision notice dated 29.09.2016) unless alternative details have first been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure appropriate landscaping of the site in the interests of visual amenity, to enhance the character of the street scene and to provide biodiversity enhancements in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, EP14 and EP18, Fylde Council Local Plan to 2032 policies GD7 and ENV1, and the National Planning Policy Framework.

7. Measures for soil conservation, including stripping, storage, movement and replacement, shall be carried out in full accordance with the details approved under application reference 16/0511 (as identified in the decision notice dated 29.09.2016).

Reason: To ensure compliance with section 8.4.4 of the report 'Land at Queensway, St Annes Environmental Statement'.

8. The development hereby permitted shall be drained on a separate system, with only foul drainage connected into the existing public sewer.

Reason: To ensure that adequate measures are put in place for the disposal of foul and surface water in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1 and CL2, and the National Planning Policy Framework.

9. No development associated with the construction of buildings on the site shall take place until a surface water drainage strategy for the development has been submitted to and approved in writing by the local planning authority. The strategy shall include: measures to attenuate surface water discharges to existing 'greenfield' rates by means of a Sustainable Urban Drainage System (SUDS); a timetable for implementation of the SUDS and any other proposed drainage measures; and details of how these are to be maintained. The strategy shall be implemented and commissioned in accordance with the approved details (including the timetable) and shall thereafter be retained in the approved form.

Reason: To ensure that the development is not at risk of flooding and does not increase flood risk elsewhere, and that adequate measures are put in place for the disposal of surface water in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1 and CL2, and the National Planning Policy Framework.

10. Prior to the commencement of development, details of the piling of the proposed pipe work and measures to be incorporated to prevent the drying out of the underlying peat shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure that appropriate safeguards are put in place in order to minimise the risk of ground instability issues affecting land and buildings within and surrounding the site in accordance with the requirements of the National Planning Policy Framework.

11. No development falling within flood zones 2 and 3 (as identified on the Flood Map for Planning) shall take place until a scheme for the provision and implementation of compensatory flood storage works and associated flood flow culverts through the proposed highway embankments in accordance with the Flood Risk Assessment by Cole Easdon Consultants (November 2011, ref: 3330) has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved scheme.

Reason: To ensure that the development is not at risk of flooding and does not increase flood risk elsewhere, and that adequate measures are put in place for the provision and implementation of compensatory flood storage works in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1 and CL2, and the National Planning Policy Framework.

12. No development hereby permitted shall commence until a scheme for the implementation of all site access measures and off-site highway works/improvements have been submitted to and approved in writing by the local planning authority. The measures, works and improvements shall include the following: details of the Queensway/ TR5 junction (including pedestrian, cycling and equestrian provision); all other pedestrian, cycling and equestrian provision on the B5261; the

proposed east-west access road (TR5) and its junctions including that with the proposed M55 Link Road with supporting pedestrian, cycling and equestrian infrastructure; signalisation measures at the St Annes Road East/St Davids Road North and St Annes Road East/Church Road junctions; and improvements to the St Annes Road East/Heyhouses Lane junction. The scheme shall be implemented as approved.

Reason: To ensure a safe and suitable means of access to the development and to secure improvements to the surrounding highway and transport network in the interests of road safety, and to promote modal shift and increased use of sustainable methods of travel in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, TR1 and TR3, Fylde Council Local Plan to 2032 policies GD7 and T4, and the National Planning Policy Framework.

13. Before the development hereby permitted commences, a movement strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall include details of the road hierarchy within the site, emergency access (and its management/enforcement), and the footway, cycleway and bridleway networks together with their linkages to the existing networks. The development thereafter shall be carried out in accordance with the approved strategy.

Reason: To ensure a safe and suitable means of access for and circulation of all users to, from and within the site in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, TR1 and TR3, Fylde Council Local Plan to 2032 policies GD7 and T4, and the National Planning Policy Framework.

14. None of the dwellings on phases 1 and 2 of the development hereby approved shall be occupied until a scheme for the construction of all highway works associated with those phases, including permanent, temporary and any remediation works post-delivery, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include but not be limited to:

- Temporary access arrangements onto Queensway.
- Works involving the stopping up of the temporary access arrangement to Queensway, to include provision of landscaping, footpath and cycle path.
- Foot/cycle way on Queensway from a point south of the existing Queensway junction to 3 Heyhouses Lane.
- Toucan crossing to the south of the frontage of this application linking the new foot/cycle way to the existing/modified provision on the opposite side of road. In line with Unilateral - Annexure – 4 – plans– 33 30-213 Proposed Highways produced by Cole Easdon.
- A temporary crossing between the temporary access and the existing Queensway/Kilnhouse Lane junction with a temporary refuge island.

Reason: To ensure a safe and suitable means of access to the site is provided for all users and to ensure that the scope of highway works provided as part of the development is sufficient to serve up to 165 dwellings in the interests of highway safety in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

15. None of the dwellings on phases 1 and 2 of the development hereby approved shall be occupied until a Construction Phasing Plan (CPP) has been submitted to and approved in writing by the Local Planning Authority. The CPP shall detail the phasing of development on the site in relation to provision of the highways works approved pursuant to condition 14, the new junction of Queensway/ Kilnhouse Lane and any other highway works. The development and off site highway works shall thereafter be implemented and made available for use in accordance with the duly approved CPP.

Reason: To ensure that the highway works required by condition 14 are implemented at an

appropriate time in relation to the phasing of the development in order that future occupiers of the development are afforded a safe and suitable means of access to/from the site and its surroundings and to encourage travel by modes of transport other than private car in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and TR1, Fylde Council Local Plan to 2032 (Submission Version) policies GD7 and T4, and the National Planning Policy Framework.

16. No more than 165 dwellings (as constructed pursuant to any planning permissions that allow the construction of dwellings upon the site, in any combination) shall be occupied until the new Queensway/ TR5 junction (including all pedestrian, cycling and equestrian provision), all other pedestrian, cycling and equestrian provision on the B5261, the western section of the east-west access road (TR5) up to and including the first (development) access and the bridleway to the south of the access road, together with all supporting infrastructure required to link into existing routes at either end, have been completed in accordance with the approved scheme.

Reason: To ensure that appropriate highway infrastructure is delivered at an early stage of the overall development in order to mitigate the development's impact on the capacity of the surrounding highway network and to ensure appropriate measures are put in place to facilitate a safe and suitable means of access to the wider development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

17. The temporary vehicular access to Queensway as approved pursuant to condition 14 (a) of this permission shall be blocked up prior to construction of the 166th dwelling (as constructed pursuant to any planning permissions that allow the construction of dwellings upon the site, in any combination), or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with a scheme which shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall make provision for landscaping, and a footpath and cycle path link to Queensway. The approved scheme shall be implemented in accordance with the aforementioned timescales.

Reason: The temporary access provides an appropriate means of access to serve a limited number of dwellings (those within development phases 1 and 2) for a temporary period and is incapable of providing a safe and suitable means of access to the wider development. The temporary access is to be closed once the maximum number of dwellings it is deemed suitable to serve is exceeded or once the formal access to the site via the Queensway/TR5 junction has been constructed and brought into use, whichever occurs first, in the interests of highway safety. At that point, a suitable scheme for the treatment and landscaping of the land which previously provided the access will be required in the interests of visual amenity. The condition is imposed in accordance with the requirement of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policies GD7 and ENV1, and the National Planning Policy Framework.

18. No more than 375 dwellings shall be occupied on the site until improvement schemes/works at the signalised junctions of St Annes Road East/St Davids Road North and St Annes Road East/Church Road and the priority junction of St Annes Road East/Heyhouses Lane have been completed and made operational in accordance with the approved schemes.

Reason: To ensure that appropriate improvements to existing signalised junctions are delivered concurrently with the development in order to mitigate its impact on the capacity of the surrounding highway network and to enhance provisions for the free flow of traffic in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

19. No more than 375 dwellings shall be occupied on the site until the east-west T5 road including bridleway and the section of the M55 Link Road from, and including, the Moss Sluice Roundabout

to the modified Cropper Road/Whitehill Road/Lytham St Annes Way Roundabout are completed and open to traffic in accordance with details that have been approved in writing by the local planning authority.

Reason: To ensure that appropriate off-site highway infrastructure improvements are delivered as part of the development in order to mitigate its impact on the capacity of the surrounding highway network and to enhance provisions for the free flow of traffic in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policies T1 and GD7 and the National Planning Policy Framework.

20. Prior to any dwelling hereby permitted being occupied, a Travel Plan shall be submitted for the written approval of the local planning authority. The Plan shall include objectives and targets and shall make provision for monitoring as well as promotion, marketing, and provision of a travel coordinator for at least an initial five year period. The approved Travel Plan shall be implemented, audited and updated at intervals as approved.

Reason: In order to promote modal shift and increased use of sustainable methods of travel in accordance with the objectives of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, TR1 and TR3, Fylde Council Local Plan to 2032 policies GD7 and T4 and the National Planning Policy Framework.

21. No dwelling hereby permitted shall be occupied until vehicular and other access has been provided to it in accordance with the approved details.

Reason: To ensure a safe and suitable means of access is achieved for individual dwellings in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

22. No site clearance or demolition shall commence until a site preparation plan has been submitted to and approved in writing by the local planning authority. The site preparation plan shall include the method and details of clearance, vehicle routing to the site, wheel cleaning and any proposed temporary traffic management measures. The site preparation plan shall be implemented as approved and adhered to throughout site preparation.

Reason: In order to ensure that appropriate measures are put in place for each phase of development to limit noise, nuisance and disturbance to the occupiers of neighbouring properties and to ensure that construction traffic does not compromise the safe and efficient operation of the surrounding highway network during the construction of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP27, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

23. No construction works shall commence on the site until a construction plan has been submitted to and approved in writing by the local planning authority. The construction plan shall include vehicle routing to the site; parking for construction vehicles; any temporary traffic management measures; and times of access. The construction plan shall be implemented as approved and adhered to throughout construction of the development.

Reason: In order to ensure that appropriate measures are put in place for each phase of development to limit noise, nuisance and disturbance to the occupiers of neighbouring properties and to ensure that construction traffic does not compromise the safe and efficient operation of the surrounding highway network during the construction of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP27, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

24. Details of any cranes to be operated on the site during construction works, including their height

and area of operation, shall be submitted for the written approval of the local planning authority at least 28 days prior to any crane being brought onto the site. All crane operations shall be carried out in accordance with the approved details.

Reason: In order to ensure that the development does not pose any unacceptable risk to aerodrome safeguarding in accordance with the requirements of the National Planning Policy Framework.

25. Measures to prevent air pollution and pollution of local ground and surface water during construction shall be implemented in full accordance with the details approved under application reference 16/0511 (as identified in the decision notice dated 29.09.2016).

Reason: To prevent pollution of the surrounding air and water environment in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP26 and the National Planning Policy Framework.

26. The scheme for the use of secondary and recycled aggregates approved under application reference 16/0511 (as identified in the decision notice dated 29.09.2016) shall be implemented in full accordance with the duly approved details.

Reason: To prevent any impetrated material brought onto the site causing contamination of the development site and surrounding land in accordance with the requirements of Fylde Council Local Plan to 2032 policy GD9 and the National Planning Policy Framework.

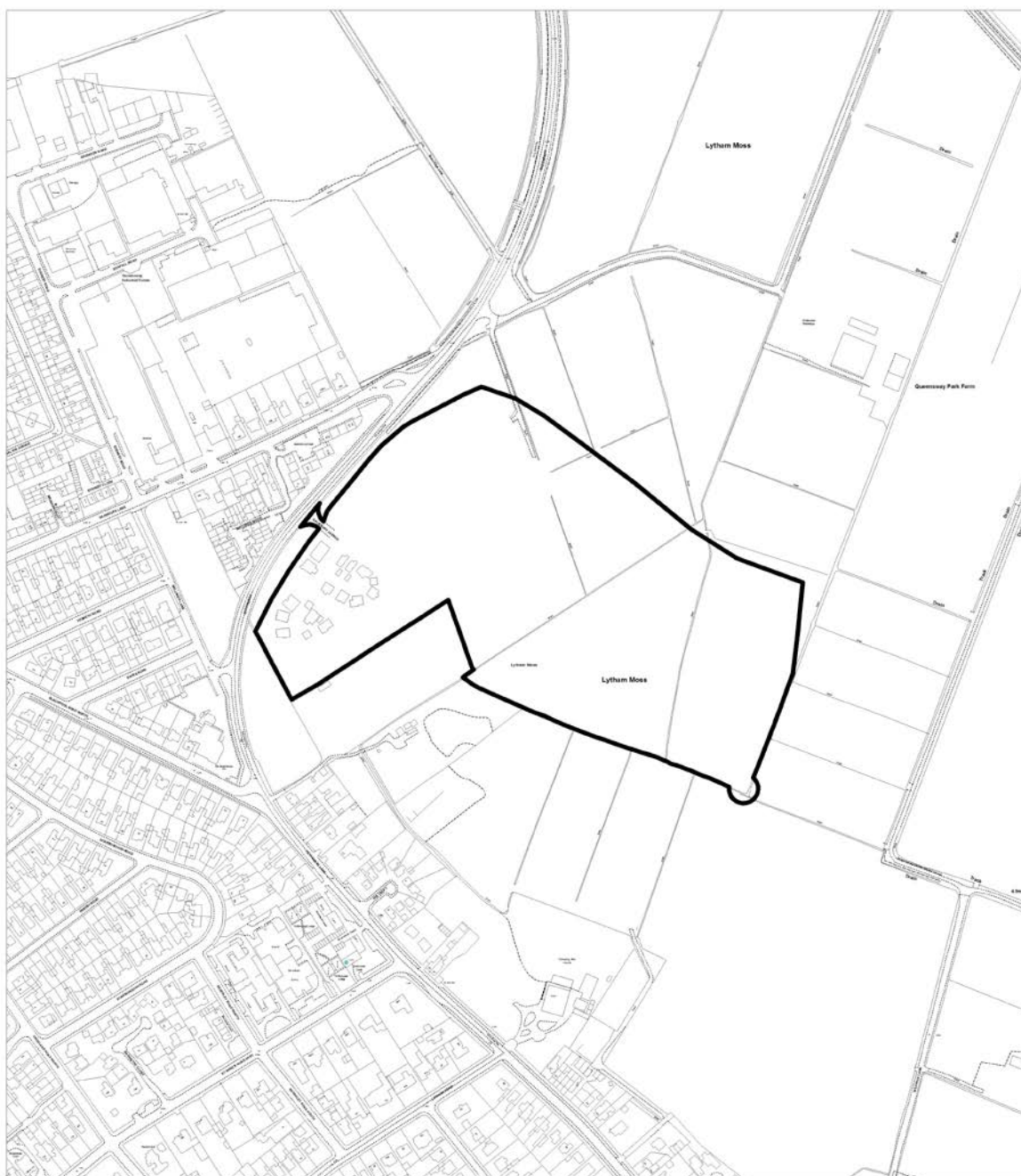
27. All street lighting within the development shall be in accordance with details, including details of post heights, design, construction, lighting head form and light emissions, which have been approved in writing by the local planning authority. The details shall include measures to minimise artificial light spillage to wildlife habitats including the Nature Park and Farmland Conservation Area and measures to prevent perching birds.

Reason: To ensure appropriate street lighting is introduced as part of the development in the interests of highway safety and to avoid light spillage towards sensitive wildlife habitats in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP19, Fylde Council Local Plan to 2032 policies GD7 and ENV2, and the National Planning Policy Framework.

28. The scheme for the provision of on-site renewable energy production approved under application reference 16/0511 (as identified in the decision notice dated 29.09.2016) shall be implemented in full accordance with the duly approved details and the timetable contained therein.

Reason: To ensure that the development contributes to the delivery of renewable energy as part of the development in accordance with the objectives of the Saint Anne's on the Sea Neighbourhood Development Plan and the National Planning Policy Framework.





Development Services Fylde Council		(c) Crown Copyright and database right (2018). Ordnance Survey (100006084).	
Application No. 5/18/0544	Address Land forming Kensington Developments Site, Queensway, Lytham St Annes	Grid Ref. E.3336 : N.4303	Scale 0 25 50 75 100 m

**Item Number:** 7

**Committee Date:** 10 October 2018

<b>Application Reference:</b>	18/0546	<b>Type of Application:</b>	Variation of Condition
<b>Applicant:</b>	Kensington Developments Limited	<b>Agent :</b>	
<b>Location:</b>	LAND FORMING KENSINGTON DEVELOPMENTS SITE, QUEENSWAY, LYTHAM ST ANNES		
<b>Proposal:</b>	APPLICATION TO VARY CONDITION 23 OF PLANNING PERMISSION 17/0862 TO DELAY THE BLOCKING UP OF THE TEMPORARY VEHICLE ACCESS TO QUEENSWAY UNTIL PRIOR TO THE CONSTRUCTION OF THE 166TH DWELLING		
<b>Ward:</b>	HEYHOUSES	<b>Area Team:</b>	Area Team 2
<b>Weeks on Hand:</b>	10	<b>Case Officer:</b>	Matthew Taylor
<b>Reason for Delay:</b>	Need to determine at Committee		

**If viewing online this is a Google Maps link to the general site location:**

<https://www.google.co.uk/maps/@53.7660049,-3.0102451,277m/data=!3m1!1e3?hl=en>

**Summary of Recommended Decision:** Grant subject to revised s106 agreement

#### **Summary of Officer Recommendation**

The application follows the grant of full planning permission 17/0862 relating to a residential development of 66 dwellings on land to the south and east of the B5261 (Queensway), Lytham St Annes. The site forms part of a larger housing scheme – known as the ‘Richmond Point’ development – which benefits from extant permissions for 948 dwellings. The site of this application is located to the northwest corner of the wider site, immediately south of the proposed entrance to the T5 bypass off Queensway.

Condition 23 of planning permission 17/0862 reads as follows:

23. *The temporary vehicular access to Queensway as detailed on drawing number KD63/10 rev E shall be blocked up prior to construction of the 66th dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with the scheme of highway works agreed by condition 21. The approved scheme shall be implemented in accordance with the aforementioned timescales.*

The current application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary condition 23 of planning permission 17/0862 in order to delay the blocking up of the temporary vehicle access onto Queensway until the point prior to the construction of the 166th dwelling. The preceding 165 dwellings are to form phases 1 and 2 of the overall development and will be constructed pursuant to this full planning permission (66 dwellings) and reserved matters approval 15/0400 (99 dwellings). Accordingly, the applicant proposes that condition 23 of planning permission 17/0862 be varied to read as follows (changes highlighted):

23. The temporary vehicular access to Queensway as detailed on drawing number KD63/10 rev E shall be blocked up prior to construction of the **166th** dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with the scheme of highway works agreed by condition 21. The approved scheme shall be implemented in accordance with the aforementioned timescales.

Full planning permission 17/0862 allowed the construction of 66 dwellings to be served via a temporary access with a priority (give way) junction onto Queensway. S73 application 17/0861 varied the wording of conditions 16 and 18 on the original outline permission (08/0058) to reflect the change in access arrangements permitted by application 17/0862 in order that a limited number of dwellings implemented under that permission could also be served by the temporary access off Queensway rather than via a new junction with the TR5 bypass (the 'Queensway Roundabout'), with a cap of 65 dwellings across both permissions being applicable.

This application seeks to increase the number of dwellings that can take access from the temporary priority junction onto Queensway from 65 to 165 units (phases 1 and 2 of the development) by delaying the blocking up of the temporary access until the construction of the 166<sup>th</sup> dwelling, after which the development would be accessed via the new Queensway/TR5 junction and the first development access off the TR5.

The proposed variation to the condition is required in order to allow the continued delivery of housing on the site in advance of a scheme for the final design of the Queensway/TR5 junction – which is to be varied from a roundabout to a signalised junction – being approved and implemented. The Local Highway Authority have advised that the layout, design and capacity of the temporary access onto Queensway, as approved by application 17/0862, is capable of serving a development of up to 165 dwellings and, accordingly, the proposed variation to condition 23 would have no adverse impact on the safe and efficient operation of the surrounding highway network.

No other adverse effects would arise from the variation of the condition that would significantly and demonstrably outweigh the benefits arising from the continued and accelerated delivery of housing on a strategic site allocated in the Emerging Local Plan. Therefore, when considered as a whole, the proposal is considered to represent sustainable development in accordance with the relevant policies of the FBLP, the SANDP, the SLP and the NPPF.

