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## Appeal Decision

Inquiry held on 11-12 May 2021

Site visit made on 14 May 2021

**by Katie McDonald MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7<sup>th</sup> June 2021**

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**Appeal Ref: APP/D2320/W/20/3265785**

**Land off Lower Burgh Way, Eaves Green, Chorley**

- 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 Taylor Wimpey UK Limited against the decision of Chorley Council.
  - The application Ref 16/00804/FULMAJ, dated 25 August 2016, was refused by notice dated 29 June 2020.
  - The development proposed is the erection of 201 dwellings, associated access, drainage and the provision of public open space and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 201 dwellings, associated access, drainage and the provision of public open space and landscaping at Land off Lower Burgh Way, Eaves Green, Chorley in accordance with the terms of the application, Ref 16/00804/FULMAJ, dated 25 August 2016, subject to the conditions set out in the attached Schedule.

### Application for costs

2. Before the Inquiry an application for costs was made by Chorley Council against Taylor Wimpey UK Limited. This application is the subject of a separate Decision.

### Preliminary Matters

#### *Plans*

3. An amended layout plan setting out the location of the affordable dwellings was submitted prior to the Inquiry. No other changes to the layout are proposed. At my request, plans for the proposed pumping station were also provided prior to the Inquiry. These show mainly underground works that would have been subject to a planning condition. During the Inquiry, plans were received that related to off-site highway works. Again, these would have been subject to a condition requiring them to be submitted. I am satisfied that no party would be prejudiced by my taking account of all the additional plans submitted.

#### *Planning obligation*

4. A planning obligation was presented in draft form prior to the Inquiry. This was discussed and an executed and signed copy received. I have considered this accordingly.

## Background and Main Issue

5. The Council refused planning permission for the above development owing to the failure to agree to the delivery of policy compliant affordable housing. However, the appellant revisited their position and both main parties have now agreed that the site can viably deliver policy compliant affordable housing along with all other necessary commuted sums required by the Council. These matters are included in a completed planning obligation under s106 of the 1990 Act. No formal evidence was given on this subject as the matter was resolved and agreed prior to the Inquiry. There is agreement on all planning matters between the Council and appellant and the Council considers that planning permission should be granted, subject to conditions. However, residents have raised several issues and I will be considering these.
6. Notwithstanding, Lancashire County Council as the Local Education Authority (LEA) requested a monetary contribution towards 20 secondary education places originally in 2016, and again following the submission of the appeal<sup>1</sup>. In 2016, the Council was using the Community Infrastructure Levy (CIL) to charge for education contributions and thus it was not included in the original heads of terms for the planning obligation. However, in February 2020 this changed, and the Council began to request education contributions through s106s. The Council reported the application to its Committee in June 2020 without updating the report to include the need for the contribution. This was stated by the Council to have been an oversight and when the appellant submitted the appeal and the LEA were re-consulted, the updated request was put forward.
7. The appellant disagrees with this request but has made provision for the contribution within the finalised planning obligation. Yet, the deed contains a mechanism which provides that if I were to find the education obligation does not pass the statutory tests, it shall have no effect and consequently the owner and/or other covenanters shall not have liability for payment or performance of that obligation.
8. Accordingly, the main issue is now whether the education contribution would meet the tests set out in Regulation 122(2) of the CIL Regulations (2010) (as amended) (CIL Regs) and paragraph 56 of the National Planning Policy Framework (the Framework).

## Reasons

### *Site description and proposal*

9. The site is located on the southern edge of Chorley and comprises undeveloped fields, extending to approximately 10.49 hectares. It slopes from north-west down to south-east with a level change of circa 8.4m with the site boundaries generally defined by hedgerows with trees, fences, open fields or development.
10. The site forms part of a wider 18.5 hectare site allocated for housing development under Policy HS1.1 of the Chorley Local Plan 2012-2026 Site Allocations and Development Management Policies (July 2015) (LP) (site ref. HS1.1 'Eaves Green, off Lower Burgh Lane') which has an overall capacity of 419 dwellings. The site also includes an area of land outside of the HS1.1

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<sup>1</sup> 25 February 2021.

allocation that is designated as Green Belt, within which drainage and landscaping are proposed. A Green Belt assessment is carried out below.