### **Reason for Reporting to Committee**

The application is classified as major development and the officer recommendation is for approval.

### **Site Description and Location**

The application relates to the Kensington Developments site (named 'Richmond Point') located to the south and east of the B5261 (Queensway), Lytham St Annes. The site benefits from extant planning permissions and reserved matters approvals which allow the construction of up to 948 dwellings, along with associated infrastructure including land reserved for a new school and nature park.

Although the site is shown to fall within the Countryside Area, and – with respect to the bypass and nature park – partially within the Green Belt, on the Fylde Borough Local Plan (As Altered) October 2005 Proposals Map, the land is allocated as a strategic site for residential development (reference HSS1) in the Fylde Council Local Plan to 2032 (Submission Version).

The original outline planning permission (08/0058) included access to the site to be taken from a roundabout junction with Queensway which was to merge with a 'bypass' (named as 'T5' and/or 'TR5') running in an east-west direction to connect the site with a new link road (named 'T6') to the M55 following the route of the B5410 (North Houses Lane).

Outline planning permission 08/0058 was followed by applications for approval of reserved matters (references 13/0257 and 15/400) which, in combination, allowed the construction of up to 992 dwellings across the site. Following these approvals, a separate full planning permission (reference 17/0862) was granted for a residential development of 66 dwellings on the part of site subject to reserved matters approval 13/0257. Planning permission 17/0862 includes the construction of a temporary access off Queensway for the 66 dwellings permitted via a priority (give way) junction onto the B5261 which included a dedicated right hand turn lane into the site. A S73 application (17/0861) was granted in tandem with full planning application 17/0862 and allowed a variation to the wording of conditions 16 and 18 of outline planning permission 08/0058 in order to delay the triggers for the delivery of the Queensway/TR5 junction and associated bypass in order that up to 65 dwellings could take access from the temporary junction onto Queensway permitted by application 17/0862. Condition 23 of planning permission 17/0862 read as follows:

23. *The temporary vehicular access to Queensway as detailed on drawing number KD63/ 10 rev E shall be blocked up prior to construction of the 66th dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with the scheme of highway works agreed by condition 21. The approved scheme shall be implemented in accordance with the aforementioned timescales.*

Planning permission 17/0862 and reserved matters approval 15/0400 have now been implemented. In combination, these implemented permissions will allow the construction of 948 dwellings across the site. A phasing plan (drawing no. 4113-15 Rev B) submitted with application for approval of details reserved by condition reference 18/0243 (in connection with 15/0400) shows housing to be delivered in 8 sequential phases travelling in a south-easterly direction away from Queensway. Phases 1 and 2 involve the construction of 165 dwellings in two separate parcels as follows:

- **Phase 1** – A collection of 65 dwellings bordering the site's north-western boundary with Queensway.
- **Phase 2** – A collection of 100 dwellings to the east of Phase 1 and to the south of the TR5 bypass.

### **Details of Proposal**

The application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary condition 23 of planning permission 17/0862 in order to delay the blocking up of the temporary vehicle access onto Queensway until the point prior to the construction of the 166th dwelling. The preceding 165 dwellings are to form phases 1 and 2 of the overall development and will be constructed pursuant to this full planning permission (66 dwellings) and reserved matters approval 15/0400 (99 dwellings). Accordingly, the applicant proposes that condition 23 of planning

permission 17/0862 be varied to read as follows (proposed changes highlighted):

23. The temporary vehicular access to Queensway as detailed on drawing number KD63/ 10 rev E shall be blocked up prior to construction of the 166th dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with the scheme of highway works agreed by condition 21. The approved scheme shall be implemented in accordance with the aforementioned timescales.

With reference to phasing plan 4113-15 Rev B submitted with condition discharge application 18/0243 the application seeks, in effect, to allow the construction of all 165 dwellings on phases 1 and 2 prior to the construction and bringing into use of the Queensway/TR5 junction. Instead, all 165 dwellings in these two phases are to take access off the temporary junction onto Queensway as approved by application 17/0862.

### **Relevant Planning History**

<b>Application No.</b>	<b>Development</b>	<b>Decision</b>	<b>Date</b>
17/1026	APPLICATION UNDER S106A TO MODIFY PLANNING OBLIGATION RELATING TO PLANNING PERMISSION 08/0058	Granted	12/12/2017
17/0862	APPLICATION FOR RESIDENTIAL DEVELOPMENT COMPRISING OF 66 NO. DETACHED DWELLINGS AND GARAGES.	Approved with 106 Agreement	12/12/2017
17/0886	APPLICATION UNDER S106A TO MODIFY PLANNING OBLIGATION RELATING TO PLANNING PERMISSION 08/0058	Withdrawn by Applicant	12/12/2017
17/0861	VARIATION OF CONDITION 16 (SCHEME DESIGN FOR ALL SITE ACCESS MEASURES AND OFF-SITE HIGHWAY WORKS/IMPROVEMENTS) AND CONDITION 18 (IMPLEMENTATION OF AGREED SITE ACCESS MEASURES AND OFF-SITE HIGHWAY WORKS/IMPROVEMENTS) OF PLANNING APPROVAL 08/0058.	Granted	12/12/2017
16/0511	APPLICATION TO DISCHARGE DETAILS ASSOCIATED WITH CONDITIONS 10, 11, 13, 14, 15, 17, 23, 24, 26, 27 AND 29 ON PLANNING PERMISSION 08/0058 RELATING TO LANDSCAPING, SOIL CONSERVATION, DRAINAGE, FLOOD STORAGE, MOVEMENT STRATEGY, SITE PREPARATION, CONSTRUCTION MANAGEMENT PLAN AND RENEWABLE ENERGY PRODUCTION.	Advice Issued	29/09/2016
16/0513	APPLICATION TO DISCHARGE DETAILS ASSOCIATED WITH CONDITION 13 ON PLANNING PERMISSION 13/0257 PHASE ONE CONSTRUCTION PLAN, RECYCLED AGGREGATES REPORT, SITE PREPARATION PLAN.	Advice Issued	22/09/2016
15/0400	APPLICATION FOR APPROVAL OF RESERVED MATTERS PURSUANT TO OUTLINE PLANNING PERMISSION 08/0058 FOR THE LAYOUT, SCALE, APPEARANCE AND LANDSCAPING OF A DEVELOPMENT FOR 882 DWELLINGS AND	Granted	13/10/2017

13/0767	ASSOCIATED INFRASTRUCTURE APPLICATION FOR REMOVAL OF THE AFFORDABLE HOUSING REQUIREMENT FOR THE FIRST 300 DWELLINGS ON THE SITE WITH A REQUIREMENT TO UNDERTAKE VIABILITY REAPPRAISAL BEFORE 300TH, 600TH, 900TH AND 1150TH OCCUPATIONS TO ALLOW POTENTIAL FOR THE FUTURE AFFORDABLE HOUSING CONTRIBUTION TO BE ASSESSED	Granted	24/12/2013
13/0528	APPLICATION FOR THE MODIFICATION OR DISCHARGE OF PLANNING OBLIGATIONS : REMOVAL OF AFFORDABLE HOUSING REQUIREMENT ON 08/0058	Returned Invalid Application	27/05/2014
13/0257	APPLICATION FOR APPROVAL OF RESERVED MATTERS FOR CONSTRUCTION OF 110 DWELLINGS AND ASSOCIATED WORKS FORMING PHASE 1 OF DEVELOPMENT APPROVED UNDER OUTLINE PLANNING PERMISSION 08/0058.	Granted	02/04/2015
13/0259	APPLICATION FOR SITE AND ECOLOGY PREPARATION WORKS ASSOCIATED WITH ENABLING THE FUTURE CONSTRUCTION OF THE QUEENSWAY ROUNDABOUT, PHASE ONE OF THE TR5 BYPASS, AND PHASE ONE OF THE QUEENSWAY RESIDENTIAL DEVELOPMENT. THE SCOPE OF THE WORKS TO INCLUDE THE FORMATION OF A TEMPORARY ACCESS TO QUEENSWAY, THE ERECTION OF 2M HIGH HOARDINGS TO QUEENSWAY FRONTAGE, THE PROVISION OF A TEMPORARY SITE COMPOUND, REMOVAL AND STORAGE OF TOPSOIL, AND SURCHARGING OF SITE.	Withdrawn by Applicant	13/08/2015
13/0261	PROPOSED CHANGE OF USE AND CREATION OF AN ORNAMENTAL GARDEN	Withdrawn by Applicant	21/10/2013
13/0275	APPLICATION TO DISCHARGE CONDITIONS 4, 7, 8, 9, & 16 OF OUTLINE PLANNING PERMISSION 08/0058 FOR ERECTION OF 1,150 DWELLINGS, PROVISION OF A SCHOOL SITE, AND PARKLAND	Advice Issued	
08/0058	THE DEVELOPMENT OF 1150 DWELLINGS, PROVISION OF A 1.1HA SCHOOL SITE AND A 34HA PARKLAND.	Appeal against non-determine	29/04/2009

### **Relevant Planning Appeals History**

<b>Application No.</b>	<b>Development</b>	<b>Decision</b>	<b>Date</b>
08/0058	THE DEVELOPMENT OF 1150 DWELLINGS, PROVISION OF A 1.1HA SCHOOL SITE AND A 34HA PARKLAND.	Allowed	21/06/2012

### **Parish/Town Council Observations**

**St Annes on the Sea Town Council:** Notified of the application on 02.08.18 and comment 17.08.18 as follows:

- a) "Fylde Borough Council stipulated these conditions obviously for good reason and we will support their decision."

## **Statutory Consultees and Observations of Other Interested Parties**

### *Environmental Health Officer (EHO):*

- b) No objections.

### *Environment Agency:*

- c) No objections as the condition being varied was not requested by the Environment Agency.
- d) We understand that the variation of condition application relates solely to the residential area of the site and not the T5 Heyhouses Bypass (and internal spine road), which requires a flood storage scheme to compensate for the loss of floodplain storage as a result of its construction in the Flood Zone. This is dealt with under condition 15 of planning permission 08/0058 and condition 20 of planning permission 17/0862.

### *GMEU: (Ecology)*

- The proposed variation of condition to delay the completion of the junction works and stopping up of the temporary access road into the site will not have any significant ecological impacts. Therefore, there are no objections to the application.

### *Local Highway Authority (LHA) – Lancashire County Council:*

- LCC officers continue to work closely with Kensington Developments Limited (KDL) to ensure suitable infrastructure is delivered to mitigate against the development's impacts and provided when required. The latest position is that KDL are progressing with delivery of dwellings and internal infrastructure within their site, all accessed via the temporary priority junction with Heyhouses Lane.
- The M55 to Heyhouses Link Road when delivered will provide a new link between Lytham St Annes and the Strategic Road network. The Link Road and the East/West access road (which connects to Queensway) will provide the necessary traffic relief to congested parts of the local network through improved routing opportunities and also contribute further by providing high quality linkages for sustainable modes. Discussions and scheme progression have been ongoing for some time between key stakeholders including LCC, KDL, HE and FBC to secure agreement and funding to deliver the infrastructure in advance of the triggers set by planning condition/within the unilateral undertaking when the Kensington site was approved.
- To date some significant funds have been secured and committed to deliver the link road scheme including agreement with KDL on their level of contribution (for construction of the link road). Notwithstanding the accelerated approach being actively progressed to deliver the road regard must be had to the original KDL legal unilateral undertaking (UU) dated 9th January 2012 in paragraph 22.4 states that 'Prior to 150th Occupation to pay the full cost of the T6 from point D to Annas Road...' the undertaking also provides other trigger points. Until legal agreements, land and funding is in place etc., the changes proposed by KDL do not impact on delivery of the link road as it remains as per the UU.
- The application seeks to alter the trigger for the delivery of the Queensway junction from prior to commencement, to prior to occupation of phases 1 and 2 (165 dwellings in total), to continue to use the temporary priority junction onto Queensway for phases 1 and 2.
- Although limited evidence has been submitted to support the change, having regard to that submitted for the earlier application for the use of the temporary access to serve phase 1 LCC are satisfied that the additional requirements of this temporary priority access can be accommodated from an operational perspective and will not cause severe impact at the location of temporary junction. Right turn vehicles exiting and entering the adopted network via the temporary junction for the duration that it is required can be undertaken with the

benefit of opportunities released through the lost time at the Kilnhouse Lane signalised junction, which is located circa 125m to the north east of the temporary access, by breaking up the westbound stream of traffic during peaks.

- Background traffic conditions will increase over time, thus influencing the reliability of the priority junction. To this end this junction is temporary. The temporary junction is supported for phases 1 and 2 only and must be permanently closed (for all motorised movements) prior to the 166th unit. This requires the new signalised junction at Queensway/Kilnhouse Lane/T5/Heyhouses Lane be completed and fully operation (for the site as a whole, including use by phases 1 and 2), and as a minimum the East/West access road including the first access into the Queensway site open for use prior to the first unit on phase 3 (166th unit). These changes need to be controlled through planning conditions.
- With regard to the phasing plan the 2nd access on T5 should be open for use prior to the first unit on phase 4 (276th unit) being occupied. T5 linking to the operational M55 Heyhouses Link Road should be completed and open for use for all transport modes prior to the occupation of the 451st unit. With regard to the 3rd access onto T5, this is in the gift of KDL to deliver in line with the build out of their site. This access was not linked to a trigger by the Inspector or Secretary of State at the public inquiry.
- It is important that all residents who purchase a dwelling in this phase of development are fully aware that the access is temporary and that it will be removed. It is suggested that the properties are sold on a either a leasehold or freehold basis with a clause within the leasehold/freehold title deeds identifying the planning permission and interim and future access arrangements. This should form part of a planning condition and or within a s106/UU.
- The proposed change does not negatively influence delivery of the M55 Heyhouses Link Road, Queensway signalised junction or the East/West access road (T5).

*Natural England:*

- Advise they have no comments to make concerning the variation of conditions in the manner proposed.

**Neighbour Observations**

<b>Neighbours notified:</b>	2 August 2018
<b>Site notice posted:</b>	10 August 2018
<b>Press notice:</b>	16 August 2018
<b>Amended plans notified:</b>	N/A
<b>No. Of Responses Received:</b>	Four
<b>Nature of comments made:</b>	Four objections

The appropriate neighbouring properties were notified of the application by letter. In addition, as the application involves major development and is accompanied by an Environmental Statement, notices have also been posted on site and in the local press. A total of four letters have been received in objection to the application. The points of objection are summarised below.

***Principle of development:***

- If the development required a separate access onto Queensway then this should have been included as part of the original application. The developer should not now be allowed to vary the requirement for the new Queensway junction to be introduced as the original permission was not granted on that basis.
- This application will set a precedent for allowing further delays to the delivery of the new Queensway junction through subsequent applications and, ultimately, will mean that the



developer fails to deliver the highway works promised as part of the original application.

**Highways:**

- Traffic on Queensway is already gridlocked, especially during the summer months. It is not acceptable to increase the number of vehicles utilising the temporary access onto Queensway without any upgrading of the existing highway infrastructure in the vicinity.
- Additional vehicles from another 100 dwellings taking access to and from Queensway, along with construction traffic, would create an increased road safety hazard and a heightened risk of collisions.
- The development does not appear to deliver safe access arrangements or a crossing for pedestrians.

**Amenity impacts:**

- The development has already created disamenity issues for neighbouring residents due to noise from the timing of construction works and piling operations, movement of dust and debris and trailing of mud onto the highway.

**Prejudicial effects on neighbouring development sites:**

- The Land north of Kilnhouse Lane is allocated for business and industrial development by FBLP policies EMP1 and EMP2, and emerging local plan policy EC1. The new roundabout junction onto Queensway which was shown to serve as the access for the Kensington development under application 08/0058 is also required to open up access to the adjacent employment site. Without this roundabout being constructed, there is no means of accessing the Kilnhouse Lane site. This access constraint and the potential for associated delays to the delivery of the Kilnhouse Lane site was identified in paragraph 50 of the Inspector's decision on appeal reference APP/M2325/W/16/3164516 (an application for the erection of 115 dwellings).
- It is understood that an alternative arrangement to replace the originally approved Queensway roundabout with a signalised junction is being pursued by Kensington. This will require the submission of a new planning application and, accordingly, further delays and uncertainty as to the means of access to the Kilnhouse Lane site.
- The delay to the construction of the new Queensway junction which would arise if this application were permitted would jeopardise the delivery of an allocated employment site, which could undermine the spatial strategy for Lytham and St Annes and the overall provision of employment land in both the adopted and emerging local plans. Kensington are not progressing the development at a fast pace and, at current build out rates, it could take another 5 years or so to reach the revised (166 dwelling) trigger for the construction of the formal junction that would open access to the Kilnhouse Lane site.
- There is no commitment or any indication by Kensington of the proposed timescales for submitting an application to amend the approved junction or to physically construct the junction on site. The currently approved situation (i.e. only allowing 65 dwellings to be occupied), whilst not ideal, provides some degree of certainty that the junction will be implemented within the short term and that further marketing of the Kilnhouse Lane site is warranted and justified.
- These matters have also been brought to the attention of the Local Plan Inspector.

**Relevant Planning Policy**

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise. At present, the statutory adopted development plan for Fylde comprises the

saved policies of the Fylde Borough Local Plan (As Altered) 2005 (the 'FBLP'). In addition, as the site falls within the Saint Anne's on the Sea Neighbourhood Development Plan (SANDP) area, the Neighbourhood Plan also forms part of the Development Plan in this case.

Fylde Borough Council submitted the "Fylde Council Local Plan to 2032" – the Emerging Local Plan (referred to hereafter as the 'Submission Local Plan' or 'SLP') – to the Secretary of State for examination on 9 December 2016. An Inspector appointed to undertake an independent examination into the soundness of the SLP held three sessions of examination hearings in March, June and December 2017. The Inspector confirmed that the Stage 3 hearings formally closed on 11 January 2018. Following those hearings a 'Schedule of Proposed Main Modifications for Consultation' was produced and the Council consulted on the "Fylde Local Plan to 2032 - Schedule of Proposed Main Modifications" between 8 February and 22 March 2018. This consultation also included a number of Additional Modifications to the SLP. These do not concern the Plan's policies or affect the soundness of SLP, but are factual updates of the supporting text. A Schedule of Proposed Policies Map modifications was also consulted on for clarity with respect to some of the main modifications.

The Planning Inspectorate issued a letter to the Council on 18<sup>th</sup> September 2018 confirming that the Fylde Council Local Plan to 2032 (as modified) has been found sound and can be adopted by the Council at its discretion. Specifically, the Local Plan Inspector confirms at paragraph 216 of her report "that with the recommended main modifications set out in the Appendix the Fylde Council Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework." Accordingly, the SLP (as modified) has been found sound and can be progressed for adoption without delay. It is anticipated that the Fylde Council Local Plan to 2032 will be formally adopted by the Council by the end of October and, at that point, it will replace the FBLP as the Development Plan for the Borough, which should guide decision taking. For the avoidance of doubt, references to the SLP in the remainder of the report refer to the most up-to-date (modified) version of the Fylde Council Local Plan to 2032 which has been found sound by the Inspector.

Given the above, and although the SLP has not yet been formally adopted by the Council (and, accordingly, is not yet part of the statutory development plan) it is considered that substantial weight should be afforded to it in the decision making process in accordance with the provisions of paragraph 48 of the NPPF.

**Fylde Borough Local Plan:**

SP02	Development in countryside areas
SP03	Development in green belt
HL02	Development control criteria for new housing proposals
HL06	Design of residential estates
EMP1	Business & industrial land allocations
EMP2	Existing business & industrial uses
TR01	Improving pedestrian facilities
TR02	Increasing provision of bridleways
TR03	Increasing provision for cyclists
TR05	Public transport provision for large developments
TREC17	Public Open Space within New Housing Developments
EP10	Protection of important landscape and habitat features
EP11	Building design & landscape character
EP12	Conservation trees & woodland
EP14	Landscaping of new developments

EP15	Protection of European wildlife sites
EP16	Development in or near SSSI's
EP18	Natural features
EP19	Protected species
EP21	Archaeology
EP22	Protection of agricultural land
EP23	Pollution of surface water
EP25	Development and waste water
EP27	Noise pollution
EP29	Contaminated land
EP30	Development within floodplains
CF02	Provision of new primary schools

#### **Fylde Local Plan to 2032:**

S1	Proposed Settlement Hierarchy
DLF1	Development Locations for Fylde
M1	Masterplanning the Strategic Locations for Development
SL1	Lytham and St Annes Strategic Location for Development
GD1	Settlement Boundaries
GD2	Green Belt
GD7	Achieving Good Design in Development
GD9	Contaminated Land
EC1	Overall Provision of Empty Land and Existing Sites
H1	Housing Delivery and the Allocation of Housing Land
H2	Density and Mix of New Residential Development
H4	Affordable Housing
INF1	Service Accessibility and Infrastructure
INF2	Developer Contributions
T1	Strategic Highway Improvements
T4	Enhancing Sustainable Transport Choice
CL1	Flood Alleviation, Water Quality and Water Efficiency
CL2	Surface Water Run-Off and Sustainable Drainage
ENV1	Landscape
ENV2	Biodiversity
ENV4	Provision of New Open Space

#### **Other Relevant Policy:**

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance

#### **Saint Anne's on the Sea Neighbourhood Development Plan 2016-2031 (SANDP) & Design Guide Supplementary Neighbourhood Plan Document**

- GP1 – Settlement boundary
- EN2 – Green Infrastructure
- EN4 – Urban trees supply
- DH1 – Creating a distinctive St Anne's
- DH2 – Corridors and Gateways
- TR1 – Accessibility for all
- TR2 – Better public transport
- TR3 – Residential car parking

TR4 – Getting around St Anne's  
HOU1 – Housing development  
HOU4 – Residential design  
SU1 – Incorporate sustainable urban drainage into new development  
DEL1 – Developer contributions

### **Environmental Impact Assessment**

Planning application 17/0862 was EIA Development. Paragraph 016 of the 'flexible options for planning permissions' chapter to the NPPG makes clear that "a section 73 application is considered to be a new application for planning permission under the 2011 Environmental Impact Assessment Regulations. [...] Where an Environmental Impact Assessment was carried out on the original application, the planning authority will need to consider if further information needs to be added to the original Environmental Statement to satisfy the requirements of the Regulations. Whether changes to the original Environmental Statement are required or not, an Environmental Statement must be submitted with a section 73 application for development which the local planning authority considers to be Environmental Impact Assessment development.

As the extant planning permission involved EIA development, this S73 application is also EIA development. Accordingly, the application is accompanied by an Environmental Statement (ES) which provides an addendum update to the original ES in order to assess the effects of the proposed variation to condition 23 of planning permission 17/0862.

### **Comment and Analysis**

#### **Background and principle of development:**

The principle of a residential development for up to 1150 dwellings, including a 1.1ha school site and 34ha parkland, has been established through the granting of outline planning permission 08/0058 (as varied by application 17/0861). Moreover, development has now commenced on site pursuant to subsequent applications for approval of reserved matters (15/0400) and a separate full planning permission (17/0862) which, in combination, allow the construction of a total of 948 dwellings across the site.

Paragraphs 013 – 018 of the "flexible options for planning permissions" chapter to the NPPG relate to "amending the conditions attached to a permission including seeking minor material amendments (application under Section 73 TCPA 1990)". Paragraph 15 of the NPPG makes clear that a grant of a S73 application is, in effect, the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.

The granting and subsequent implementation of extant permissions at the site have established the principle of development and this is not a matter to be revisited as part of the S73 application.

Whilst applications to vary conditions on extant permissions are to be determined in accordance with the Development Plan under S38 (6) of the Planning and Compulsory Purchase Act 2004, given the existence of extant permissions 08/0058 (as varied by 17/0861), 15/0400 and 17/0862, it follows that attention should be focussed on national or local policies or other material considerations that have changed since the original grant of permission, as well as the effects of the proposed changes sought to the wording of the condition.

Planning permission 17/0862 was granted on 12th December 2017. Although the statutory,

adopted development plan for Fylde remains the same (the FBLP), the SLP has been subject to additional modifications and is at a more advance stage of preparation. Accordingly, the SLP should be afforded substantial weight in the decision making process (though it does not yet have 'development plan' status). The SANDP was adopted on 24 May 2017 and is also part of the development plan (though that was also the case when planning permission 17/0862 was granted). In addition, the Ministry of Housing, Communities and Local Government published the revised NPPF in July 2018.

Given the above, there have been material changes in both local and national planning policy since the issuing of planning permission 17/0862. These changes do not, however, indicate that an alternative approach should be taken with respect to the principle of development. Indeed, the application land is allocated as a strategic site for housing development under policy SL1 of the SLP (site reference HSS1). It must also be kept in mind that, in this case, extant planning permissions and reserved matters approvals for all 948 dwellings have already been implemented. Therefore, while any grant of permission would, in effect, result in the issuing of a new full planning permission, it follows that consideration only needs to be given to those elements of the scheme which differ from the previous approval, alongside any effects of the abovementioned changes in policy since the issuing of the previous decision insofar as they relate to the specific changes sought as part of this S73 application.

#### Effects of the proposed variation to condition 23:

The purpose of the application is to vary the requirements of condition 23 of full planning permission 17/0862 in order to delay the blocking up of the temporary vehicle access onto Queensway until the point prior to the construction of the 166th dwelling. The preceding 165 dwellings are to form phases 1 and 2 of the overall development and will be constructed pursuant to this full planning permission (66 dwellings) and reserved matters approval 15/0400 (99 dwellings).

In essence, the application seeks to allow all 165 dwellings in phases 1 and 2 of the development to take access from the temporary junction onto Queensway which was approved as part of full planning permission 17/0862.

Criterion (9) of FBLP policy HL2 states that applications for housing will only be permitted where the development would have satisfactory access and parking and would not have an adverse effect on the safe and efficient operation of the highway network, either individually or cumulatively with other developments.

Criteria (j) and (q) of SLP policy GD7 require that developments:

- Ensure parking areas for cars, bicycles and motorcycles are safe, accessible and sympathetic to the character of the surrounding area and that highway safety is not compromised.
- Should not prejudice highway safety, pedestrian safety, and the efficient and convenient movement of all highway users (including bus passengers, cyclists, pedestrians and horse riders).

The SANDP identifies Queensway as an important gateway and corridor into the town. SANDP policy DH2 states that "development proposals adjoining these corridors and gateways must respond in design terms and have regard to the principles and detailed guidance set out in the St. Anne's Design Guide SPD and the accompanying Corridors and Gateways Companion Document. All development will be required to make a positive contribution towards the implementation of the strategy and improvement of the access corridors and gateways."

In addition, paragraph 108 of the NPPF requires that in assessing applications for development, it should be ensured that:

- Appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;
- safe and suitable access to the site can be achieved for all users; and
- any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Paragraph 109 of the Framework indicates that “development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

The construction of the temporary access in the form of a priority (give way) junction onto the B5261 was permitted as part of application 17/0862. The siting and design of the access is shown on drawing no. KD63/10 Rev E (as referred to in condition 23) and is also indicated in an enclosure to Technical Note 3794/01 by Cole Easdon (drawing titled ‘Plan 3794/231’). In summary, the temporary access and priority junction includes:

- Visibility splays of 2.4m x 90m in both directions at the junction of the site access with Queensway.
- A ghost island right hand turn lane into the site from Queensway including associated carriageway widening.
- The provision of a 3m wide shared footway/cycleway along the site’s frontage with Queensway and extending around both sides the junction before narrowing to 2m within the site.

Additional requirements for the delivery of a toucan crossing to the south of the access and a temporary crossing between the temporary access and the existing Queensway/Kilnhouse Lane junction via a pedestrian refuge are set out in condition 21 of planning permission 17/0862.

The Technical Note (TN) by Cole Easdon which accompanied application 17/0862 included details of anticipated vehicle trip generation and junction capacity assessments based on a scenario where 65 dwellings would take access from the temporary junction onto Queensway and the remaining 1085 dwellings (as permitted by application 08/0058) would be accessed from the Queensway/T5 junction.

With reference to vehicle trip rates used in the 2011 Transport Assessment for the original outline application, Table 3.3 of the TN estimates that a development of 65 dwellings would generate a total of 42 two-way vehicle trips through the temporary junction during the peak AM period (08:00 – 09:00), rising to 45 two-way vehicle trips during the peak PM period (17:00 – 18:00). Using the vehicle trip rates in Table 3.2 of the TN, these figures would rise to 106 trips in the peak AM period and 115 trips in the peak PM period if 165 dwellings were permitted to use the temporary access. The differences between the two scenarios are set out in Table 1 below.

Period	65 dwellings	165 dwellings	Variance
AM peak (08:00-09:00)	42	106	+64
PM peak (17:00 – 18:00)	45	115	+70
Daily	386	979	+593

**Table 1 – Vehicle trip generation comparison**

While the use of the temporary access by an additional 100 dwellings would result in a significant

increase in the number of vehicle trips into and out of the junction, the Local Highway Authority (LHA) consider the design of the access – a priority junction off the B5261 in the position approved by application 17/0862 – to be sufficient to deal with the number of vehicle trips associated with a development of up to 165 dwellings in advance of the formal Queensway/T5 junction being delivered. Similarly, the LHA consider that the level of traffic generated by a development of 165 dwellings utilising the temporary access would not result in a severe impact on network capacity or highway safety. Given the proximity of the site access to the junction of Queensway and Kiln House Lane and the temporary nature of the access, the local highway authority does not consider that it will be necessary to incorporate the ghost island, which was incorporated into the original junction design when the developer was seeking to retain this access to the site on a permanent basis.

Although the LHA consider the design of the temporary access as approved by application 17/0862 to be sufficient to serve up to 165 dwellings as proposed in phases 1 and 2 of the development, their response makes clear that this assessment is based on the temporary nature of the junction and that future increases in background traffic levels will affect the reliability of the junction in the longer term. Accordingly, the LHA reiterate their position set out during application 17/0862 that the permitted access arrangements are suitable only as a temporary measure to serve a limited number of dwellings. In this case, the LHA consider that the applicant's proposal for a maximum of 165 dwellings to be served by the temporary junction is appropriate, but that this junction must be closed for all motorised movements prior to the occupation of the 166th dwelling or the completion and bringing into use of the Queensway/T5 junction (whichever occurs first). This requirement (albeit for up to 65 dwellings) is reflected in condition 23 of planning permission 17/0862 and is to be carried over for the 165 dwellings now proposed to be served by the temporary access, as advised by the LHA.

For the reasons set out above, it is considered that the proposed variation to condition 23 of planning permission 17/0862 which would allow up to 165 dwellings to take access from the temporary junction onto Queensway (in accordance with the design approved under application 17/0862) prior to this being blocked up at the point of construction of the 166th dwelling, would not conflict with the requirements of FBLP policy HL2, SLP policy GD7, the SANDP or the NPPF.

#### Other matters:

##### *Addendum Environmental Statement:*

The application is accompanied by an addendum to the ES which provides an update to that submitted with the previous applications and deals with the effects of increasing the number of dwellings that can take access from the temporary junction onto Queensway. With reference to the eight topics covered by the ES for outline application 08/0058, the addendum ES concludes that the proposed variation of condition “does not introduce any new negative effects on receptors” beyond those already assessed by other ES’ and mitigated for through conditions and the planning obligation.

The addendum ES also makes reference to a Shadow Habitat Regulations Assessment prepared in October 2017 which included an “appropriate assessment” to examine the effectiveness of measures introduced by the Farmland Conservation Area to mitigate the development's effect (as a whole) on the integrity of the Ribble and Alt Estuaries SPA. The appropriate assessment concludes that the residual and in-combination effects of the scheme would not have an adverse effect on the integrity of the SPA, due primarily to the fact that the full mitigation measures for both the Queensway and M55 link road projects “have already been implemented, meaning that there would be no temporal overlap of adverse effects arising from multiple projects in combination with

Queensway/M55 Link Road.”

All relevant statutory consultees have been notified of the application. None of these (including Natural England and the Environment Agency) have raised any objections to the scheme or the conclusions in the ES. As this application seeks only to alter the access arrangements to the first 2 phases of a wider residential development which already benefits from extant planning permissions, and given that the mitigation measures associated with the Farmland Conservation Area have already been implemented, the conclusions in the ES are considered to soundly demonstrate that the proposal would not conflict with relevant policies in the FBLP, SANDP, SLP and the NPPF, as well as the Conservation of Habitats and Species Regulations.

*Effects on surrounding land use allocations:*

Objections have been received on behalf of the owners of a nearby site on the north side of Kilnhouse Lane which is allocated for employment use in both the FBLP and SLP (site reference ES1 in the latter). The basis of the objection is that the delay in the construction of the formal Queensway/TR5 junction arising as a result of this proposal would jeopardise the delivery of employment development on site ES1 due to the absence of a suitable access which, in turn, would prevent the employment allocation in the SLP being brought forward. It is not, however, considered that this provides a cogent argument against the application for the following reasons:

- a) Notwithstanding that the owner’s preferred means of access to the employment site may be off the Queensway/TR5 junction, there is nothing to prevent the owner of site ES1 applying for a different means of access to the land. Indeed, the Council received an application for the construction of a separate access onto Queensway for site ES1 on 18.09.18 (application 18/0723).
- b) Despite the site’s allocation for employment use in the Emerging Local Plan, the only applications submitted on the site since work started on the preparation of the new local plan have been for residential development (applications 16/0524 and 17/0296 – the former of which was dismissed at appeal). Accordingly, and notwithstanding the above, there is no extant permission for employment development on site ES1 which could be seen as being prejudiced by the delayed construction of the formal Queensway junction.
- c) While SLP policy EC1 identifies sites for 62 ha of new employment land “to be delivered during the plan period” (of which site ES1 contributes 3.8 ha), it does not include a trajectory or anticipate a timeframe for their delivery. The SLP runs to 2032 and, for the reason set out above, there is no reason to suggest that employment development on site ES1 is imminent in the short term or would be unduly frustrated by delaying the construction of the formal Queensway/TR5 junction.
- While the objector considers that Kensington are delivering the housing at a slow rate and could take 5 years to reach the revised trigger of 166 dwellings for the delivery of the Queensway junction, this runs contrary to the position set out in the Housing Trajectory to Appendix 3 of the Council’s latest Housing Land Supply Statement (published August 2018) which, instead, indicates that the 166 dwelling trigger will be reached in early-mid 2021 (i.e. in less than 3 years). The response from the LHA indicates that progress has been made with respect to the detailed design of a new signalised junction onto Queensway to serve the development and, although this will need to be the subject of a separate application, there is no reason to conclude that this should result in undue delays to the construction of the junction, particularly as the LHA are undertaking the detailed design.
- Despite the objections being brought to the attention of the Local Plan Inspector, paragraphs 108-111 of the Inspector’s report state the reasons why the employment allocation on site ES1 has been retained and does not seek to modify the wording of SLP



policy EC1 to exclude this site on any of the grounds put forward by objectors.

*Conditions:*

With respect to imposing conditions on S73 applications, paragraph 015 of the “flexible options for planning permissions” chapter to the NPPG advises that:

- “To assist with clarity decision notices for the grant of planning permission under section 73 should also **repeat the relevant conditions from the original planning permission, unless they have already been discharged.**”
- “As a section 73 application cannot be used to vary the time limit for implementation, **this condition must remain unchanged from the original permission.**”

In this case, extant planning permission 17/0862 has already been implemented. Accordingly, there is no need to re-impose the condition relating to the time limit for implementation (condition 1). An application has been submitted to discharge conditions 3, 4, 5, 6, 7, 10, 11, 13, 14, 15, 16, 19, 20, 21, 22 and 33 of planning permission 17/0862 (application reference 18/0241). However, this application only includes 25 of the 66 dwellings to be constructed pursuant to planning permission 17/0862 – those that fall within the area of phase 1 – and, accordingly, does not cover all of the land associated with application 17/0862. Therefore, those conditions previously imposed on application 17/0862 are still relevant to the remaining 41 dwellings approved by this permission (which fall within phase 2) and so are re-imposed. Moreover, as there are still outstanding details to be agreed as part of condition discharge application 18/0241 (which is, to date, undetermined), re-wording of the extant conditions to refer to the details submitted as part of application 18/0241 would be premature.

Condition 23 of planning permission 17/0862 (condition 22 in the schedule below) has been re-worded to reflect the variation sought by this application, though the applicant’s suggested wording has been updated for clarity and completeness to refer to the access and other off-site highway works required by condition 21 of 17/0862 (recommended condition 20 below) and to make clear that the dwelling threshold set out in the condition is to be calculated based on the totality of any dwellings constructed within the site across different permissions, and not just those allowed by this permission (which allows the construction of 66 dwellings only).

*Developer contributions:*

A planning obligation (in the form of a Unilateral Undertaking) dated 09.01.12 was entered into as part of outline planning permission 08/0058. This obligation has previously been varied by applications 13/0767 and 17/1026, the latter of which altered the definition of “Planning Permission” to include reference to S73 application 17/0862 and of the “Queensway Roundabout” to refer to “the Queensway/TR5 highway junction [...] or any alternative junction arrangement which has been granted planning permission”.

A further application to vary the Unilateral Undertaking has been submitted in tandem with this S73 application under application reference 18/0545. This variation is submitted in accordance with the provisions of S106A of the Town and Country Planning Act and seeks, among other things, to vary the definition of “Planning Permission” to include reference to this application (18/0546).

Notwithstanding that changes are required to the wording of the modifications proposed by application 18/0545 which will require the withdrawal of 18/0545 and the subsequent submission of a fresh application to vary the UU, S106A of the Act provides a suitable mechanism to vary the extant UU in order that the obligations contained within it (as alerted) are linked and remain equally

applicable to this S73 application. The requirement for an application under S106A to be approved prior to this S73 application being granted is set out in the resolution below.

### **Conclusions**

The application follows the grant of full planning permission 17/0862 relating to a residential development of 66 dwellings on land to the south and east of the B5261 (Queensway), Lytham St Annes. The site forms part of a larger housing scheme – known as the ‘Richmond Point’ development – which benefits from extant permissions for 948 dwellings. The site of this application is located to the northwest corner of the wider site, immediately south of the proposed entrance to the T5 bypass off Queensway.

Condition 23 of planning permission 17/0862 reads as follows:

23. *The temporary vehicular access to Queensway as detailed on drawing number KD63/ 10 rev E shall be blocked up prior to construction of the 66th dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with the scheme of highway works agreed by condition 21. The approved scheme shall be implemented in accordance with the aforementioned timescales.*

The current application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary condition 23 of planning permission 17/0862 in order to delay the blocking up of the temporary vehicle access onto Queensway until the point prior to the construction of the 166<sup>th</sup> dwelling. The preceding 165 dwellings are to form phases 1 and 2 of the overall development and will be constructed pursuant to this full planning permission (66 dwellings) and reserved matters approval 15/0400 (99 dwellings). Accordingly, the applicant proposes that condition 23 of planning permission 17/0862 be varied to read as follows (changes highlighted):

23. The temporary vehicular access to Queensway as detailed on drawing number KD63/ 10 rev E shall be blocked up prior to construction of the **166<sup>th</sup>** dwelling, or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with the scheme of highway works agreed by condition 21. The approved scheme shall be implemented in accordance with the aforementioned timescales.

Full planning permission 17/0862 allowed the construction of 66 dwellings to be served via a temporary access with a priority (give way) junction onto Queensway. S73 application 17/0861 varied the wording of conditions 16 and 18 on the original outline permission (08/0058) to reflect the change in access arrangements permitted by application 17/0862 in order that a limited number of dwellings implemented under that permission could also be served by the temporary access off Queensway rather than via a new junction with the TR5 bypass (the ‘Queensway Roundabout’), with a cap of 65 dwellings across both permissions being applicable.

This application seeks to increase the number of dwellings that can take access from the temporary priority junction onto Queensway from 65 to 165 units (phases 1 and 2 of the development) by delaying the blocking up of the temporary access until the construction of the 166<sup>th</sup> dwelling, after which the development would be accessed via the new Queensway/TR5 junction and the first development access off the TR5.

The proposed variation to the condition is required in order to allow the continued delivery of

housing on the site in advance of a scheme for the final design of the Queensway/TR5 junction – which is to be varied from a roundabout to a signalised junction – being approved and implemented. The Local Highway Authority have advised that the layout, design and capacity of the temporary access onto Queensway, as approved by application 17/0862, is capable of serving a development of up to 165 dwellings and, accordingly, the proposed variation to condition 23 would have no adverse impact on the safe and efficient operation of the surrounding highway network.