11. The proposal is for 201 dwellings, comprising a mix of 1, 2, 3 and 4 bed properties. The proposed type and mix of housing include detached, semi-detached, mews houses and apartments. The predominant scale of development will be 2-storey, with some taller 2.5 storey buildings.

#### *Education contribution*

12. The CIL Regs and the Framework require that a planning obligation can only be sought where it is:
  - (a) necessary to make the development acceptable in planning terms
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development
13. The second and third parts of the test are not disputed by the appellant. The question is whether the contribution requested by the LEA is necessary to make the development acceptable in planning terms. The LEA set out 20 secondary education places would arise from the development. This is undisputed. It was agreed that the proposal would have its full impact (i.e. when it is substantially complete and families are occupying the dwellings) in 2026.
14. The LEA stated that it could not guarantee that children occupying the development would be able to access a school place within a reasonable distance from their home, and thus the development would be considered unsustainable without the developer committing to pay monies towards secondary school provision.
15. Several data sets were presented in different forms, and they all represent slightly different statistics. There is also a change in the data from the LEA's original request in 2016 to 2021, which is to be expected given the 5 years between assessments. It is also important to note that going forward, the data will be updated and is likely to change when future assessments on capacity and requirements are made by the LEA.
16. There were also claims from the appellant that not all the data was presented by the LEA. However, based on what has been presented, I am satisfied that I can draw a reasonable conclusion; and it is clear from both parties' sets of evidence that there is, and will continue to be, a shortfall in secondary education places in the Chorley schools area in the next 5 years. The development will result in an additional burden.
17. On the LEA's figures, there is a shortfall of 277 places in 5 years' time, rising to 297 with the development. The appellant uses the SCAP (school capacity) forecasts for year 7 and finds a varying shortfall every year from 2021 to 2026, peaking in 2023 with a deficit of 120 places, but with shortfalls of 78 (2024), 96 (2025) and 13 (2026) in the years following.
18. The LEA has a statutory duty<sup>2</sup> to provide enough school places. This is the basis of the appellant's argument, who claims that because the shortfall at 2026 would be lower than the preceding years based on its evidence, the LEA will have inevitably created additional permanent capacity in the schools, such

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<sup>2</sup> The Education Act 1996 (as amended)

that the spaces arising from this proposal would be absorbed and thus a contribution would be unnecessary. I disagree for the following reasons.

19. Firstly, it is unknown how the LEA will address the existing shortfalls. The County Council's witness could not confirm how, when or even if the LEA would increase capacity as this has not yet been subject to any scoping exercises, although he did set out the LEA did not anticipate any breaches in its statutory duty. Nonetheless, and taking full account of the statutory duty to provide enough school places, it is not clear how the LEA would comply with the duty at this time and it would be inappropriate to place significant weight upon something which has not yet been considered.
20. Secondly, some school years, such as 2023, are likely to be oversubscribed, described as bulge years, and temporary provision may be put in place to address this. However, if the LEA increases capacity permanently, this would be put in place to address existing shortfalls, and not the proposal, despite any asserted reduced shortfall at 2026.
21. Thirdly, even if the shortfall at 2026 is less than preceding years, there would still be a shortfall. Although this may be addressed by the LEA to accommodate the shortfall from preceding years, as set out above, there are currently no plans to do so and the development would still have an impact.
22. Furthermore, whilst the methodology to calculate school places was not disputed in its entirety by the appellant, it believes that the assessment should be based upon a year 7 approach. The method is not without an evidence base, indicating that children are unlikely to change schools owing to a house move and thus the effect of the development would trigger in the 2026 year 7. It also gave a background to shortfall in earlier years.
23. That said, at 2026, the full impact of the development would result in a requirement of 20 school places, which the LEA spread over the 5 years of secondary school resulting in 4 places per school year. If only year 7 was considered, this would result in 4 pupils starting secondary school in 2026. The appellant's witness accepted that at 2026 there would be no space in any other school years than year 7. Moreover, there would be instances where families move from a location that necessitates a school move. Therefore, I am unconvinced that to look at year 7 only is the correct approach because there are 16 other school places arising from the development that need to be accommodated somewhere in 2026.
24. However, if I were to take the appellant's approach, it seems to me that considering the impact at 2026 would not be appropriate or reasonable. The most realistic way to adopt this approach would be to look at the development's impact earlier than when it would be substantially complete, such that the requirement for school places would rise as the development progresses to the full impact of 20 spaces at 2026. This could not be accommodated with the current shortfalls.
25. The decision<sup>3</sup> referred to by the appellant to support this 'year 7' approach is largely irrelevant as it considered an oversubscribed school where around 47% of existing pupils were from different LEAs. Therefore, the effect of the development could be accommodated going forward as those pupils would be