No other adverse effects would arise from the variation of the condition that would significantly and demonstrably outweigh the benefits arising from the continued and accelerated delivery of housing on a strategic site allocated in the Emerging Local Plan. Therefore, when considered as a whole, the proposal is considered to represent sustainable development in accordance with the relevant policies of the FBLP, the SANDP, the SLP and the NPPF.

### **Recommendation**

That, subject to:

- The Council's approval of an application made under S106A of the Town and Country Planning Act which provides for a modification to the definition of "Planning Permission" in the Unilateral Undertaking dated 09.01.12 to include reference to planning application 18/0546 and, in doing so, ties this permission to the obligations within that Unilateral Undertaking (as varied by any other necessary modifications).

Authority be delegated to the Head of Planning and Regeneration to GRANT planning permission subject to the following conditions (or any amendment to the wording of these conditions or additional conditions that the Head of Planning & Regeneration believes is necessary to make otherwise unacceptable development acceptable):

1. This permission relates to the following plans:

- Location Plan drawing number KD63/ 54 rev. B
- Site A drawing number KD63/10 rev. E
- Proposed access arrangement to Queensway Cole Easdon drawing no. Plan 3794/241
- Springfield house type drawing number 1880.H.09
- Portland house type drawing number 1880.H.08
- Mayfair house type drawing number 1880.H.07
- Louisiana house type drawing number 1880.H.06
- Grosvenor house type drawing number 1880.H.05
- Charleston house type drawing number 1880.H.04
- Buckingham house type drawing number 1880.H.03
- Bridgeport C house type drawing number 1880.H.02
- Baltimore house type drawing number 1880.H.01
- Garages drawing number 1880.H.11

Except as provided for by other conditions to this permission, the development shall be carried out in complete accordance with the approved drawings.

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development in accordance with the policies contained within the Fylde Borough Local Plan (As Altered) October 2005, Fylde Council Local Plan to 2032 and National Planning Policy Framework.

2. Prior to the first construction of any dwelling hereby approved, and notwithstanding any details shown on the approved plans, representative samples of the external construction materials shall

be submitted to and approved in writing by the Local Planning Authority. The approved details shall be used in construction of the development.

Reason: To ensure use of appropriate materials which are sympathetic to the character of surrounding buildings and the street scene in the interests of visual amenity in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

3. Notwithstanding any details shown on the approved plans, prior to the first construction of any dwelling hereby approved, drawings which indicate dual aspect dwellings to dwellings on Plot numbers 101, 104, 115, 125, 133,134, 136 and 155 shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Reason: To ensure a satisfactory appearance to the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

4. Prior to the first construction of any dwelling hereby approved and notwithstanding any details shown on the approved plans, details of finished floor levels and external ground levels for each plot shall be submitted to and approved in writing by the Local Planning Authority before any development at that plot takes place. The development shall thereafter be implemented in accordance with the duly approved details.

Reason: In order to ensure a satisfactory relationship between the new dwellings and their surroundings and to ensure that the development is not at risk of flooding, in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP30, Fylde Council Local Plan to 2032 policies GD7 and CL1, and the National Planning Policy Framework.

5. Prior to the first construction of any dwelling hereby approved and notwithstanding any details shown on the approved plans, a scheme of boundary treatment shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include details of siting, height and construction materials and ensure provision of masonry boundary walls where visible in the street scene. The development shall be constructed in accordance with the approved details.

Reason: In the interests of visual amenity and to ensure the safety of future residents of the development, in accordance with Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and HL6, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

6. Prior to the first construction of any dwelling hereby approved and notwithstanding any details shown on the approved plans, a detailed soft and hard landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The submitted soft landscaping scheme shall include detail of private and public landscape areas, including the planting of trees, shrubs and grassed areas. The details of hard landscaping shall include the surfacing of roads and driveways.

The duly approved landscaping scheme shall be carried out during the first planting season after the development is substantially completed and the areas which are landscaped shall be retained as landscaped areas thereafter. Any trees, hedges or shrubs removed, dying, being severely damaged or becoming seriously diseased within ten years of planting shall be replaced by trees, hedges or shrubs of similar size and species to those originally required to be planted.

Reason: To ensure appropriate landscaping of the development in the interests of visual amenity and to enhance the character of the street scene in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP14, Fylde Council Local Plan to 2032 policies GD7 and ENV1 and the National Planning Policy Framework.

7. Notwithstanding any details shown on the approved plans and prior to the first construction of any dwelling hereby approved, details of the bridge structures, and other ancillary buildings/ structures shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the duly approved details.

Reason: To ensure a satisfactory appearance to the development in the interests of visual amenity in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and HL6, and Fylde Council Local Plan to 2032 policy GD7.

8. Prior to the first construction of any dwelling hereby approved and notwithstanding any details shown on the approved plans, a scheme for the provision of any public art on the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall indicate the location and detailed design of the public art feature(s). The public art in the duly approved scheme shall be implemented prior to the occupation of the last dwelling hereby approved, and shall be retained as such thereafter.

Reason: In order to ensure that any public artwork within the site is appropriate to the character and appearance of the area in accordance with the objectives of Fylde Council Local Plan to 2032 policy GD7.

9. Prior to the first construction of any dwelling hereby approved and notwithstanding any details shown on the approved plans, a scheme of street lighting design shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for a bespoke design of street lighting and shall include measures to minimise artificial light spillage to wildlife habitats including the Nature Park and Farmland Conservation Area and measures to prevent perching birds.

Reason: To ensure appropriate street lighting is introduced as part of the development in the interests of highway safety and to avoid light spillage towards sensitive wildlife habitats in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP19, Fylde Council Local Plan to 2032 policies GD7 and ENV2, and the National Planning Policy Framework.

10. Prior to the first construction of any dwelling hereby approved, details of the on-going maintenance of the communal areas of public open space / amenity landscaping, including open drainage ditches and flood attenuation features shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be maintained in accordance with the approved schedule of maintenance.

Reason: To ensure appropriate maintenance of communal areas of public open space and amenity landscaping in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL6, EP14 and TREC17, Fylde Council Local Plan to 2032 policies GD7 and ENV4 and the National Planning Policy Framework.

11. There shall be no lopping, topping or felling of any trees or hedgerow on or overhanging the site unless details have first been submitted to and approved in writing by the Local Planning Authority. Any works undertaken shall only be in accordance with the agreed details.

Reason: In order to protect the existing trees on the site and to ensure satisfactory landscaping of the site in the interests of visual amenity in accordance with Fylde Borough Local Plan (As Altered) October 2005 policies EP12 and EP14, Fylde Council Local Plan to 2032 (Submission Version) policies GD7 and ENV1, and the National Planning Policy Framework.

12. Prior to the first construction of any dwelling hereby approved, the following information shall be submitted to and approved in writing by the Local Planning Authority:

- A detailed plan for the proposed buildings of that phase demonstrating that there would be no detrimental impact upon the operation of St Annes Radar; and
- Details of a scheme to mitigate any detrimental impact upon the St Annes Radar, including any associated timescales for implementation of the mitigation works.

The approved scheme of mitigation shall be implemented in accordance with the approved details and within the approved timescales, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to ensure that the development does not pose any unacceptable risk to aerodrome safeguarding in accordance with the requirements of the National Planning Policy Framework.

13. Prior to the first construction of any dwelling hereby approved and notwithstanding any details shown on the approved plans, a scheme of energy efficiency and renewable energy generation to be provided for each dwelling shall be submitted to and approved in writing by the Local Planning Authority. The identified measures shall be implemented in accordance with the approved details prior to the occupation of each dwelling.

Reason: In order to ensure that the development is carried out in accordance with the provisions of Policy HOU4 of the St Anne's on the Sea Neighbourhood Development Plan 2016-2031.

14. Prior to the first construction of any dwelling hereby approved, a surface water drainage scheme based on sustainable drainage principles, and implementation of an appropriate surface water sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. Those details shall include, as a minimum:

- a) Information about the lifetime of the development, design storm period and intensity (1 in 30 & 1 in 100 year + allowance for climate change see EA advice Flood risk assessments: climate change allowances'), discharge rates and volumes (both pre and post development), temporary storage facilities, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses, and details of floor levels in AOD;
- b) The drainage strategy should demonstrate that the surface water run-off must not exceed the pre-development greenfield runoff rate (as previously agreed by application 15/0400). The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.
- c) Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);
- d) Flood water exceedance routes, both on and off site;
- e) A timetable for implementation, including phasing as applicable;
- f) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates;
- g) Details of water quality controls, where applicable.

The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings, or completion of the development, whichever is the sooner. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

Reason: To ensure that the development is not at risk of flooding and does not increase flood risk elsewhere, and that adequate measures are put in place for the disposal of foul and surface water in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1 and CL2, and the National

Planning Policy Framework.

15. Prior to the first construction of any dwelling hereby approved, an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development shall be submitted to and approved in writing by the Local Planning Authority. The plan, as a minimum, shall include:
- a) The arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company
  - b) Arrangements concerning appropriate funding mechanisms for its on-going maintenance of all elements of the sustainable drainage system (including mechanical components) and will include elements such as:
    - on-going inspections relating to performance and asset condition assessments
    - operation costs for regular maintenance, remedial works and irregular maintenance caused by less sustainable limited life assets or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime;
  - Means of access for maintenance and easements where applicable.

The plan shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings, or completion of the development, whichever is the sooner. Thereafter the sustainable drainage system shall be managed and maintained in accordance with the approved details.

Reason: To ensure that management arrangements are in place for the sustainable drainage system in order to manage the risk of flooding and pollution during the lifetime of the development in order that the development is not at risk of flooding and does not increase flood risk elsewhere in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1 and CL2, and the National Planning Policy Framework.

16. None of the dwellings hereby approved shall be first occupied until the sustainable drainage scheme for the site approved pursuant to conditions 14 and 15 of this permission has been completed in accordance with the submitted details. The sustainable drainage scheme shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.

Reason: To secure proper drainage and to manage the risk of flooding and pollution in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1 and CL2, and the National Planning Policy Framework.

17. All attenuation basins and flow control devices/structures approved pursuant to condition 14 of this permission shall be constructed and operational prior to the commencement of any other development and prior to any development phase.

Reason: To ensure site drainage during the construction process does not enter the watercourses at un-attenuated rate and prevent a flood risk during the construction of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1 and CL2, and the National Planning Policy Framework.

18. Prior to the commencement of development, details of the piling of the proposed pipe work and measures to be incorporated to prevent the drying out of the underlying peat shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure that appropriate safeguards are put in place in order to minimise the risk of ground instability issues affecting land and buildings within and surrounding the site in accordance with the requirements of the National Planning Policy Framework.

19. No development falling within flood zones 2 and 3 (as identified on the Flood Map for Planning) shall take place until a scheme for the provision and implementation of compensatory flood storage works and associated flood flow culverts through the proposed highway embankments in accordance with the Flood Risk Assessment by Cole Easdon Consultants (November 2011, ref: 3330) has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved scheme.

Reason: To ensure that the development is not at risk of flooding and does not increase flood risk elsewhere, and that adequate measures are put in place for the provision and implementation of compensatory flood storage works in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP25 and EP30, Fylde Council Local Plan to 2032 policies CL1 and CL2, and the National Planning Policy Framework.

20. None of the dwellings on phases 1 and 2 of the development hereby approved shall be occupied until a scheme for the construction of all highway works associated with those phases, including permanent, temporary and any remediation works post-delivery, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include but not be limited to:

- a) Temporary access arrangements onto Queensway.
- b) Works involving the stopping up of the temporary access arrangement to Queensway, to include provision of landscaping, footpath and cycle path.
- c) Foot/cycle way on Queensway from a point south of the existing Queensway junction to 3 Heyhouses Lane.
- d) Toucan crossing to the south of the frontage of this application linking the new foot/cycle way to the existing/modified provision on the opposite side of road. In line with Unilateral - Annexure – 4 – plans– 33 30-213 Proposed Highways produced by Cole Easdon.
- e) A temporary crossing between the temporary access and the existing Queensway/ Kilnhouse Lane junction with a temporary refuge island.

Reason: To ensure a safe and suitable means of access to the site is provided for all users and to ensure that the scope of highway works provided as part of the development is sufficient to serve up to 165 dwellings in the interests of highway safety in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

21. None of the dwellings on phases 1 and 2 of the development hereby approved shall be occupied until a Construction Phasing Plan (CPP) has been submitted to and approved in writing by the Local Planning Authority. The CPP shall detail the phasing of development on the site in relation to provision of the highways works approved pursuant to condition 20, the new junction of Queensway/ Kilnhouse Lane and any other highway works. The development and off site highway works shall thereafter be implemented and made available for use in accordance with the duly approved CPP.

Reason: To ensure that the highway works required by condition 20 are implemented at an appropriate time in relation to the phasing of the development in order that future occupiers of the development are afforded a safe and suitable means of access to/from the site and its surroundings and to encourage travel by modes of transport other than private car in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and TR1, Fylde Council Local Plan to 2032 (Submission Version) policies GD7 and T4, and the National Planning Policy Framework.



22. The temporary vehicular access to Queensway as approved pursuant to condition 20 (a) of this permission shall be blocked up prior to construction of the 166th dwelling (as constructed pursuant to any planning permissions that allow the construction of dwellings upon the site, in any combination) or, as soon as the permanent means of vehicular access to the development via the main access road from the TR5 Heyhouses Bypass is available for use, whichever is the sooner. The road closure shall be implemented in accordance with a scheme which shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall make provision for landscaping, and a footpath and cycle path link to Queensway. The approved scheme shall be implemented in accordance with the aforementioned timescales.

Reason: The temporary access provides an appropriate means of access to serve a limited number of dwellings (those within development phases 1 and 2) for a temporary period and is incapable of providing a safe and suitable means of access to the wider development. The temporary access is to be closed once the maximum number of dwellings it is deemed suitable to serve is exceeded or once the formal access to the site via the Queensway/TR5 junction has been constructed and brought into use, whichever occurs first, in the interests of highway safety. At that point, a suitable scheme for the treatment and landscaping of the land which previously provided the access will be required in the interests of visual amenity. The condition is imposed in accordance with the requirement of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policies GD7 and ENV1, and the National Planning Policy Framework.

23. Prior to any dwelling hereby permitted being occupied, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include objectives, targets, mechanism and measures to achieve and maintain targets, monitoring, implementation timescales and have a travel plan co-ordinator in post prior to first occupation and to remain for the full build out or 5 years per dwelling. The approved plans shall be implemented, audited and updated at intervals as approved.

Reason: In order to promote modal shift and increased use of sustainable methods of travel in accordance with the objectives of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, TR1 and TR3, Fylde Council Local Plan to 2032 policies GD7 and T4 and the National Planning Policy Framework.

24. No dwelling hereby permitted shall be occupied until all vehicular and other access points, and, car parking and manoeuvring areas, have been provided to it in accordance with the approved details.

Reason: To ensure a safe and suitable means of access is achieved for individual dwellings in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy HL2, Fylde Council Local Plan to 2032 policy GD7 and the National Planning Policy Framework.

25. The development shall be constructed in full accordance with the Site Preparation Plan (ref: KD101/500, June 2016) as previously partially discharged (relative to Phase 1 of the development only) by the Local Planning Authority under application reference 16/0511 on 29th September 2016.

Reason: In order to ensure that appropriate measures are put in place for each phase of development to limit noise, nuisance and disturbance to the occupiers of neighbouring properties and to ensure that construction traffic does not comprise the safe and efficient operation of the surrounding highway network during the construction of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP27, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

26. The development shall be constructed in full accordance with the Construction Health & Safety Plan (ref: Bill Rogerson Safety Services, 19th April 2016) as discharged by the Local Planning Authority under planning application reference 16/0513 on 29th September 2016 and partially discharged (relative to Phase 1 of the development only) under planning reference 16/0511 on

29th September 2016.

Reason: In order to ensure that appropriate measures are put in place for each phase of development to limit noise, nuisance and disturbance to the occupiers of neighbouring properties and to ensure that construction traffic does not compromise the safe and efficient operation of the surrounding highway network during the construction of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2 and EP27, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

27. Prior to the first construction of any dwelling hereby approved and notwithstanding any details shown on the approved plans, a movement strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall include details of the road hierarchy within the site, emergency access (and its management/ enforcement), and the footway, cycleway and bridleway networks together with their linkages to the existing networks. The development thereafter shall be carried out in accordance with the approved movement strategy.

Reason: To ensure a safe and suitable means of access for and circulation of all users to, from and within the site in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies HL2, TR1 and TR3, Fylde Council Local Plan to 2032 policies GD7 and T4, and the National Planning Policy Framework.

28. No clearance of trees and shrubs in preparation for or during the course of development shall take place during the bird nesting season (1st March - 31st August inclusive) unless an ecological survey has first been submitted to and approved in writing by the Local Planning Authority which demonstrates that the vegetation to be cleared is not utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no clearance of trees and shrubs shall take place until a methodology for protecting nest sites during the course of the development has been submitted to and approved in writing by the Local Planning Authority. Nest site protection shall thereafter be provided in accordance with the duly approved methodology.

Reason: In order to prevent any habitat disturbance to nesting birds in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP19, Fylde Council Local Plan to 2032 policy ENV2, the provisions of the Wildlife and Countryside Act 1981 (as amended) and the National Planning Policy Framework.

29. The development shall be carried out in accordance with the habitat creation measures and timescales for implementation as detailed in 4996.018 FCA and Nature Park Status Report August 2016 v2, as previously discharged by the Local Planning Authority under planning reference 16/0511 on 29th September 2016.

Reason: To ensure that appropriate measures are put in place to mitigate the development's effects on the Ribble and Alt Estuaries Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), Ramsar site and land which is functionally linked to it in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP15 and EP16, Fylde Council Local Plan to 2032 policy ENV2, the National Planning Policy Framework and the Conservation of Habitats and Species Regulations 2017.

30. The development shall be carried out in full accordance with the Construction Ecological Management Plan (3552.004 revision 3.2, TEP, March 2015) as previously discharged by the Local Planning Authority under planning reference 13/0275 on 15th October 2015.

Reason: To ensure that appropriate measures are put in place during the construction period to mitigate the development's potential effects on sensitive conservation sites, habitats and species of biodiversity value in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP15, EP16, EP18 and EP19, Fylde Council Local Plan to 2032 policy ENV2 and the National Planning Policy Framework.

31. The development shall be constructed in accordance with the Soil Conservation Plan (TEP, April 2016), as previously discharged by the Local Planning Authority under planning reference 16/0511 on 29th September 2016.

Reason: To ensure compliance with section 8.4.4 of the report 'Land at Queensway, St Annes Environmental Statement'.

32. Prior to the first construction of any dwelling hereby approved, a water vole survey of any ditches or watercourses or within 5m of the top of any associated watercourse bank on the site, shall be submitted to and approved in writing by the Local Planning Authority. The survey shall have been carried out in accordance with established survey guidelines and shall have been carried out within the preceding 24 months. If water voles are found to be present on the site, details of appropriate measures for mitigation and compensation, including appropriate timetables for implementation, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable.

Reason: To ensure that adequate mitigation measures are introduced as part of the development in order that it does not adversely affect the favourable conservation status of any protected species in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP19, Fylde Council Local Plan to 2032 policy ENV2, the National Planning Policy Framework, the Conservation of Habitats and Species Regulations 2017 and the Wildlife and Countryside Act 1981 (as amended).

33. The development shall be constructed in full accordance with the Air and Water Pollution document (ref: Wardell Armstrong, July 2016) as previously discharged by the Local Planning Authority under planning reference 16/0511 on 29th September 2016. Prior to any material being imported to the site, the applicant shall submit information which details the volume and composition of the material, site of origin and areas where it is to be deposited for the written approval of the Local Planning Authority. The development shall be implemented in accordance with the approved details.

Reason: To ensure that materials brought on site is appropriate for the development and poses no risk to the end user and to prevent pollution of the surrounding air and water environment in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policy EP26 and the National Planning Policy Framework.

34. Details of any cranes to be operated on the site during construction works, including their height and area of operation, shall be submitted for the written approval of the local planning authority at least 28 days prior to any crane being brought onto the site. All crane operations shall be carried out in accordance with the approved details.

Reason: In order to ensure that the development does not pose any unacceptable risk to aerodrome safeguarding in accordance with the requirements of the National Planning Policy Framework.

35. There shall be no on site works, including any heavy vehicular movements and deliveries to/from the site, between the hours of:
- a) 07:30 - 18:00 Monday to Friday.
  - b) 07:30 - 13:00 Saturday.
  - c) No on site works on Sundays or Bank Holidays.

Reason: In order to ensure that appropriate measures are put in place to limit noise, nuisance and disturbance to the occupiers of neighbouring properties during the construction of the development in accordance with the requirements of Fylde Borough Local Plan (As Altered)

October 2005 policies HL2 and EP27, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

36. Unless permission to vary this condition is formally approved in writing by the local planning authority, the development hereby approved shall be carried out in full accordance with the approved drawings and the following supporting documents:

- a) Habitats Regulation Assessment (update October 2017).
- b) Environmental Statement Addendum (Ecology Matters) (TEP, November 2017).
- c) Ecological Assessment (TEP, October 2017).

Reason: To ensure that appropriate measures are put in place to mitigate the development's effects on the Ribble and Alt Estuaries Site of Special Scientific Interest (SSSI), Special Protection Area (SPA), Ramsar site and land which is functionally linked to it in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies EP15 and EP16, Fylde Council Local Plan to 2032 policy ENV2, the National Planning Policy Framework and the Conservation of Habitats and Species Regulations 2017.

37. All garages within the development hereby approved shall be made available for use prior to the occupation of each associated dwelling and be retained with a construction that allows for the parking of a motor vehicle(s).

Reason: To ensure provision and retention of required parking within the development, in accordance with Fylde Borough Local Plan (As Altered) October 2005 policy HL5 and the National Planning Policy Framework.



Development Services Fylde Council		(c) Crown Copyright and database right (2018). Ordnance Survey (100006084).	
Application No. 5/18/0546	Address Land forming Kensington Developments Site, Queensway, Lytham St Annes	Grid Ref. E.3336 : N.4303	Scale 0 25 50 75 100 m 

**Item Number:** 8

**Committee Date:** 10 October 2018

<b>Application Reference:</b>	18/0567	<b>Type of Application:</b>	Variation of Condition
<b>Applicant:</b>	James Hall and Company Limited	<b>Agent :</b>	Smith and Love Planning Consultants Ltd
<b>Location:</b>	SPAR, TOWNSENDS GARAGE, 184 LYTHAM ROAD, BRYNING WITH WARTON, PRESTON, PR4 1AH		
<b>Proposal:</b>	APPLICATION TO VARY CONDITION 4 OF PLANNING PERMISSION 16/0823 TO ALLOW THE SALE OF CONVENIENCE GOODS FROM THE RETAIL UNIT 24 HOURS A DAY BY PERMITTING: (1) EXTENDED TRADING HOURS BETWEEN 05:30 AND 23:00 WITHIN THE RETAIL UNIT; AND (2) PAYMENTS VIA A NIGHT SERVICE WINDOW ON SOUTHWEST CORNER OF BUILDING BETWEEN 23:00 AND 05:30		
<b>Ward:</b>	WARTON AND WESTBY	<b>Area Team:</b>	Area Team 1
<b>Weeks on Hand:</b>	10	<b>Case Officer:</b>	Matthew Taylor
<b>Reason for Delay:</b>	Need to determine at Committee		

**If viewing online this is a Google Maps link to the general site location:**

<https://www.google.co.uk/maps/@53.7501019,-2.8954655,277m/data=!3m1!1e3?hl=en>

**Summary of Recommended Decision:** Grant

#### **Summary of Officer Recommendation**

The application relates to the SPAR retail unit and Petrol Filling Station (PFS) fronting onto the A584 (Lytham Road), Warton. Although the PFS is already permitted to sell petrol 24 hours a day, 7 days a week via a 'pay at pump' facility on the forecourt, the operating hours of the retail unit are restricted to between 07:00 and 23:00.

This application is submitted under S73 of the Town and Country Planning Act and seeks to extend the existing opening hours of the retail unit in order to allow the sale of convenience goods 24 hours a day by permitting:

- Extended trading hours between 05:30 and 23:00 within the retail unit; and
- Payments via a night service window on the southwest corner of the building outside these hours (i.e. between 23:00 and 05:30).

The main issue in this case relates to the impact of the extended opening hours on the amenity of neighbouring residential occupiers with respect to the potential for added noise and disturbance. Any added effects in this regard must, however, be considered in the context of existing forecourt activity associated with the 24 hour operation of the PFS and current background noise levels along the thoroughfare of Lytham Road.

It is acknowledged that the extended opening hours of the retail unit have the potential to give rise to added noise and disturbance for the occupiers of nearby residential properties due to increased customer comings and goings during the night time and early morning periods. The applicant has, however, undertaken an assessment to monitor existing

background noise levels and measure noise associated with present forecourt activities including car engines, stereos, door slams and customer conversations. The evidence presented in the noise assessment (which is not disputed by the Council's EHO) demonstrates that, even in the worst case scenario, sound levels from these comings and goings are unlikely to result in any greater disamenity effects in comparison to passing road traffic along the built-up thoroughfare of Lytham Road when considered against World Health Organisation (WHO) guidelines.

Therefore, there is no compelling evidence to suggest that the proposed extension of opening hours (including trade via a night service window for the largest part of the most sensitive hours of operation) would give rise to increased noise emissions above and beyond existing background noise in the area such that it would have an unacceptable impact on the amenity of neighbouring residents through added noise disturbance during unsocial hours. Accordingly, the proposed variation of opening hours is not considered to be in conflict with the requirements of FBLP policies SH11 and EP27, SLP policy GD7 or the NPPF.

### **Reason for Reporting to Committee**

The application is recommended for approval by officers and the Parish Council has submitted representations in objection to the application.

### **Site Description and Location**

The application relates to the SPAR supermarket and Petrol Filling Station (PFS) fronting onto the A584 (Lytham Road), Warton. The retail unit is the southernmost premises incorporated within a larger building used as a vehicle repair garage (J Townsend & Sons) which extends to the north. The SPAR store has a large shop front to its southern elevation which faces over the forecourt of the 12-pump PFS. The façade is split into two sections: (i) a glazed shop front to the western half; and (ii) a brick elevation to the eastern half which includes an ATM. Petrol pumping stations are sheltered by a freestanding, open-sided canopy with a flat roof supported by equidistantly spaced stanchions. The site has been recently redeveloped in line with a designation on the Fylde Borough Local Plan (As Altered) October 2005 Proposals Map which allocates the site for a shopping and community facility.

The external areas of the site include the forecourt of the PFS to the south of the SPAR which merges with hardstanding areas to the east and west that provide access through the site via two separate vehicle entrance and exits points off Lytham Road. The access arrangement is intended to provide a notional 'one-way' system where vehicles enter to the southwest and exit to the southeast back onto the A584 (though there is no specific signage to indicate this). Parking for the SPAR store is located within marked bays to the far western (alongside a primary school) and eastern (alongside a bungalow at 176 Lytham Road) boundaries, with 3 additional spaces being positioned immediately to the west side of the building.

Surrounding uses include a mix of dwellings on Lytham Road and The Orchard to the east and south and non-residential premises including a primary school to the west, the attached vehicle repair garage to the north and offices at BAE Systems on the opposite side of Lytham Road to the south. Those adjoining the site immediately to the east include a mix of bungalows and two storey dwellings separated from the site by a combination of garden fencing and hedge planting of varying height but reaching up to *circa* 2m. Bungalows and two storey dwellings opposite the site accesses generally have low boundary treatments onto Lytham Road.

### **Details of Proposal**

Planning permission for the SPAR, PFS and vehicle repair garage was granted pursuant to planning permission 15/0016. This permission was the subject of a S73 application for a Minor Material Amendment to allow design changes to the originally approved building under application reference 16/0823. The planning permission granted as part of application 16/0823 has now been implemented and so it is the conditions on that permission (rather than 15/0016) under which the current site operates.

Condition 4 of planning permission 16/0823 relates to the opening hours of the retail unit (and, laterally, the PFS) and reads as follows:

*“Other than any direct sales of petrol at individual pumping stations (e.g. a ‘pay at pump’ facility), the retail unit hereby approved shall only be open for trade or business between the hours of 07:00 and 23:00 Monday to Sunday (inclusive), and deliveries of goods to the site shall only take place between 07:00 and 20:00.*

*Reason: In order to safeguard the amenity of surrounding occupiers and to limit the potential for noise and disturbance in accordance with the requirements of Fylde Borough Local Plan policies SH11 and EP27, and the National Planning Policy Framework.”*

This application is submitted under S73 of the Town and Country Planning Act and seeks permission to vary condition 4 of planning permission 16/0823 in order to allow the sale of convenience goods from the retail unit 24 hours a day by permitting:

- Extending trading hours between 05:30 and 23:00 within the retail unit; and
- Payments via a night service window on the southwest corner of the building outside these hours (i.e. between 23:00 and 05:30).

Accordingly, if this application were approved, condition 4 would be varied to read as follows:

“The retail unit hereby approved shall only be open for the sale of goods (including petrol) within the premises between the hours of 05:30 and 23:00. Any sales of goods (including petrol) between the hours of 23:00 and 05:30 shall only take place via: (i) direct sales of petrol at individual pumping stations (e.g. a ‘pay at pump’ facility); or (ii) the night service window on the southwest corner of the retail unit. There shall be no admittance of customers within the retail unit between the hours of 23:00 and 05:30 and deliveries of goods to the site shall only take place between 07:00 and 20:00 hours.”

### **Relevant Planning History**

<b>Application No.</b>	<b>Development</b>	<b>Decision</b>	<b>Date</b>
18/0079	ADVERTISEMENT CONSENT FOR DISPLAY OF ILLUMINATED FASCIA SIGN TO BUILDING. 1 X 7M ILLUMINATED TOTEM SIGN, 6 X SPREADER PANELS, 3 X PARKING SIGNS, 6 X FREESTANDING LEADER BOARDS AND 14 X PUMP NUMBERS. ALL ASSOCIATED WITH RE-DEVELOPED PETROL STATION	Granted	23/03/2018



17/0755	NON-MATERIAL AMENDMENT TO PLANNING PERMISSION 16/0823 TO INTRODUCE MINOR DESIGN CHANGES TO REDEVELOPMENT OF PETROL FILLING STATION INCLUDING RELOCATION OF PARKING AREAS, RELOCATION OF TANKER STAND, PROVISION OF DELIVERY DOOR AND ACCESS TO SIDE OF BUILDING AND INTRODUCTION OF ATM TO FRONT	Granted	03/10/2017
17/0712	APPLICATION TO DISCHARGE DETAILS ASSOCIATED WITH CONDITION 3 (MATERIALS) ON PLANNING PERMISSION 16/0823	Advice Issued	03/10/2017
16/0823	MINOR MATERIAL AMENDMENT TO PLANNING PERMISSION 15/0016 TO REVISE DESIGN OF REDEVELOPED PETROL FILLING STATION STORE / CANOPY, AND VEHICLE REPAIR BUILDING TO REAR	Granted	13/12/2016
15/0698	APPLICATION TO DISCHARGE CONDITIONS 3, 6, 7, 8 AND 9 OF PLANNING PERMISSION 15/0016 IN RELATION TO WORKSHOP DEVELOPMENT (PHASE I)	Advice Issued	07/01/2016
15/0016	REDEVELOPMENT OF PETROL FILLING STATION WITH EXTENSIONS TO FORECOURT SHOP TO FORM EXTENDED RETAIL STORE (USE CLASS A1) WITH OFFICE AND STORAGE, EXTENSION OF CAR SERVICE AND REPAIRS BUILDING TO REAR, ERECTION OF REPLACEMENT PETROL FILLING STATION CANOPY, AND INSTALLATION OF REPLACEMENT UNDERGROUND TANKS AND PUMPS	Granted	09/07/2015

### **Relevant Planning Appeals History**

None

### **Parish/Town Council Observations**

***Bryning with Warton Parish Council:*** Notified of the application on 01.08.18 and comment (24.09.18) as follows:

- The Parish Council object to the proposal and recommend refusal.
- An intrinsic element of the Bryning with Warton Neighbourhood Plan was 'Preserving the rural character of the village' and 'Maintain and protect its integrity'. Granting of this proposal would fundamentally change the late evening and night time dynamics of the village by provision of 'off sales' retail goods beyond 23:00 hrs and through the night.
- Obviously economic projection by the company indicates sales would be sufficiently viable to cover staffing costs so while initially only a small minority may avail themselves of the service, in time this would escalate and encourage traffic that would not normally travel into or through the village during the early hours. The Parish Council does not feel the provision of this service is necessary or justifies the potential nuisance to local residents. Any local economic benefits would be outweighed by the traffic nuisance.
- It would also have implications in setting a dangerous precedent for retail competition in reasonable proximity without the provision of fuel availability (i.e. Tesco's, Lytham Road). The planning authority would not be able to justify restriction of an extension to their trading hours if retail goods sales were available just down the road.

## **Statutory Consultees and Observations of Other Interested Parties**

**Environmental Health Officer (EHO)** – No objections. Comments as follows:

- I reviewed the documentation submitted and have no objections to the proposals.

## **Neighbour Observations**

<b>Neighbours notified:</b>	1 August 2018
<b>Site notice posted:</b>	15 August 2018
<b>Press notice:</b>	N/A
<b>Amended plans notified:</b>	N/A
<b>No. Of Responses Received:</b>	Two
<b>Nature of comments made:</b>	Two objections

The appropriate neighbouring properties were notified of the application by letter and a site notice was posted. Two letters have been received in objection to the application. The points made in the letters are summarised as follows:

- Warton is a small rural village and there is no real justification to serve the local community 24 hours a day.
- The extension in opening hours would cause extra noise pollution. Residents are already disturbed at unreasonable hours (i.e. after 10pm and before 6am) by alarms from the self-service car wash, car doors slamming throughout the night, car alarms and locking up of larger metal bins within the external storage area. If the retail unit is allowed to open 24 hours a day, there would be a significant increase in existing noise levels generated by these operations at unsocial hours and additional disturbances from 'walk in' customers chatting, more of an issue with car alarms 'going off' and an increase in individuals slamming car doors. These effects would be particularly bad for residents facing and/or adjacent to the site where windows are orientated towards the unit and need to be kept open in the summer months.
- The extended opening hours would diminish the health and quality of life of neighbouring residents due to added noise and disturbance 24 hours a day causing sleep deprivation.
- The proposal would have a negative impact on the value of surrounding properties.

## **Relevant Planning Policy**

Paragraph 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that development proposals are determined in accordance with the development plan unless material considerations indicate otherwise. At present, the statutory adopted development plan for Fylde comprises the saved policies of the Fylde Borough Local Plan (As Altered) 2005 (the 'FBLP'). In addition, as the site falls within the Bryning with Warton Neighbourhood Development Plan (BWNP) area, the Neighbourhood Plan also forms part of the Development Plan in this case.

Fylde Borough Council submitted the "Fylde Council Local Plan to 2032" – the Emerging Local Plan (referred to hereafter as the 'Submission Local Plan' or 'SLP') – to the Secretary of State for examination on 9 December 2016. An Inspector appointed to undertake an independent examination into the soundness of the SLP held three sessions of examination hearings in March, June and December 2017. The Inspector confirmed that the Stage 3 hearings formally closed on 11 January 2018. Following those hearings a 'Schedule of Proposed Main Modifications for Consultation' was produced and the Council consulted on the "Fylde Local Plan to 2032 - Schedule of Proposed Main Modifications" between 8 February and 22 March 2018. This consultation also

included a number of Additional Modifications to the SLP. These do not concern the Plan's policies or affect the soundness of SLP, but are factual updates of the supporting text. A Schedule of Proposed Policies Map modifications was also consulted on for clarity with respect to some of the main modifications.

The Planning Inspectorate issued a letter to the Council on 18<sup>th</sup> September 2018 confirming that the Fylde Council Local Plan to 2032 (as modified) has been found sound and can be adopted by the Council at its discretion. Specifically, the Local Plan Inspector confirms at paragraph 216 of her report "that with the recommended main modifications set out in the Appendix the Fylde Council Local Plan satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework." Accordingly, the SLP (as modified) has been found sound and can be progressed for adoption without delay. It is anticipated that the Fylde Council Local Plan to 2032 will be formally adopted by the Council by the end of October and, at that point, it will replace the FBLP as the Development Plan for the Borough, which should guide decision taking. For the avoidance of doubt, references to the SLP in the remainder of the report refer to the most up-to-date (modified) version of the Fylde Council Local Plan to 2032 which has been found sound by the Inspector.

Given the above, and although the SLP has not yet been formally adopted by the Council (and, accordingly, is not yet part of the statutory development plan) it is considered that substantial weight should be afforded to it in the decision making process in accordance with the provisions of paragraph 48 of the NPPF.

#### **Fylde Borough Local Plan:**

SP01	Development within settlements
EMP3	Business & industrial uses outside defined area
EMP4	Buffer zones and landscaping
SH10	New dev. in local shopping centres & new village shops
SH11	Local service centre (Warton)
EP08	Shop fronts
EP27	Noise pollution

#### **Fylde Local Plan to 2032:**

S1	Proposed Settlement Hierarchy
DLF1	Development Locations for Fylde
SL3	Warton Strategic Location for Development
GD1	Settlement Boundaries
EC1	Overall Provision of Empty Land and Existing Sites
EC2	Employment Opportunities
GD7	Achieving Good Design in Development
EC5	Vibrant Town, District and Local Centres
CL1	Flood Alleviation, Water Quality and Water Efficiency
CL2	Surface Water Run-Off and Sustainable Drainage
ENV1	Landscape

#### **Other Relevant Policy:**

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance

#### **Bryning with Warton Neighbourhood Development Plan (BWNP):**

BWLC1 – Shops and Services  
BWNE2 – Protecting and Enhancing Local Character and Landscape  
BWNE3 – Design to Reduce Surface Water Run Off

### **Environmental Impact Assessment**

The development is of a type listed within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, but does not exceed the threshold in column 2 of the table relating to category 10(b) developments. Accordingly, it is not Schedule 2 development and is not EIA development.

### **Comment and Analysis**

#### **Background and principle of development:**

The principle of mixed retail/employment development on the site has been established through the granting of planning permissions 15/0016 and 16/0823. The employment development to the north of the site has been implemented pursuant to planning permission 15/0016, including application 15/0698 which discharged conditions 3, 6, 7, 8 and 9 of that permission in relation to the workshop (phase 1) development. Conversely, the retail unit which is the subject of this application has been implemented pursuant to planning permission 16/0823, alongside applications 17/0712 (which discharged condition 3 of that permission) and 17/0755 (which sought a non-material amendment to design elements of the approved scheme).

Paragraphs 013 – 018 of the “flexible options for planning permissions” chapter to the NPPG relate to “amending the conditions attached to a permission including seeking minor material amendments (application under Section 73 TCPA 1990)”. Paragraph 15 of the NPPG makes clear that a grant of a S73 application is, in effect, the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended.

Whilst applications to vary conditions on an extant permissions are to be determined in accordance with S38 (6) of the Planning and Compulsory Purchase Act 2004, given the implementation of planning permissions 15/0016 and 16/0823, it follows that attention should be focussed on national or local policies or other material considerations that have changed since the original grant of permission, as well as the effects of the proposed changes sought to the wording of condition 4 which relates only to the opening hours of the retail unit and the means by which petrol is sold from the PFS outside these hours. Given the grant of planning permissions 15/0016 and 16/0823, the principle of development on the site has already been established and this is not a matter to be revisited as part of the S73 application.

Application 16/0823 was granted on 13 December 2016. Although the statutory, adopted development plan for Fylde remains the same (the FBLP), the SLP is at a much more advanced stage of preparation and, accordingly, it should be afforded substantial weight in the decision making process (though it does not yet have ‘development plan’ status). The BWNP was adopted on 24 May 2017 and is also part of the development plan. In addition, the Ministry of Housing, Communities and Local Government published the revised NPPF in July 2018. Accordingly, there have been material changes in both local and national planning policy since the issuing of planning permission 16/0823.

While any grant of permission would, in effect, result in the issuing of a new planning permission,

given the advice in the NPPG it follows that consideration only needs to be given to those elements of the scheme which differ from the previous approval, along with any effects of the abovementioned changes in policy since the issuing of the previous decision. As planning permission 16/0823 has been implemented these changes in policy are, however, only relevant insofar as they relate to the proposed variation of condition 4 concerning the retail unit's hours and means of operation.