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<sup>3</sup> APP/A0665/A/13/2193956

- admitted over pupils from outside the LEA and the capacity issue would not be permanent. That is not the case here.
26. The assertion that the Council's figures are overestimated appeared to be a misunderstanding of data. Within the Council's data sets, the projected pupils are those that would demand a place, and this changes upon the popularity of the school or family choice. This did not indicate the capacity.
  27. However, when comparing the future planned net capacity for 2026 with 2021, 5026 places were quoted for 2021, yet the latest number on roll in 2021 was 4801. The appellant sets out that this results in an overestimation of 8.7%. Yet, it was explained by the LEA that a high number of students have been displaced to schools in South Ribble where there was capacity. The increase in number on roll at schools in South Ribble has risen by 670 from 2016. This would explain the anomaly.
  28. Despite this, the latest number on roll has increased considerably from 4358 to 4801, indicating an increase in students over the past 5 years. Furthermore, the projected pupils have increased from 5220 to 5421, indicating an increase in future pupil demand. Therefore, despite the future planned net capacity not being in line with the numbers on roll, there is a steady increase in student numbers. The Council expect this to keep rising.
  29. Furthermore, the one year figures presented to the Department for Education were within their tolerance levels and the 3 and 5 year figures appeared to be similarly rational.
  30. The appellant presented ONS data for births in Chorley to support its evidence on decreasing forecasts from 2023. However, whilst the birth rate may decrease from 2015 to 2019, indicating a drop in demand for places going forward, at 2015 there is a peak of births at 1269. 2015 would be the corresponding year 7 entry year of 2026 (for January to August births), when the development is anticipated to have its full impact, corresponding with the age band 10-14 data presented, which shows a peak in 2025 and 2026. Therefore, on the appellant's evidence there is likely to be a bulge year in 2026, when it is argued by the appellant there would be capacity and a reduced shortfall. The two sets of data do not marry up.
  31. Lastly, whilst I have based my assessment upon the data before me, the LEA would decide whether to increase capacity on its most recent data. This may indicate a greater or lesser shortfall, but if the appellant's evidence is anything to go by, the birth rates presented would indicate an increase in the demand forecast at 2026.
  32. The planning obligation directs the monies to be spent at Holy Cross Catholic High School and/or Parklands Academy. Whilst the specifics of how it would deploy the monies have not yet been determined, this is not an unusual approach. The LEA has a methodology that calculates a sum per school place, and this is what it expects is necessary to provide the permanent increase in places. This method of calculating funds was not disputed.
  33. Clearly, further work would be required to secure how the monies are spent with the school/s and this is set out within the LEA request of 2021. It would be unnecessarily premature to engage with schools about increasing capacity when the outcome of a planning decision is not determined. Furthermore, there

may be other developments that pay contributions such that pooling may occur for a larger project. Moreover, if the monies toward the secondary provision are not spent on the provision of additional secondary school places within five years, there is a clause within the planning obligation that would require the County Council to return the monies.

34. To draw matters together, and put simply, this proposal would lead to 20 additional secondary school places. There is currently no spare capacity to accommodate this and, despite their statutory obligations, I do not know how, when or if the LEA will address the existing shortfall such that there would be spare capacity in 2026 to accommodate the demand from this development. Consequently, at this time, it is clear to me that the proposal would place a burden upon the capacity of local schools.
35. The resultant effect is that the provision of additional school places would be necessary and the contribution would mitigate the impact of the development. The planning obligation therefore meets the tests set out in both the CIL Regs and the Framework. It would also ensure the development is compliant with Policies 2 and 14 of the Central Lancashire Core Strategy (July 2012)(CS) which together seek to ensure funding shortfalls in infrastructure are identified and secured through developer contributions, asking developers to contribute towards the provision of school places where their development would result in or worsen a lack of capacity at existing schools.