#### Effects of the proposed variation to condition 4:

Condition 4 of planning permission 16/0823 presently allows the direct sale of petrol from the pumping stations on the forecourt via a 'pay at pump' facility 24 hours a day, 7 days a week. Sales of goods (including petrol) from within the retail unit are, however, prohibited between the hours of 23:00 and 07:00, with deliveries of goods also restricted to between 07:00 and 20:00 hours.

The application seeks to vary condition 4 in order to allow 24 hour, 7 day a week trading for the retail unit, though it is proposed to restrict the means by which the sale of goods (including petrol) can take place during certain hours. Specifically, customers would only be permitted to enter the retail unit between the hours of 05:30 and 23:00. Any trade conducted outside these hours would be either via the currently permitted 'pay at pump' facility or through transactions at a night service window which is already in place on the southwest corner of the shop front.

The reason for imposing condition 4 of planning permission 16/0823 was to "safeguard the amenity of surrounding occupiers and to limit the potential for noise and disturbance". Accordingly, the main issue in this case is whether the extended opening hours for trade within and outside the retail unit are likely to give rise to an unacceptable impact on the amenity of neighbouring occupiers by reason of added noise disturbance. As petrol can already be sold at pumping stations 24 hours a day, 7 days a week and in the context of the retail unit's existing opening hours, the main impacts to consider are:

- The effects of additional customer comings and goings within the retail unit between the hours of 05:30 and 07:00.
- The added effects of customer visits to the night service window on the southwest corner of the retail unit between the hours of 23:00 and 05:30.

Given the timing of the above customer visits and the nature of surrounding uses, the most sensitive receptors in this regard are dwellings that border and/or neighbour the site to the east and south on Lytham Road and The Orchard.

FBLP policy SH11 relates to the development of a foodstore within this area of Warton. Criterion (2) of the policy indicates that such development will be permitted provided that it "would not be detrimental to the amenities of adjacent or nearby residents".

In terms of noise, FBLP policy EP27 states that development which would unnecessarily and unacceptably result in harm by way of noise pollution will not be permitted.

In addition, BWNP policy BWLC1 states that proposals for local needs retail uses will be supported within the settlement boundary subject to developments demonstrating that they will not harm local character, residential amenity or highway safety.

SLP policy GD7 set out a series of principles to guide new developments. Criteria (c) and (h) of the policy indicate that developments should:

- Ensure that amenity will not be adversely affected by neighbouring uses, both existing and

proposed.

- Be sympathetic to surrounding land uses and occupiers.

Paragraph 170 (e) of the NPPF states that planning policies and decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of noise pollution.

In addition, paragraph 180 (a) indicates that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- Mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life.

The application is accompanied by a noise assessment which includes measurements of existing ambient and background noise levels at the closest neighbouring dwelling (no. 176 Lytham Road) and of noise levels from events associated with customer comings and goings to the premises including car engine noise, car door slams, audio systems and customer conversations. The noise assessment uses this data to predict the potential impact of noise from these activities on surrounding occupiers during the extended opening hours proposed. The assessment makes the following conclusions in this regard:

- WHO Guidelines (1999) recommend that to avoid sleep disturbance, indoor night-time guideline noise values of 30 dB<sub>L<sub>Aeq</sub></sub> for continuous noise and 45 dB<sub>L<sub>A</sub>F<sub>max</sub></sub> for individual noise events should be applicable. The number of individual noise events should also be taken into account and the WHO guidelines suggest that indoor noise levels from such events should not exceed approximately 45 dB<sub>L<sub>A</sub>F<sub>max</sub></sub> more than 10 – 15 times per night. The guidelines go on to state that to protect the majority of individuals from moderate annoyance, external noise levels should not exceed 50 dB<sub>L<sub>Aeq</sub></sub>.
- Background and ambient noise measurements were taken at a location within the site approximately 3.5m from the boundary fence with no. 176 Lytham Road between 01:00 and 03:00 on Saturday 24.06.18. These times are considered to be representative of the period during which the existing residential receptor would be subject to the lowest levels of ambient noise.
- Existing noise sources include: (i) frequent individual vehicle pass-by events on Lytham Road; (ii) occasional users of the forecourt to turn around or use ATM; (iii) a constant broadband fan noise from the existing SPAR; and (iv) door slams and other events measured during use of the forecourt.
- During the survey, the site was passed approximately 100 times by vehicles on Lytham Road. The L<sub>A</sub>F<sub>MAX</sub> values measured during these pass-by events varied between 60 dB and 68 dB. An open window in the closest façade would be expected to deliver approximately 15 dB of attenuation. Therefore it is likely that, if open window ventilation is utilised, existing vehicle pass by events would result in internal L<sub>A</sub>F<sub>MAX</sub> levels above the 45dB threshold for peak noise events given in WHO guidance.
- **Car door slams** – The L<sub>A</sub>F<sub>MAX</sub> events occurring in the forecourt area in front of the SPAR will not be above the internal WHO criteria. Those events occurring in the car parking spaces immediately adjacent to the edge of the site, approximately 5.0 m from the receptor, could potentially exceed the WHO 45dB L<sub>A</sub>F<sub>MAX</sub> criteria. However, the forecourt area is large

enough to accommodate multiple parked vehicles at any one time and with the relatively low numbers of customers during the night time extended operational hours, it is unlikely that the parking spaces adjacent to the receptor will be used frequently.

- **Conversation and car stereo noise** – Conversation observed in the forecourt area, close to the ATM and fuel pumps was audible at the measurement position, however it was not at a sufficient level to exceed the background noise level which was dominated by existing industrial plant. While there will be variations depending on the user and type of audio equipment, music played at a comfortable level within a vehicle parked 5m from the monitoring location was audible but not above the background noise level. Considering the constant level of noise at the receptor due to existing sources, it is not considered likely that conversation or stereo noise will be a significant impact at the receptor. Furthermore, such noise events are already part of the ambient noise environment from users of the ATM.
- **Car engines** – An assessment of predicted internal noise, considering attenuation through an open window and the existing fence-line indicates that vehicle arrival into the spaces adjacent to the receptor location are not identified as being a significant impact and are below WHO  $L_{AFMAX}$  guidelines.

The monitoring undertaken in the noise assessment indicates that passing vehicle traffic on Lytham Road and other vehicles using the 24 hour services already offered on the forecourt accounted for the majority of  $L_{AFMAX}$  events (those giving rise to a sudden, sharp difference in sound level), with background noise (measured as a constant over a longer time period) dominated by an existing fan on the façade of the SPAR. Of the typical events associated with customer comings and goings that were examined, only car door slamming in the spaces adjacent to no. 176 are expected to result in an exceedance (by +1 dB) of the 45 dB  $L_{AFMAX}$  criteria. However, the assessment indicates that absolute level of door slam events is similar to the existing  $L_{AFMAX}$  events from vehicles passing on Lytham Road.

The noise assessment has been appraised by the Council's EHO who does not dispute its methodology or conclusions. Accordingly, the EHO raises no objections to the proposed variation in opening hours. While it is recognised that the noise assessment predicts a minor exceedance of WHO guidelines for  $L_{AFMAX}$  events associated with door slamming in the parking spaces located along the eastern site boundary immediately adjacent to no. 176 Lytham Road, the point is also made that the size of the forecourt, along with the relatively low number of visits to the site at these times and the availability of other parking to the western end of the site in closer proximity to the night service window on the southwest corner of the building is likely to direct traffic (and, laterally, door slam events) to the western part of the site and away from neighbouring dwellings to the east. While it is recognised that there are other residential receptors opposite the forecourt to the south, the noise assessment has also found that  $L_{AFMAX}$  noise from passing road traffic is similar to that from passing road traffic on the A584 which will occur more frequently than visits to the retail unit.

It is acknowledged that the extended opening hours of the retail unit have the potential to give rise to added noise and disturbance for the occupiers of residential properties surrounding the site due to increased customer comings and goings during the night time and early morning periods. However, the evidence presented in the noise assessment (which is not disputed by the Council's EHO) demonstrates that, even in the worst case scenario, sound levels from these comings and goings are unlikely to result in any greater disamenity effects in comparison to passing road traffic along the built-up thoroughfare of Lytham Road when considered against WHO guidelines.

It must also be kept in mind that the PFS already has consent to operate 24 hours a day, 7 days and week via a 'pay at pump' facility and, accordingly, noise from car engines, stereos, door slams and

customer conversations will already arise from those permitted operations. Given that context, there is no compelling evidence to suggest that the proposed extension of opening hours (including trade via a night service window for the largest part of the most sensitive hours of operation) would give rise to a level of increased noise emissions above and beyond existing background noise in the area such that it would have an unacceptable impact on the amenity of neighbouring residents through added noise disturbance during unsocial hours. Accordingly, the proposed variation of opening hours is not considered to be in conflict with the requirements of FBLP policies SH11 and EP27, SLP policy GD7 or the NPPF.

#### Other matters:

#### *Conditions:*

With respect to imposing conditions on S73 applications, paragraph 015 of the “flexible options for planning permissions” chapter to the NPPG advises that:

- “To assist with clarity decision notices for the grant of planning permission under section 73 should also **repeat the relevant conditions from the original planning permission, unless they have already been discharged.**”
- “As a section 73 application cannot be used to vary the time limit for implementation, **this condition must remain unchanged from the original permission.**”

In this case, planning permission 16/0823 has been implemented and, likewise, applications to discharge several planning conditions (applications 15/0698 and 17/0712) have been approved and implemented. In these circumstances there is no need to re-impose conditions 1 (time limit), 3 (materials), 6 (boundary treatments), 7 (construction of parking spaces) and 8 (landscaping) as these have already been complied with. Condition 2 (approved plans) should be updated to include reference to the revised plans for the retail unit permitted as part of NMA application 17/0755, condition 4 (opening hours for the retail unit) has been varied through this S73 application, condition 5 (opening hours for the workshop) has been re-imposed without amendment, as has condition 9 (external lighting) as this will be relevant to any additional lighting installed at a future date.

Notwithstanding the conclusions in the previous section concerning noise impacts associated with customer comings and goings, residents’ concerns regarding the late night/early evening use of the jet washing bays to the west side of the building are noted and it is recognised that the use of this apparatus was not included as part of the noise assessment. Accordingly, it is considered expedient to impose a separate condition that prevents the use of the jet washing bays during the extended opening hours permitted for the sale of retail goods and petrol in order to distinguish this specific operation from others that can take place during the extended hours. Therefore, a condition has been added to limit the use of the jet washing bays to the west side of the building to the current opening hours referred to in condition 4 of planning permission 16/0823 (i.e. between 07:00 and 23:00).

#### Conclusions

The application relates to the SPAR retail unit and Petrol Filling Station (PFS) fronting onto the A584 (Lytham Road), Warton. Although the PFS is already permitted to sell petrol 24 hours a day, 7 days a week via a ‘pay at pump’ facility on the forecourt, the operating hours of the retail unit are restricted to between 07:00 and 23:00.

This application is submitted under S73 of the Town and Country Planning Act and seeks to extend



the existing opening hours of the retail unit in order to allow the sale of convenience goods 24 hours a day by permitting:

- Extended trading hours between 05:30 and 23:00 within the retail unit; and
- Payments via a night service window on the southwest corner of the building outside these hours (i.e. between 23:00 and 05:30).

The main issue in this case relates to the impact of the extended opening hours on the amenity of neighbouring residential occupiers with respect to the potential for added noise and disturbance. Any added effects in this regard must, however, be considered in the context of existing forecourt activity associated with the 24 hour operation of the PFS and current background noise levels along the thoroughfare of Lytham Road.

It is acknowledged that the extended opening hours of the retail unit have the potential to give rise to added noise and disturbance for the occupiers of nearby residential properties due to increased customer comings and goings during the night time and early morning periods. The applicant has, however, undertaken an assessment to monitor existing background noise levels and measure noise associated with present forecourt activities including car engines, stereos, door slams and customer conversations. The evidence presented in the noise assessment (which is not disputed by the Council's EHO) demonstrates that, even in the worst case scenario, sound levels from these comings and goings are unlikely to result in any greater disamenity effects in comparison to passing road traffic along the built-up thoroughfare of Lytham Road when considered against World Health Organisation (WHO) guidelines.

Therefore, there is no compelling evidence to suggest that the proposed extension of opening hours (including trade via a night service window for the largest part of the most sensitive hours of operation) would give rise to increased noise emissions above and beyond existing background noise in the area such that it would have an unacceptable impact on the amenity of neighbouring residents through added noise disturbance during unsocial hours. Accordingly, the proposed variation of opening hours is not considered to be in conflict with the requirements of FBLP policies SH11 and EP27, SLP policy GD7 or the NPPF.

### **Recommendation**

That Planning Permission be GRANTED subject to the following conditions (or any amendment to the wording of these conditions or additional conditions that the Head of Planning & Regeneration believes is necessary to make otherwise unacceptable development acceptable):

1. This permission relates to the following plans:
  - Site location plan received 8th January 2015.
  - Drawing no. P-03 B – Site Plan - Landscaping.
  - Drawing no. P-04 B – Elevations.
  - Drawing no. P-05 B – Site plan.
  - Drawing no. BR-24 Rev A – Proposed site plan (approved by application 17/0755)
  - Drawing no. BR-02 Rev C – Proposed elevations (approved by application 17/0755)
  - Drawing no. BR-01 Rev C – Proposed floor plan (approved by application 17/0755)
  - Drawing no. BR25 – Bin, plant and access slope (approved by application 17/0755)

The development shall be carried out in complete accordance with the approved drawings.

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development in accordance with the policies contained within the Fylde Borough Local Plan (As Altered) October 2005, Fylde Council Local Plan to 2032 (Submission Version) and the National Planning Policy Framework.

2. The retail unit hereby approved shall only be open for the sale of goods (including petrol) within the premises between the hours of 05:30 and 23:00. Any sales of goods (including petrol) between the hours of 23:00 and 05:30 shall only take place via: (i) direct sales of petrol at individual pumping stations (e.g. a 'pay at pump' facility); or (ii) the night service window on the southwest corner of the retail unit. There shall be no admittance of customers within the retail unit between the hours of 23:00 and 05:30, and deliveries of goods to the site shall only take place between 07:00 and 20:00 hours.

Reason: To minimise the potential for noise nuisances and disturbance to surrounding occupiers arising from customer comings and goings at unsocial hours in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies SH11 and EP27, Bryning with Warton Neighbourhood Development Plan policy BWLC1, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

3. Notwithstanding the provisions of condition 2 of this permission, the jet washing bays located to the west side of the retail unit hereby approved shall only be used between the hours of 07:00 and 23:00 on any day.

Reason: To distinguish the use of the jet washing bays from the hours of operation permitted in connection with the retail use in order to ensure that forecourt operations which have the potential to generate significant levels of noise that were not accounted for in the noise assessment by Miller Goodall LTD (Report No. 101871) are adequately controlled and do not take place during unsocial hours, in the interests of safeguarding the amenity of occupiers of nearby residential properties in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies SH11 and EP27, Bryning with Warton Neighbourhood Development Plan policy BWLC1, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

4. The workshop hereby approved shall only be open for trade or business between the hours of 08:00 and 18:00 Monday to Friday (inclusive) and between 08:00 and 13:00 on Saturdays.

Reason: In order to safeguard the amenity of surrounding occupiers and to limit the potential for noise and disturbance in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies SH11 and EP27, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.

5. Full details of any additional external lighting to be installed on any of the buildings hereby approved shall be submitted to and approved in writing by the Local Planning Authority prior to its installation. Such details shall include its position and height on the building, its luminance (including light spillage), angle of installation and any hoods to be fixed to the lights. Only lighting as approved shall be installed on the buildings in accordance with the terms of any such approval.

Reason: To ensure that any lighting to be installed on the buildings does not cause a nuisance to surrounding occupiers in accordance with the requirements of Fylde Borough Local Plan (As Altered) October 2005 policies SH11, EMP3 and EMP4, Fylde Council Local Plan to 2032 (Submission Version) policy GD7 and the National Planning Policy Framework.



Development Services Fylde Council		(c) Crown Copyright and database right (2018). Ordnance Survey (100006084).	
Application No. 5/18/0567	Address SPAR, Townsends Garage, 184 Lytham Road, Warton	Grid Ref. E.3410 : N.4285	Scale 0 6 12 18 24 m 

**Item Number:** 9

**Committee Date:** 10 October 2018

<b>Application Reference:</b>	18/0684	<b>Type of Application:</b>	Variation of Condition
<b>Applicant:</b>	Mr & Mrs WARD	<b>Agent :</b>	MAT DESIGN
<b>Location:</b>	FAIR BANK, FLEETWOOD ROAD, GREENHALGH WITH THISTLETON, PRESTON, PR4 3HJ		
<b>Proposal:</b>	VARIATION OF CONDITION 2 OF PLANNING PERMISSION 17/0966 TO REVISE APPROVED SITE LAYOUT TO RELOCATE STATIC CARAVANS AND OTHER ELEMENTS WITHIN SITE		
<b>Ward:</b>	SINGLETON AND GREENHALGH	<b>Area Team:</b>	Area Team 2
<b>Weeks on Hand:</b>	6	<b>Case Officer:</b>	Andrew Stell
<b>Reason for Delay:</b>	Not applicable		

**If viewing online this is a Google Maps link to the general site location:**

<https://www.google.co.uk/maps/@53.8206433,-2.9005666,277m/data=!3m1!1e3?hl=en>

**Summary of Recommended Decision:** Grant

#### **Summary of Officer Recommendation**

The application relates to a residential dwelling that was formerly a farmhouse and is located off Fleetwood Road in Greenhalgh. Planning permission was granted at the site earlier in 2018 for the establishment of two pitches within the curtilage to the property to each provide for a static caravan and a touring caravan. The static caravans were to be each occupied by the family of the occupier of the property. This is to allow them to be able to provide for his care needs, and those of his family, as the applicant suffered catastrophic injuries some years ago in a road accident and requires lifetime care as a result.

This application seeks to revise the location and confirm the size of the static caravans, and so is submitted as a 'minor material amendment' to the existing planning permission under section 73 of the Town and Country Planning Act.

The changes introduced are minor in scale and do not involve any intensification of the use of the site or any undue harm to the rural landscape. As such it is recommended that the application be approved and planning permission granted for the revised layout. The previously imposed conditions personalising the planning permission and controlling the scale and number of caravans are proposed to be repeated, with those relating to the drainage and refuse arrangement revised as satisfactory details of these elements have been provided in this submission.

#### **Reason for Reporting to Committee**

The Parish Council have recommended refusal of the application and so it is appropriate that it be determined by the Planning Committee rather than under delegated powers.

### **Site Description and Location**

The application property is a detached dwelling located on the western side of the A585 Fleetwood Road around 1.8km north of the M55 junction. It is a detached dwelling that was formally a farm house and has been extended into an attached barn but remains as a single dwelling. There is a vehicle access and driveway to the A585 and a row of mature Leylandii trees on the road side. In common with many such farm dwellings the garden merges into an area where a series of outbuildings are sited that are generally timber construction and in poor condition and will have been used for storage of machinery, rearing poultry and similar uses in the past.

There is also an area of allotment, a polytunnel and an orchard to the rear part of the site and two dilapidated caravans are currently on site. These areas are all within the red edge to the application site which is rectangular and has a frontage width of around 60m and a depth of around 80m with the dwelling sited in the north east corner of this so that its gable is adjacent to the roadside.

The site is located in the Countryside in the adopted and emerging Local Plans. There is a similar farmhouse type property immediately across Fleetwood Road and a horticultural site with small dwelling to the north. Other surrounding land uses are open fields in agricultural use although there are occasional dwellings in the wider area.

### **Details of Proposal**

Planning permission was granted at the Planning Committee meeting in February 2018 for the use of the site for two static caravans and two trailer caravans to provide ancillary accommodation for family members supporting the residential occupation of the main dwelling. That permission includes a series of conditions, with this application seeking to vary condition 2 which lists the approved plans. This is now a common type of application which allows the details of a permission to be altered and is submitted under s73 of the Town and Country Planning Act 1990 and sometimes known as a 'minor material amendment' application.