## **Other Matters**

### *Planning obligation*

36. Additional to the education contribution, there are other obligations contained within the finalised planning obligation, to which the appellant has no objections. These comprise:
- (a) 30% (60 units) of on site affordable housing, split 70% (42 units) social rented and 30% (18 units) intermediate units (i.e. shared ownership).
  - (b) A contribution towards new allotment provision at Harrison's Road, at a rate of £15 per dwelling, totalling £3,015.
  - (c) A contribution to improve natural and semi-natural green space at Plock Wood, Lower Burgh Way, as a rate of £557 per dwelling, totalling £111,957.
  - (d) A contribution towards playing pitch enhancement, ancillary facilities and supporting infrastructure improvement at Astley Park Playing Pitches, at a rate of £1,599.00 per dwelling, totalling £321,399.
37. The Council produced a CIL Compliance Statement which sets out the evidence and policy support for requiring the obligations. These include an identified affordable housing need, existing deficiencies in allotment provision, low quality and/or low value natural and semi-natural green space accessible to the site, and a Borough wide deficit of playing pitches. There is also development plan policy support relating to each obligation.
38. Having reviewed this evidence, I am satisfied that the obligations are necessary to make the development acceptable, directly related to the development; and fairly and reasonably related in scale and kind to the development such that the planning obligations contained within the Section 106 Agreement comply with the tests in the CIL Regs and Framework.



### *Green Belt assessment*

39. Drainage and landscaping are proposed within an area of the site allocated as Green Belt. This sits outside the housing allocation on the south of the site. The Framework sets out that engineering operations are not inappropriate development in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it.
40. *Pumping station* - The drainage works comprise a pumping station and are engineering operations. It would comprise predominantly underground works and thus preserve openness, but a cabinet would sit atop, and fencing would surround the compound. The development would be located on the edge of the housing site and at the lowest point on the site, such that it would be obscured from wider views. It is of a small scale, and would have limited spatial or visual implications, particularly with the landscaping proposed. It would also be seen in the context of the housing estate and the associated attenuation ponds, such that the countryside would be satisfactorily safeguarded from encroachment. Therefore, it would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it.
41. *Attenuation ponds* - The landscaping works include attenuation ponds as part of the Sustainable Drainage System (SuDS) and extensive planting around the ponds. These ponds would also be engineering works for drainage purposes. The ponds proposed would preserve openness in that they would retain an open and 'undeveloped' appearance, akin to natural ponds which would be found in open fields. Furthermore, there would be no conflict with the purposes of the Green Belt given the nature of the development.
42. As such, the works within the Green Belt would not constitute inappropriate development.

### *Ecology*

43. A detailed ecology survey was undertaken when the planning application was submitted in 2016, and this has since been updated for the purposes of the appeal. Neither the Council nor its ecology advisor have any objections to the proposal in relation to ecology subject to suitable conditions. Of these, to ensure wildlife, including protected species are protected during the development and invasive non-native species are removed from the site to prevent their spread; pre-commencement surveys (and mitigation if necessary) would be required. A scheme for translocating bluebells would also be necessary to mitigate the impact of the development on bluebells which have protection under the Wildlife and Countryside Act 1981.
44. *Great Crested Newts* - Surveys have confirmed great crested newts (GCN) are present within 250m of the site boundary and their terrestrial habitat would be affected by the development. Without the mitigation proposed, there would be adverse impacts upon GCN. This is a material consideration as the species is protected by law and a species mitigation license from Natural England (NE) would be required.
45. NE can only issue a licence if the following tests have been met:
- i) the development is necessary for preserving public health or public safety or other imperative reasons of overriding public interest;
  - ii) there is no satisfactory alternative; and

- iii) the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.
46. Circular 06/2005 requires that when effects on protected species are being considered in appeals, decision-makers should 'have regard' to the 3 tests that are used when licences are being determined. Therefore, as the competent authority, I must have regard to the tests.
47. The site is allocated for housing and development of the site for such purposes would be compliant with the development plan. It also forms part of the Council's housing land supply and it is required to deliver enough new housing in the area. Therefore, there are imperative reasons of overriding public interest.
48. The site was considered as part of a local plan examination in which numerous other sites were presented and the most suitable sites were selected to serve housing need in the area. Thus, there is no satisfactory alternative.
49. Despite assertions from residents, the substantive evidence details that the population of the species would be maintained at a favourable conservation status with the mitigation proposed. As part of the mitigation measures, a GCN Mitigation area is proposed. This would need to be secured by a condition for a landscape and ecological management plan, that would secure the on-going management and maintenance of the area. Consequently, it is likely that NE would grant a species mitigation license and the effect upon GCN would be acceptable.
50. *Bats* – 3 trees were recorded with features that have potential for roosting bats and the site has local importance for commuting and foraging common and soprano pipistrelle, Myotis species, noctule, Nathusius' pipistrelle and brown long-eared bats. The trees with features recorded are to be retained and pre-commencement surveys would be required by condition. A bat box scheme would also be necessary to support the species.
51. *Birds* – there is a breeding bird population present of local significance. Mitigation is proposed by way of nesting bird checks prior to vegetation clearance and a nest box scheme to be produced by condition. A lighting scheme would also be required to safeguard the impact.
52. *Biological Heritage Site and woodland* – the landscape and ecological management plan would also secure the on-going management and maintenance of the 15m buffer around the woodland and Biological Heritage Site to ensure they are not damaged during construction and are properly managed and maintained once the development is complete.
53. With the imposition of conditions and mitigation outlined above, I am satisfied that the proposal would have an acceptable effect upon ecology and protected species.

### *Highways*

54. The carriageway and the footway on the section of Lower Burgh Way between Capesthorpe Drive and the first proposed access running west into the development is proposed be widened to 7.3m and 3.5m respectively as requested by the Highways Authority. The existing left turn lane at the junction



on the approach from Myles Standish Way and the A6 Bolton Road would be increased by at least two vehicle lengths to accommodate additional left turning traffic. Highway improvements are also currently being undertaken as part of the Section 278 works in relation to the adjacent development. A planning condition would require these off site works of highway improvements to be carried out prior to the commencement of the 10<sup>th</sup> dwelling.

55. There would be some potential harm to traffic levels because of the proposal. Yet, a longer queuing lane at the junction at Bolton Road and Myles Standish Way would be unachievable because of the position of the River Yarrow. Therefore, there is little more that could be done than the offsite highways improvements already proposed to reduce traffic levels.
56. Pedestrian and cycle links would be provided throughout the site to connect to Lower Burgh Way and the existing pedestrian network surrounding the site. This would encourage walking and cycling that would support sustainable methods of travel. Furthermore, a condition would be necessary to ensure future management and maintenance of the streets until such a time that the roads are adopted or a private management and maintenance company has been established.
57. Therefore, whilst concerns have been raised by local residents and the Highway Authority, the site is allocated for housing development, and on balance the effect of the proposal on the local highway network and the safety of all users of the highway would be satisfactory.

#### *Living conditions*

58. Claims that there would be disruption from construction traffic could be addressed by a suitable construction management plan, which would set out where construction workers would park along with suitable times for works to take place. This would ameliorate the effect upon neighbouring living conditions and could be required by a condition.

#### *Drainage*

59. The proposal would be built using sustainable drainage principles that ensure surface water from the site would discharge at the same rate or less than the undeveloped site, and it would not increase the risk of flooding elsewhere. This matter could be the subject of a condition along with details to be submitted regarding the future management of the approved drainage system.
60. Furthermore, the foul water drainage will be drained on a separate system and the proposal includes the pumping station to adequately deal with the sewage. This could also be subject to a condition that requires details of the foul water details to be presented to the Council for approval.

#### *Accessibility*

61. The site is over 700m from the nearest bus stop, which runs an hourly service. There are also no shops or services within a reasonable walking distance. However, whilst the location of the site could benefit from better access to public transport, the matter of its accessibility has been examined and accepted by the Local Plan Inspector when the site was allocated as a housing development.

62. Notwithstanding this, a Travel Plan condition could be imposed that would serve to reduce the number of car borne trips and to encourage the use of public transport. This would be necessary in this instance.

*Other considerations*

63. Residents have raised several concerns, most of which I have addressed above. However, some other concerns remain. Assertions that the roads in the existing estate are not gritted during winter is a matter between the local highway authority and the residents. The quality of existing houses on the estate is a matter controlled by other means, for example, Building Regulations or directly with the parties concerned. Loss of private views is not a sufficient reason to withhold planning permission for housing on an allocated site.
64. The scheme includes on site open space that would exceed the requirements of the development plan such that there would be suitable access to green space. No contributions or infrastructure was requested towards the provision of any health services or GP surgeries.