The variation sought in this application is to the site layout plan and features four amendments:

- The 2 x static units are now indicated as being to a size of 15.5m x 4m rather than the previous 8m x 4m.
- The 2 x static units are relocated on the site to be positioned set in from the northern boundary hedge on an area of existing hardstanding within the site.
- The 2 touring units are now shown on the plan and are located alongside each other and the northern boundary hedge in a location previously occupied by one of the static units.
- The extension to the dwelling approved under 17/0210 is shown, as are the drainage and refuse arrangements for the site. There is a condition to the planning permission that requires drainage details to be approved and the applicant has supplied this plan in an attempt to address that matter within this decision. A further application to discharge these details, and those required by other conditions, in respect of the original application has also been received and is under consideration as 18/0683.

### **Relevant Planning History**

Application No.	Development	Decision	Date
17/0966	CHANGE OF USE OF EXISTING DOMESTIC CURTILAGE TO ALLOW SITING OF TWO STATIC	Granted	09/02/2018

17/0210	CARAVANS AND TWO TRAILER CARAVANS (TWO PITCHES TOTAL) TO PROVIDE ANCILLARY LIVING ACCOMMODATION FOR USE BY FAMILY MEMBERS PROVIDING DAY-TO-DAY CARE FOR THE OCCUPIERS OF FAIRBANKS FARM APPLICATION FOR PRIOR NOTIFICATION OF SINGLE STOREY REAR EXTENSION OF 6M PROJECTION, WITH 3.94M HEIGHT AND 2.5M EAVES.	Approve Prior Determination	19/04/2017
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### **Relevant Planning Appeals History**

None

### **Parish/Town Council Observations**

**Greenhalgh with Thistleton Parish Council** notified on 28 August 2018 and comment:

*"The parish council recommends REFUSAL of this planning application with respect to the following matters:*

- *The revised plans do not indicate size of static homes and seem 50% larger per unit.*
- *The question of why the location of one unit be moved adjacent to 3 livestock pens is questionable – it would seem this frees land in the original approved location for extra touring caravans which would have an impact on access and egress on an already over-utilised highway.*
- *There is a general question regarding the site usage and infrastructure on the site."*

### **Statutory Consultees and Observations of Other Interested Parties**

None to report.

### **Neighbour Observations**

<b>Neighbours notified:</b>	28 August 2018
<b>Number of Responses</b>	None

### **Relevant Planning Policy**

#### **Fylde Borough Local Plan:**

SP02	Development in countryside areas
HL08	Sites for Gypsies
SP14	Special needs dwellings

#### **Fylde Local Plan to 2032:**

GD4	Development in the Countryside
GD7	Achieving Good Design in Development
H5	Gypsies, Travellers and Travelling Showpeople's Sites

**Other Relevant Policy:**

NPPF:	National Planning Policy Framework
NPPG:	National Planning Practice Guidance

**Site Constraints**

Within countryside area

**Environmental Impact Assessment**

This development does not fall within Schedule 1 or 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

**Comment and Analysis****Principle of Development**

Whilst the site is located in the Countryside under the adopted and emerging Local Plans, the council's decision to grant planning permission 17/0966 is a key material consideration that must be given significant weight in this decision given that it is an extant planning permission that relates to essentially the same development as is proposed here. The Summary to the Committee report to that application explains that the development was to provide

*"Accommodation in the form of two 'pitches' that are each to provide a static caravan and a touring caravan and are to be occupied by close family relatives of the occupier of the dwelling. This accommodation is required to assist the applicant and his immediate family, who will live in Fairbanks Farm, to cope with the day-to-day needs of the applicant and to provide wider family support requirements. This support is required as a consequence of catastrophic and life threatening injuries that the applicant suffered in 2012 which have left him with a very severe head and brain injury that requires 24 hour life-time care.*

*The pitches would be occupied residentially, and the establishment of residential units in the countryside is generally considered to be unacceptable due to the conflict with the adopted and emerging development plan policies that seek to preserve the rural character of such areas. However, the personal circumstances here are significant and must weigh strongly in the planning balance. In addition the form of development is limited in its scale and its visual impact, and does not raise any other planning issues of concern."*

The level of development proposed in this application remains the two pitches each with a static and a touring caravan as previously proposed, and the personal circumstances of the applicant remains as before. Hence the principle of development is acceptable notwithstanding its policy conflict, providing that the changes introduced in the revised layout are acceptable.

**Revised Scale of Static Units**

Application reference 17/0201 did not provide any details of the static units other than indicating where they were to be sited on the site layout plan, with the size shown on that plan being 8m x 4m. The current proposal increases their size on the revised site layout plan to 15.5m x 4m, which is obviously a significant uplift in size.

However, condition 3 of the planning permission is explicit in controlling the size of the static caravans to meet the definition for a caravans as set out in section 29 (1) of the Caravan Sites and Control of Development Act 1960 and section 13(2) of the Caravan Sites Act 1968 (as amended)..

The size of the units shown on the site plan under consideration here will meet that legally defined size and so comply with condition 3 of the existing planning permission. For information the size allowed under that legislation is 18.3m x 6.1m x 3m in height internally. On this basis it is considered that the revisions proposed to the site layout in this respect is acceptable.

#### Revised Location of Static Units

One of the key justifications for supporting the previous application was that the location of the static caravans was set well back from the road and against a tall northern boundary hedge where their visual impact would be limited in the countryside. The revised layout retains their location in the rear part of the site that is set well back from any public view from Fleetwood Road or other off-site locations, but does now separate them from the hedge. However, they remain within a cluster of sheds and other outbuildings associate with the site's farming origins and they will be a similar height to those structures. The revised layout remains one where the positioning of the caravans will not cause any landscape harm and so the revised locations sought are acceptable.

#### Other Changes to Layout

The plan includes the location of the touring caravans. These are against the hedge in the previous location of a static caravan and are of the reduced size for these elements required by condition 3 of the planning permission. As such this element is acceptable.

The foul drainage arrangements for the dwelling and the caravans are shown on the plan and in information provided to application 18/0683. This is a Biodigester which is to be located to the western edge of the site with a drainage connection provided from the dwelling and the two static caravans, and is of a capacity for 12 persons. With the absence of a foul sewer in the area this is a usual method for handling foul sewerage with the size clearly suitable and the output from it addressed through the building regulations and environmental permitting regulations as appropriate. This arrangement is considered to be acceptable.

The surface water drainage will use percolation from the permeably surfaced yard area to the brook which runs alongside the site as is the existing situation, and this is an acceptable arrangement.

The refuse arrangements for the caravans will involve additional bins being located within the site and so handled alongside the refuse for the dwelling. This is also an acceptable arrangement.

The planning conditions associated with these elements are to be revised from the previous permission to simply require the implementation of the details submitted here.

#### Other Matters

The concerns of the parish council relate to the scale of the static units increasing and this, together with the revised siting freeing up space that could potentially accommodate further touring caravans, having an impact on highway safety through the increased use of the access to Fleetwood Road. This reflects concerns that they raised with the earlier application, and which were not supported by the local highway authority or the Planning Committee in granting planning permission for the development. The increased size of the static caravans shown on the site layout plan will not have any impact on the level of use of this access as the existing planning permission allows 'caravans' as discussed earlier in this report.

The parish council also refer to concerns over infrastructure, which it is understood to relate to the potential for the caravan use of the site to intensify in future. The planning permission limits the caravan use of the site to those providing family support to the applicant and is personal to him. It is suggested that the same conditions be imposed to this application, which would ensure that any



wider caravan use would require a further planning permission and so proper assessment of the suitability of the site for that use, and that use can only occur when the applicant occupies the property. It is considered that this approach will address the concerns of the Parish Council and their Clerk has been advised of this position.

The nature of a s73/minor material amendment application requires that all relevant planning conditions with the original planning permission are repeated, with the exception of the time limit for implementation condition as that cannot be amended through this route. Accordingly the previous conditions would normally be repeated, although in this case the applicant has provide further details of the site drainage and refuse storage which are considered to be acceptable as explained above.. The wording of the relevant conditions are to be revised to ensure that these details are implemented in the planning permission.

### **Conclusions**

The application relates to a residential dwelling that was formerly a farmhouse and is located off Fleetwood Road in Greenhalgh. Planning permission was granted at the site earlier in 2018 for the establishment of two pitches within the curtilage to the property to each provide for a static caravan and a touring caravan. The static caravans were to be each occupied by the family of the occupier of the property. This is to allow them to be able to provide for his care needs, and those of his family, as the applicant suffered catastrophic injuries in a road accident and requires lifetime care as a result.

This application seeks to revise the location and confirm the size of the static caravans, and so is submitted as a 'minor material amendment' to the existing planning permission under section 73 of the Town and Country Planning Act.

The changes introduced are minor in scale and do not involve any intensification of the use of the site or any undue harm to the rural landscape. As such it is recommended that the application be approved and planning permission granted for the revised layout. It is proposed that the previously imposed conditions personalising the planning permission and controlling the scale and number of caravans are to be repeated, with those relating to the drainage and refuse arrangement revised as satisfactory details of these elements have been approved.

### **Recommendation**

That Planning Permission be GRANTED subject to the following conditions:

1. The development must be begun not later than the expiration of three years beginning with the date of the grant of planning permission 17/0966 which is 07/02/2018.

Reason: To comply with the requirements of section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. This permission / consent relates to the following details:

- Location Plan - Mike Carr drawing No. 1 Oct 2017
- Existing (Original) and Proposed Site Plans - Mike Carr drawing No. 2 Rev B Sept 2018

Reason: To provide clarity to the permission.

3. That the extent of the use hereby approved shall be limited to two residential pitches, with each pitch to comprise of no more than one touring caravan (ie. to have a single axle and an overall length not exceeding 6.5m including towing bracket), and no more than one static caravan as defined in section 29 (1) of the Caravan Sites and Control of Development Act 1960 and section 13(1) of the Caravan Sites Act 1968 (as amended).

Reason: To provide clarity over the extent of the caravans permitted within the application site as a consequence of this planning permission, and to ensure that their visual impact is not harmful to the rural character of the area.

4. That the caravans associated with the pitches hereby approved shall be positioned within the site in general accordance with the indicated positions on the proposed site plan approved under condition 2 of this permission, and that the parking areas associated with the development shall also accord only with the extent of that shown on that plan..

Reason: To provide clarity to the planning permission and to limit the potential for visual impacts on the character of the rural area as required by Policy SP2 of the Fylde Borough Local Plan.

5. That the caravans sited on the pitches approved under this planning permission shall only be occupied by the immediate family members of the applicant (Mr Michael Ward) and his family, and shall only remain on site during such time that he is a resident at Fairbank Farm and in need of care and support to maintain his residence at that address. In the event that he no longer is resident at the address then the caravans hereby approved shall be removed within 2 months of that residency ceasing.

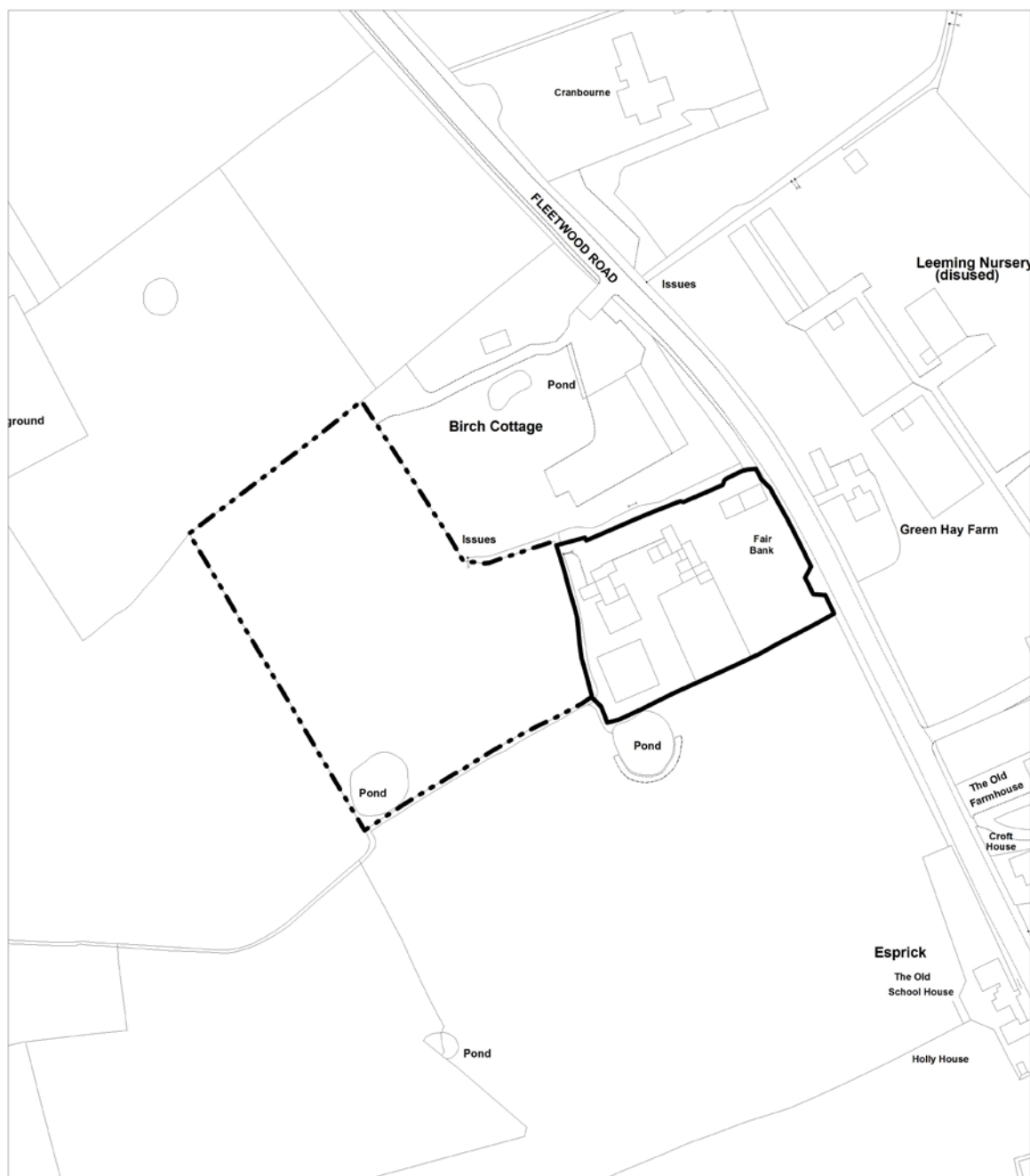
Reason: To ensure compliance with development plan policies relating to the residential development of the countryside as the occupation of the site by those unrelated to the applicant and not related in providing his care or family support would be in conflict with the proper planning of the area as established under Policy SP2 of the Fylde Borough Local Plan and Policy GD4 of the Submission Version of the Fylde Local Plan to 2032.

6. That the static caravans hereby approved shall be connected to a Biodigester T12 Range septic tank (or equivalent) with a capacity to meet the foul water drainage requirements of the site located as shown on the site layout plan approved as condition 2 of this planning permission prior to the first occupation of any of the caravans hereby approved, and this shall be maintained in an operational condition throughout the time that the caravans are present on site.

Reason: To ensure that the site has appropriate foul water drainage arrangements to ensure that there are no potential flooding or pollution implications as a consequence of the development.

7. Prior to the commencement of works associated with this planning permission, the refuse storage arrangements as indicated on the site layout plan approved as condition 2 of this planning permission shall be implemented and shall be maintained throughout the time that the caravans are present on site.

Reason: To ensure that the site has appropriate waste disposal arrangements.



Development Services Fylde Council		(c) Crown Copyright and database right (2018). Ordnance Survey (100006084).	
Application No. 5/18/0684	Address Fair Bank, Fleetwood Road, Greenhalgh	Grid Ref. E.3407 : N.4364	Scale 0 10 20 30 40 m

## INFORMATION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	PLANNING COMMITTEE	10 OCTOBER 2018	5
<b>LIST OF APPEALS DECIDED</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY OF INFORMATION

The council received the following attached appeal decisions between 24/8/18 and 28/9/2018.

### SOURCE OF INFORMATION

Development Services

### INFORMATION

List of Appeals Decided attached.

### WHY IS THIS INFORMATION BEING GIVEN TO THE COMMITTEE?

To inform members on appeals that have been decided.

### FURTHER INFORMATION

Contact Andrew Stell, Development Manager, 01253 658473

## APPEAL DECISIONS

The council received decisions on the following appeals between 24 August 2018 and 28 September 2018. The inspector's decision letters follow.

Rec No: 1			
07 June 2018	16/0464	126 ST ANDREWS ROAD SOUTH, LYTHAM ST ANNES, FY8 1YA RE-SUBMISSION OF 15/0300 - CHANGE OF USE OF GROUND AND FIRST FLOOR OF PROPERTY AS A RESTAURANT (USE CLASS A3) AND A HOT FOOD TAKEAWAY (USE CLASS A5) WITH THE INSTALLATION OF EXTRACTION LOUVRES TO REAR, FIRST FLOOR BAY WINDOW TO REAR AND PITCHED ROOF DORMER TO REAR	Written Representations Case Officer: AP
Fylde Dec. Level	DEL		
Appeal Decision:	Dismiss: 10 September 2018		
Rec No: 2			
24 May 2018	16/0244	ASHLEY NURSERIES, PRESTON NEW ROAD, FRECKLETON, PRESTON, PR4 1TU APPLICATION FOR REMOVAL OF CONDITION 2 OF PLANNING PERMISSION 13/0157 REQUIRING PLANTING OF HEDGE TO EASTERN BOUNDARY, AND REMOVAL OF CONDITION 3 OF PLANNING PERMISSION 13/0157 REQUIRING 6M SEPARATION BETWEEN STORED VEHICLES AND WESTERN BOUNDARY	Written Representations Case Officer: AS
Fylde Dec. Level	DEL		
Appeal Decision:	Allowed: 30 August 2018		
Rec No: 3			
08 May 2018	17/0558	MOONS COTTAGE, 29 SCHOOL LANE, NEWTON WITH CLIFTON, PRESTON, PR4 3RT DEMOLITION OF EXISTING COTTAGE AND ERECTION OF TWO DETACHED DWELLINGS	Written Representations Case Officer: RC
Fylde Dec. Level	DEL		
Appeal Decision:	Dismiss: 30 August 2018		

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## Appeal Decision

Site visit made on 13 August 2018

**by G J Fort BA PGDip LLM MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 September 2018**

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**Appeal Ref: APP/M2325/W/17/3191531**

**126 St Andrews Road South, Lytham St Annes FY8 1YA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr James Glassbrook against the decision of Fylde Borough Council.
  - The application Ref 16/0464, dated 23 June 2016, was refused by notice dated 16 June 2017.
  - The development proposed is the change of use of ground and first floor of property as a restaurant (use class A3) and a hot food takeaway (use class A5) with the installation of extraction louvres to rear, first floor bay window to rear and pitched roof dormer to rear
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. In the banner heading above I have used a slightly amended form of the description of development given on the Council's Decision Notice rather than the one on the application form<sup>1</sup> as this includes the proposed physical alterations to the property as well as the change of use. I note also that the appellant accepted the wording as registered by the Council, and used it on the appeal form.
3. On 24 July 2018 the Ministry of Housing Communities and Local Government issued the new National Planning Policy Framework (the Framework), which supplants the previous version of the document relevant at the time of the Council's decision on the application that led to this appeal. As the Framework establishes<sup>2</sup> that it is a material consideration in planning decisions from the day of its publication comments were sought from the parties on its bearing on the appeal. Consequently, I consider that no prejudice would occur to the parties as a result of me taking the Framework into account in my assessment of the appeal's planning merits.

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<sup>1</sup> Which is "use of ground and first floor of property as a restaurant (Use Class A3) and hot food takeaway (Use Class A5)"

<sup>2</sup> At paragraphs 2 and 212

## **Main Issue**

4. The main issue in this appeal is the effect of the proposed development on the living conditions of the occupants of adjacent residential properties in terms of noise, disturbance and odour.