**Conditions**

65. Aside from the conditions which I have already discussed above, the plans are listed for certainty. I have also re-ordered the conditions in line with the Planning Practice Guidance<sup>4</sup>.
66. A phasing scheme is necessary to understand and order the development of the site. To ensure and safeguard the recording and inspection of matters of archaeological and/or historical importance associated with the site, a programme of archaeological work must be carried out in accordance with a written scheme of investigation.
67. An estate street phasing and completion plan is necessary in the interests of residential and highway safety, and to ensure a satisfactory appearance of highways infrastructure, safeguarding the visual amenities of the locality and users of the highway. A condition to ensure the new estate road into the site is constructed to the Highway Authority's specification is necessary to ensure safe access is provided.
68. To safeguard the trees to be retained, an Arboricultural Method Statement will be necessary. A condition for landscaping is necessary to ensure the development is ameliorated and to secure high quality design. Owing to previous historical coal mining on site, remedial works are necessary.
69. Detailed design of the highway and any street furniture, along with implementation, is necessary to ensure the roads and footways built to an acceptable standard. Existing and finished ground levels are necessary to ensure the height and level of the dwellings is suitable to protect neighbouring living conditions and the character and appearance of the area.
70. An open space management scheme is necessary to ensure adequate provision that is properly and satisfactorily maintained and managed. Improvements to Burgh Lane South track are necessary because it is required to be improved to a standard acceptable to serve the development, such as using low level

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<sup>4</sup> Paragraph: 024 Reference ID: 21a-024-20140306 Revision date: 06 03 2014

bollard lighting. Furthermore, safety signage would be necessary as large vehicles use the track to access Lower Tenement Farm.

71. Conditions relating to the submission of external materials, all boundary treatments, hard landscaping and retaining walls are necessary to ensure a satisfactory appearance.
72. Super-fast broadband connections are necessary to ensure compliance with Policy 3 of the CS, which seeks to reduce the need to travel by enabling better telecommunications. Each dwelling shall be provided with hard wiring to enable an electric vehicle charging point to ensure compliance with the Framework, which sets out that applications for development should be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.
73. All dwellings are required to achieve a minimum Dwelling Emission Rate of 19% above 2013 Building Regulations (Code Level 4 equivalent). This is necessary to ensure compliance with the transitional arrangements for Policy 27 of the CS. The policy originally required Code Level 6, but following the Deregulation Act 2015, a Written Ministerial Statement<sup>5</sup> allowed planning authorities to apply existing (as of March 2015) development plan policies which require compliance with (the equivalent of) Level 4 in the Code for Sustainable Homes until s43 of the Deregulation Act 2015 comes into force, serving to amend the Planning and Energy Act 2008. S43 has not yet come into force.
74. A link road to the adjacent undeveloped site is proposed and a condition would be necessary to ensure the site can be satisfactorily accessed. It is necessary to require car parking spaces to be implemented in order to provide sufficient off street parking. Remediation and validation of contaminated land would be necessary to prevent harm to human health.
75. Conditions relating to implementation of the GCN mitigation and the 15m buffer are necessary to provide suitable protection for protected species and ancient woodland. Submission of the protected species license is necessary and reasonable because the great crested newt mitigation is complex, and submission will ensure that the license effectively integrates with the timetabling and other matters associated with the construction of the scheme. The mitigation would also protect the status of the common toad. Implementation of bin collection areas are necessary to protect the amenity of the area.
76. Conditions 3-21 are pre-commencement conditions. They are pre-commencement conditions as it is fundamental to have these details submitted prior to the commencement of the development, or a phase of the development. The pre-commencement conditions have been agreed to in writing by the appellant as required by the Town and Country Planning (Pre-commencement Conditions) Regulations 2018.

## **Conclusion**

77. The proposal would deliver a housing development on an allocated site that complies with all relevant development plan policies. The education

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<sup>5</sup> Statement UIN HCWS488 25 March 2021

contribution would be necessary along with all other planning obligations and conditions.

78. For the reasons set out above, I conclude that the appeal should be allowed.

*Katie McDonald*

INSPECTOR

## APPEARANCES

### For the local planning authority:

David Forsdick QC	Instructed by Stefanie Leach, on behalf of Chorley Council
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He called

Caron Taylor	Principal Planning Officer, Chorley Council
BSc(Hons) MTP MRTPI	
Mark Sarjent	School Planning Principal, Lancashire County Council
BSc(Hons) DipMS	
Stefanie Leach	Senior Solicitor, Chorley Council
Katherine Greenwood	Planning Policy and Housing Officer, Chorley Council

### For the appellant:

Douglas Edwards QC with Sarah Sackman of Counsel	Instructed by Taylor Wimpey UK Ltd
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They called

Caroline Musker	Senior Director, Lichfields
BA(Hons) DipTRP MRPTI	
John Powell	Operations Director, Alfredson York Associates Ltd
BA(Hons)	
Sue Thackeray	Regional Solicitor, Taylor Wimpey UK Ltd

### Interested parties:

Geoff Clark	Planning consultant speaking on behalf of Mr and Mrs Woodcock
Ian Hamer	Local resident

## INQUIRY DOCUMENTS

- ID1 Appellant opening submissions
- ID2 Council opening submission
- ID3 Updated Core Document 4.3 to include Appendix A Parking Standards
- ID4 Lancashire County Council School Place Provision Strategy, 2017/18 to 2019/20 (August 2017)
- ID5 Lancashire County Council Education Contribution Methodology Infrastructure and Planning Annex (2 September 2020)
- ID6 Plans relating to off-site highway works
- ID7 Ecology update from Greater Manchester Ecology Unit
- ID8 Policy 27 Position Statement
- ID9 Chorley Council Response to Questions from Mr Hamer
- ID10 Council Closing submissions
- ID11 Appellant closing submissions
- ID12 Completed planning obligation

## **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development shall be carried out in accordance with the following plans and documents:
  - Planning Layout TWM014 - PL01 (Sheet 1) Rev BD
  - Planning Layout TWM014 - PL01 (Sheet 2) Rev BD
  - Materials Layout TWM014 - ML02 Rev G
  - Waste Management Plan TWM014 SK01 Rev P12
  - Waste Management Plan TWM014 SK02 Rev P12
  - Landscape General Arrangement (2) 2331-102 Rev M
  - Landscape General Arrangement (3) 2331-103 Rev N
  - Landscape General Arrangement (4) 2331-104 Rev N
  - Shared Surface Areas 2331-105 Rev C
  - Attenuation Basins - Landscape Proposals 2331-106 Rev D
  - Footpath Network 2331-107 Rev D
  - Amenity Space – Landscape Proposals 2331-108 Rev D
  - Open Space Provision 2331-111 Rev A
  - Planting Plan (5 of 14) 2331-205 Rev H
  - Planting Plan (6 of 14) 2331-206 Rev I
  - Planting Plan (7 of 14) 2331-207 Rev H
  - Planting Plan (8 of 14) 2331-208 Rev H
  - Planting Plan (9 of 14) 2331-209 Rev I
  - Planting Plan (10 of 14) 2331-210 Rev I
  - Planting Plan (11 of 14) 2331-211 Rev H
  - Planting Plan (12 of 14) 2331-212 Rev H
  - Planting Plan (13 of 14) 2331-213 Rev J
  - Planting Plan (14 of 14) 2331-214 Rev E
  - Housetype Range TWM014/HT1(May 2019)
  - Focal House Types TWM014/HT3 (April 2019)
  - Adopted Roads Plan TWM014 AR02 Rev A
  - Site Location Plan TWM014 LP03 Rev P2
  - Garage Details 300-GD-01
  - Urban Core Enhanced Elevations Pack TWM014/HT4 11/01/2017
  - Ecological Constraints Plan G5170.010A Rev A
  - S278 General Arrangement 1924-D001 Rev C
  - S278 Site Clearance 1924-D002 Rev C
  - S278 Construction Materials 1924-D003 Rev C
  - S278 Signs & Markings 1924-D004 Rev C
  - S278 Standard Details 1924-D005 Rev B
  - General arrangement of 2 submersible sewage pumps 19-122-1 Rev A
  - Foul water pumping station kiosk and plinth details 19-122-2
  - Section through foul water pumping station 11377H 120
- 3) No development shall take place until a phasing plan has been submitted to and approved in writing by the local planning authority. The Phasing Plan will include details of which elements of the following will apply to each phase:
  - i) Ecology surveys and mitigation measures;
  - ii) Arboricultural Method Statement;
  - iii) Approved Landscaping;
  - iv) Dwelling boundary Treatments and other boundary treatments;



- v) Surface Water Sustainable Drainage Scheme;
- vi) Public Open Space;
- vii) Roads and Other Highways Works; and,
- viii) Travel Plan.