## **Reasons**

5. The appeal building is part of a semi-detached pair in a short block of properties which front St Andrew's Road with commercial uses at their ground floors. The rear aspects of 39 and 41 Victoria Road run more or less parallel with the flank of the appeal property, and their short back gardens border its grounds. With the exception of the commercial uses on St Andrews Road, several of which including the appeal property and its next door neighbour are vacant, the immediate surroundings are predominantly residential in character.
6. According to the application form the appeal scheme, as described above, would introduce a hot food take away and restaurant both within the established commercial parts of the building at lower floors, and the residential element of the building at the first floor, which would be open until midnight Mondays to Sundays. Staff parking would be supplied in the yard to the rear of the property, which would be accessed via the narrow servicing road running between the flanks of 37 and 39 Victoria Road.
7. Due to the nature of hot food takeaway uses there is a likelihood of a high frequency of trips to that element of the proposed development in terms of both vehicular and pedestrian movement arising from customers and deliveries associated with the use. Moreover, whilst the restaurant use would have a different pattern of trips associated with it given the length of time customers are likely to stay on the premises, it would lead to a requirement for longer term parking than the hot food takeaway element, and also may well entail taxi journeys. Furthermore, the position of the staff parking in the yard to the rear of the appeal property would be likely to increase movements along the narrow service road, and its constrained layout, including tandem parking as shown on the submitted plan, could lead to excessive manoeuvring, particularly during the hours following the proposed closing time, when a much quieter noise environment could be expected within the predominantly residential environs.
8. Consequently, due to the extent of the proposed development taken together with the mooted hours of opening there is a strong likelihood that it would give rise to a substantial increase in comings and goings to the appeal property when compared with its existing authorised use. This intensification of movement taken together with the attendant sounds of engines, the opening and closing of car doors and the voices of customers when arriving at or leaving the premises late at night would all be intrusive when compared to the generally quieter noise environment to be expected in this predominantly residential area. This would be particularly marked in terms of activity associated with overspill parking on Victoria Road, and from increased late night use of the service road, which is narrow and tightly bounded by the flanks of Nos 37 and 39, with the former having several ground and first floor windows abutting that road.
9. Furthermore, due to the presence of the flank first floor window at the appeal property and its close proximity to the rears of Nos 39 and 41, the sounds of larger groups using the stairs would be intrusive in the later hours, when the

occupants of those adjacent properties may be using their first floor bedrooms. Moreover, noise transfer between the appeal property and the upper parts of the adjoining property (No 124), which the Council indicates is in residential use would also be intrusive, particularly in the later evening. These aspects of the proposal would add materially to its overall noise and disturbance impacts.

10. Taking these matters together leads me to the view that the proposed development would cause material harm to the living conditions of adjacent occupants in terms of noise and disturbance. Whilst I note that the appellant considers a theoretical proposal for a similar use elsewhere within the block would have broadly comparable effects, this is not what is proposed in this instance, and moreover, does not serve to justify the appeal scheme's harmful impacts in these regards.
11. The siting of the proposed extraction louvres would be at some distance from 39 and 41 Victoria Road. Moreover, intervening structures including the tall boundary wall and the projecting two-storey rear wing of the appeal property would be between the proposed louvres and Nos 39 and 41. I am also of the view that were the other aspects of the proposed development acceptable in planning terms that conditions could control the specification of any extraction equipment to minimise the noise and odour it would create. Consequently, I consider that no harmful effects would occur to the living conditions of the occupants of adjacent properties in terms of noise or odour emanating from the proposed louvres. Nevertheless the proposed development's lack of harm in this respect does not overcome its other harmful noise and disturbance effects.
12. Consequently, these considerations taken together, lead me to the conclusion on this main issue that the proposed development would cause harm to the living conditions of the occupants of adjacent dwellings. For these reasons it would conflict with Policy SH16 of the Fylde Local Plan (adopted October 2005) and the Framework. Taken together, and amongst other matters, these policies seek to ensure that the amenities of nearby residents are not unduly prejudiced by the development of restaurants and hot food takeaways; and that developments create places with a high standard of amenity for existing and future users.

### **Other Matters**

13. The appellant intends to offer a vegan menu at the proposed use, and considers that there are health benefits of such food. Be that as it may, as the change of use applied for would not restrict any future operators at the site from providing differing menus, this is a matter that carries only the most limited weight in favour of the appeal proposal.
14. The proposed development could bring the property, which has been empty for a number of years, has failed to sell at auction, and has been subject to vandalism, back into what the appellant considers to be a viable use. I also note the appellant's references to the general economic pressures on smaller commercial parades, such as the one within which the appeal site sits, and the potential for the appeal scheme to encourage the re-use of other empty properties within its environs. These would be benefits of the proposed development; however, as it is unclear whether other less harmful uses of the appeal property could also have beneficial outcomes in these respects, they are not matters that weigh heavily in favour of the appeal scheme.



15. The proposed development could entail measures which would avoid harmful overlooking of neighbouring residential properties. However, this merely points to an absence of harm in these respects rather than a positive benefit of the scheme, and as a result has only a neutral effect on the overall planning balance.
16. Consequently, taken together, these other matters do not alter my conclusions in respect of the main issue set out above, or justify a decision other than in accordance with the development plan, with which, in terms of the above-cited policy, the appeal scheme would clearly conflict.

### **Conclusion**

17. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*G J Fort*

INSPECTOR



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## Appeal Decision

Site visit made on 9 July 2018

**by Richard Clegg BA(Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 30<sup>th</sup> August 2018**

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**Appeal Ref: APP/M2325/W/18/3199557**

**Ashley Nurseries, Preston New Road, Freckleton, PR4 1TU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr S Ashraf against the decision of Fylde Borough Council.
- The application Ref 16/0244, dated 2 April 2016, was refused by notice dated 22 January 2018.
- The application sought planning permission for the change of use of agricultural land to form an extension to the caravan/ boat/ motor-home storage area, including the formation of a road planing/ gravel surface, without complying with conditions attached to planning permission Ref 13/0157, dated 22 May 2013.
- The conditions in dispute are Nos 2 & 3 which state:
  2. *That within the first available planting season a new hedge shall be planted along the eastern boundary of the whole site edged red and blue that is utilised for the storage of caravans and motor homes. This hedge shall consist of a hawthorn hedge with a series of field maple trees (or other species as previously agreed in writing by the local planning authority) at 10m centres for the full length of the boundary. The hedge shall be maintained in accordance with BS3936 for a period of no less than 10 years from the planting of the hedge.*
  3. *That no caravan/ motor-home storage hereby approved shall be undertaken within a separation distance of no less than 6m from the western boundary of the site.*
- The reasons given for the conditions are:
  2. *To minimise the visual impact of the development in the open countryside and to enhance the wildlife biodiversity of the area in accordance with Policy SP2 and EP14 of the Fylde Borough Local Plan.*
  3. *To provide an appropriate separation to the neighbouring residential caravan and park home site in the interests of the visual amenity of the occupiers of that site.*

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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of agricultural land to form an extension to the caravan/ boat/ motor-home storage area, including the formation of a road planing/ gravel surface, at Ashley Nurseries, Preston New Road, Freckleton, in accordance with the application Ref 16/0244 made on the 2 April 2016, without complying with conditions Nos 2 & 3 set out in planning permission Ref 13/0157 granted on 22 May 2013 by Fylde Borough Council, but otherwise subject to the following conditions:
  - 1) Within 3 months of the date of this decision a scheme for the maintenance of the hedge along the eastern boundary of the land edged red and blue on the A4 location plan shall be submitted for the written

approval of the local planning authority. The hedge along the eastern boundary of the land edged red and blue on the A4 location plan shall be maintained in accordance with the approved hedge maintenance scheme.

- 2) No caravan, motor-home or boat storage hereby permitted shall be undertaken within a separation distance of 6m from the western boundary of the site.

### **Procedural matters**

2. The application refers to the removal of conditions Nos 2 & 3 of the planning permission to extend the storage area. It is in effect a proposal for a fresh permission without those two conditions.
3. In July 2018, after the main parties had submitted their statements, the Government published the revised National Planning Policy Framework (NPPF). Accordingly the Appellant and the Borough Council were given the opportunity to comment on the implications of the revised NPPF for their respective cases.

### **Main Issues**

4. I consider that the main issues in this appeal are:
  - (i) The effect of the appeal proposal on the character and appearance of the area.
  - (ii) The effect of the appeal proposal on the living conditions of residents of Greenfield Park.

### **Reasons**

#### ***Character and appearance***

5. Ashley Nurseries comprises a narrow parcel of land, extending some distance back from Preston New Road. The greater part of the land, beyond the buildings which are close to the road, is used for the storage of caravans, motor-homes and boats. The appeal site is at the northern end of the land which is furthest from Preston New Road, and it has been laid out and brought into use to provide an additional area of storage.
6. The Appellant's land is in the countryside. There is occasional development along Preston New Road, including Greenfield Park which is on the western side of Ashley Nurseries and accommodates residential caravans, but open fields extend to the east. Along the eastern boundary of Ashley Nurseries are some lengths of tall hedgerow, together with young hedgerow plants. I note that the Borough Council is satisfied with the planting which has taken place, and the dispute in respect of condition No 2 essentially concerns the requirement for maintenance of the hedgerow.
7. The caravans, motor-homes and boats are stored in two rows, parallel to the western and eastern boundaries. There were only a few boats at the time of my visit, with most of the storage comprising caravans and motor-homes. Both the caravans and motor-homes are predominantly light in colour, and the expanse of light-coloured vehicles presents a marked contrast with the nearby rural landscape. The appeal site is set well back from Preston New Road, and although at present the young hedgerow plants do not themselves provide any substantial cover on its eastern boundary, the distance and the roadside

hedgerows restrict visibility of storage at the northern end of the property. Closer to the road, views are filtered but the presence of caravans and motor-homes can be discerned from Preston New Road immediately to the east of the Appellant's property.

8. The change of use of the northern portion of the land has consolidated the storage use in this countryside location. Irrespective of the prominence of the stored items on the appeal site itself, the extended area of open storage represents a significant incursion into the rural landscape. Whilst Policy SP2 of the adopted Fylde Borough Local Plan supports proposals essentially needed for the continuation of an existing enterprise, such development should be of a type and scale which would not harm the character of the surrounding countryside. This requirement is carried forward in Policy GD4 of the emerging Fylde Council Local Plan to 2032. Establishment of a hedge along the eastern boundary of the Appellant's property is necessary to mitigate the intrusive effect of the enlarged storage facility on the character of the area. It follows that it is also important that the hedge is maintained, and Policy EP14 of the adopted Local Plan supports the use of conditions for this purpose.
9. The Appellant states that he wishes to provide screening and soften the impact on wider countryside views, but that the hedge plants are too small and other vegetation, including trees, is preferred. Hedgerows typically form boundaries in the surrounding area, and, the planting undertaken at Ashley Nurseries will grow taller and denser, and could be maintained to provide effective screening.
10. Condition No 2 requires maintenance in accordance with British Standard BS 3936 which is concerned with the specification of nursery stock and not its ongoing maintenance. That reference is not relevant, and it would be more appropriate for a maintenance scheme to be submitted to the Council for approval, in accordance with Policy ENV1(e) of the emerging Local Plan. Both main parties were given the opportunity to comment on such an alternative requirement: the Borough Council had no objection and no response was received from the Appellant.
11. I conclude that the absence of a condition requiring maintenance of the hedge on the eastern boundary of the Appellant's land would be damaging to the character of the area, and in this respect the proposal would be contrary to Policies SP2 and EP14 of the adopted Local Plan and to Policy GD4 of the emerging Local Plan.

### ***Living conditions***

12. Residential caravans at Greenfield Park are positioned alongside the western boundary of the Appellant's land. There are windows to habitable rooms which face towards the appeal site and there are also private amenity areas at Greenfield Park which are close to the boundary with the appeal site. The caravans, motor-homes and boats on the appeal site are stored close together, and, if they are not set back from the boundary, their presence in a long row with only narrow gaps, would seriously detract from the outlook of residents at Greenfield Park. The Appellant suggests that the adverse effect of massing should be addressed by planting. However there is no condition requiring planting to be undertaken along the western boundary of the appeal site, appropriate native species would be unlikely to provide a complete screen, and there would be a significant delay before planting could provide any mitigating effect. I am in no doubt that a minimum separation distance is required to

safeguard living conditions, in accordance with Policy GD7 of the emerging Local Plan, and that, having regard to the height of the caravans, 6m is appropriate for this purpose.

13. Storage on the remainder of the Appellant's land is also adjacent to the residential accommodation at Greenfield Park, and he points out that it is not subject to a condition requiring a minimum separation distance from the western boundary. I note that planning permissions for the storage use on other parts of the property were granted in 1992 and 2005, and details of the circumstances concerning those earlier developments are not before me. In any event the absence of a requirement to maintain a separation distance on earlier permissions does not justify the absence of such a condition in respect of the appeal site, given that I have found that this is important to safeguard the living conditions of nearby residents.
14. I conclude that the absence of a condition requiring a separation distance of 6m to the western boundary of the appeal site would have an unacceptable effect on the living conditions of residents at Greenfield Park, and in this respect the proposal would be contrary to Policy GD7 of the emerging Local Plan.

### ***Other matters***

15. The Appellant argues that condition No 2 prevents maintenance of the dyke which runs alongside the eastern boundary, and that in consequence there is a risk of flooding. The young hedgerow plants do not provide a barrier to access to the dyke at present, and a scheme for maintenance could incorporate arrangements to ensure that access could be obtained to the dyke. Paragraph 83a of the NPPF supports the sustainable growth and expansion of all types of business in rural areas, and the Appellant argues that the appeal proposal would be beneficial to the local economy as it would increase the utility of the land. He also claims that condition No 3 would prevent half of the appeal site being used, rendering the additional storage area unviable. There is a wide central corridor between the two rows of stored caravans, motor-homes and boats: there is nothing before me to indicate that the 6m set back from the western boundary could not be achieved whilst retaining an adequate central corridor for access. Furthermore there is no evidence to substantiate the Appellant's claim that condition No 3 would have an adverse effect on viability.

### **Conditions**

16. Condition No 2 on the 2013 planning permission requires both the planting of a hedge on the eastern boundary of the Appellant's land and its maintenance in accordance with BS 3936. Planting has been undertaken to the Council's satisfaction, and this part of the condition is effectively discharged. Ongoing maintenance is important, but as BS 3936 does not deal with this aspect of landscaping, it should be in accordance with a scheme to be approved by the local planning authority. Whilst I have found that the separation distance to the western boundary required by condition No 3 is appropriate, boats should be specified in addition to caravans and motor-homes, as all three are covered by the planning permission.

## Conclusions

17. I have found that the absence of conditions requiring the planting and maintenance of a hedge along the eastern boundary of the Appellant's land and a storage set-back of 6m from the western boundary of the appeal site would be damaging to the character of the area and the living conditions of nearby residents respectively. Arguments raised by the Appellant concerning access to the dyke alongside the western boundary and viability do not justify the absence of these conditions. However, as explained above (para 16), certain modifications are required to conditions Nos 2 & 3. A new planning permission should, therefore, be granted with these conditions modified. In consequence, and having regard to all matters raised, the appeal is allowed in this respect alone.

*Richard Clegg*

INSPECTOR

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## Appeal Decision

Site visit made on 3 July 2018

**by Felicity Thompson BA(Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30<sup>th</sup> August 2018**

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**Appeal Ref: APP/M2325/W/18/3199645**

**29 Moons Cottage, School Lane, Newton with Clifton, PR4 3RT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr David McCartney against the decision of Fylde Borough Council.
  - The application Ref 17/0558, dated 27 June 2017, was refused by notice dated 25 October 2017.
  - The development proposed is demolition of existing cottage and erection of two detached dwellings.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I am aware that since the planning application was determined prior approval was granted by the Council for the demolition of the existing cottage and I noted at my site visit that the cottage has been demolished.
3. During the course of the consideration of this appeal the revised National Planning Policy Framework (the Framework) has been published. I have invited both main parties to submit comments on the relevance of the revised Framework to this case. The Council has noted that the revised Framework continues to stress the importance of good design and I have had regard to this matter in reaching my decision.

### Main Issues

4. The main issues are the effect of the proposal on:
  - The character and appearance of the area; and
  - The living conditions of the occupants of number 31 School lane with particular regard to outlook and light/sunlight.

### Reasons

#### *Character and appearance*

5. The appeal site is located in an area which largely consists of detached houses of varying design and scale, reasonably spaced and set back from the road. To the front and sides of the houses is parking and landscaped gardens which give



the area an open and pleasant character. The dwellings immediately adjacent to the appeal site are bungalows.

6. Whilst the houses in the area are of varying design and scale they share similar characteristics, such as wide frontages, particularly the detached properties and a mix of hard and soft landscaping to the front. When viewed in this context and adjacent to the bungalows on either side, the proposed houses because of their relatively narrow front elevations, together with the limited spacing between them and closeness to their site boundaries, would have a cramped appearance out of kilter with the generally more relaxed space around existing houses. Moreover, their two storey height next to the lower roofs of the bungalows mean that they would have a prominent and incongruous presence.
7. The proposed houses would be sited to follow the building line of neighbouring houses and the area to the front would be hard surfaced for car parking with a hedge around. As a result of the limited space available and the proposed car parking provision, there would be very little remaining space for landscaping to soften the appearance of the hard surfacing. I note that the demolished cottage was sited up to the pavement with only a small garden area to the front. However, it did not feature large areas of hard surfacing and is not directly comparable to the appeal proposal. Moreover, given that the cottage has been demolished, any effects that it previously had on the character and appearance of the area have now gone. Its former presence therefore now has very limited weight.
8. The appellant refers to the relationship between numbers 33 and 35 School Lane as being comparable to that between the proposed house on plot 1 and no.31. Although it is similar in that it is a bungalow adjacent to a two storey house, the spacing between numbers 33 and 35 is greater than that of the appeal proposal. Moreover, I do not know the circumstances of that development being permitted and therefore I give this limited weight. In any event I have considered the appeal scheme on its own merits.
9. I therefore conclude that the proposed houses would have a harmful effect upon the character and appearance of the area contrary to policy HL2 of the adopted plan, the Fylde Borough Local Plan As Altered (the Local Plan) and policy GD7 of the emerging, Plan for Fylde – Plan for the Future: The Fylde Council Local Plan to 2032 (emerging Local Plan) which require development to be in keeping with the character of the locality and the building to plot ratio and the landscaping of the proposed development to relate well to the surrounding context. It would also conflict with the design aims of the Framework.

#### *Living conditions*

10. The proposed house on plot 1 would run along the shared boundary with and have a depth slightly greater than 31 School Lane. No.31 has limited private garden space to the rear and there are two windows in the side elevation which would face the appeal site, one of which appears to be a bathroom window. I noted at my site visit that any views from these windows are partly obscured by an existing boundary structure. Nevertheless because of the height, depth and very close proximity to the shared boundary, the proposed house on plot 1 would have an unacceptable overbearing impact on the outlook from within the rear garden. Furthermore, in my judgement the proposed houses would have



an unacceptable shading effect on the house and to a lesser extent the garden at no.31 which would be more harmful during the winter months when the sun is lower.

11. The appellant states that this situation would be no worse than that which previously existed. However, the cottage has now gone. Also, it appears from the submitted plans that the former cottage was sited further away from the shared boundary with no.31, further forward in the site away from the side elevation and rear garden of no.31 and was not as tall as the proposed houses. In my judgement this is a materially different set of circumstances to those before me.
12. Overall I conclude that the proposed house on plot 1 would cause unacceptable harm to the living conditions of the occupiers of no.31 School Lane in respect of outlook and sunlight contrary to policy HL2 of the adopted Local Plan and policy GD7 of the emerging Local Plan which require that development does not adversely affect the amenity of neighbours and the Framework which seeks a high standard of amenity for existing and future occupants of buildings.

### *Planning balance*

13. The appellant contends that the Council cannot demonstrate a five year supply of housing land and therefore the 'tilted' balance should be applied, but provides no details of the shortfall. The Council state that they are able to demonstrate a supply equivalent to 5.1 years using the 'Sedgefield' method and 6.3 years using the 'Liverpool' method.
14. Even if I were to accept the appellant's position, whilst the proposed development would make use of previously developed land the scheme would only make a very modest contribution to the supply of housing in the Borough. The benefits arising from the construction and occupation of the houses would also be limited. In my view, the adverse impacts of the proposed development would significantly and demonstrably outweigh these limited benefits. Therefore the proposal would not be sustainable development as envisaged by the Framework. The conflict with the development plan is not outweighed by other considerations including the Framework.

### **Conclusion**

15. For the reasons set out above the appeal is dismissed.

*Felicity Thompson*

INSPECTOR