The development shall be carried out in accordance with the approved phasing plan.

- 4) No development shall take place until the implementation of a programme of archaeological work has been secured. This must be carried out in accordance with a written scheme of investigation, which shall first have been submitted to and approved in writing by the local planning authority.
- 5) No development shall commence until full details of the design, based on sustainable drainage principles, and implementation of an appropriate surface water sustainable drainage scheme for that phase have been submitted to and approved in writing by the local planning authority. The submitted details shall accord with the submitted Indicative Drainage Strategy (Ref: TAY78 103 P5) and Flood Risk Assessment And Drainage Management Strategy (Ref: HYD047\_EAVES.GREEN\_FRA&DMS) and Supplementary Information Note 1 (Ref: 12622264v5). Those details shall include, as a minimum:
  - i) Limit the surface water run-off generated by the critical storm periods for 1 in 30 & 1 in 100 year+ allowance for climate change so that it will not exceed the run off from the undeveloped site and not increase the risk of flooding off-site;
  - ii) Provision of compensatory flood storage for Q100 + Climate Change for the following catchments as indicated on drawing TAY78/103/P5 – Indicative Drainage Strategy:
    - Catchment A – between 756 m<sup>3</sup> and 1096 m<sup>3</sup>
    - Catchment B – between 280 m<sup>3</sup> and 407 m<sup>3</sup>
    - Catchment C – between 1106 m<sup>3</sup> and 1614 m<sup>3</sup>
    - Catchment D – between 804 m<sup>3</sup> and 1178 m<sup>3</sup>
  - iii) The drainage strategy should demonstrate that the surface water run-off must not exceed the pre-development greenfield runoff rate. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed;
  - iv) 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);
  - v) Flood water exceedance routes, both on and off site;
  - vi) A timetable for implementation, including phasing as applicable (taking into account the Great Crested Newt timetable (table 3 of the GCN Mitigation Strategy submitted with the application);
  - vii) Identification and provision of safe route(s) into and out of the site to an appropriate safe haven;
  - viii) Confirmation of the opening up of any culverts across the site;
  - ix) Finished floor levels are set no lower than 150mm above Ordnance Datum (AOD);
  - x) Details of water quality controls, where applicable;

- xi) The detailed design, construction and timetables of the SuDS features designed to support open water the majority of the time in normal rainfall conditions;
  - xii) The detailed design and location of headwalls/outfalls to ensure a sympathetic interface with the woodland Biological Heritage Site. The surface water sustainable drainage scheme and any mitigation shall be implemented in accordance with the approved details prior to full occupation of each phase.
- 6) All relevant attenuation basins and flow control devices/structures required to serve each phase shall be constructed and operational prior to the commencement of any other development as part of that phase.
- 7) No development shall commence other than site enabling works until an Estate Street Phasing and Completion Plan has been submitted to and approved in writing by the local planning authority. The Estate Street Phasing and Completion Plan shall set out the development phases and the standards that estate streets serving each phase of the development will be completed. No dwelling or dwellings shall be occupied until the estate street(s) affording access to those dwelling(s) has been completed in accordance with the Lancashire County Council Specification for Construction of Estate Roads.
- 8) The new estate road/access between the site and Lower Burgh Way shall be constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level before any other development takes place within the site.
- 9) Prior to any site clearance, vegetation removal, earth moving or other enabling works for each phase, pre-commencement surveys for that phase shall be undertaken and reports produced including mitigation protocols where necessary, shall be submitted to and approved in writing by the local planning authority. These should encompass:
  - i) All mature trees for the presence of roosting bats, with particular focus on trees T56, T59 and T53 & T54. This should include aerial inspection and activity surveys if necessary to assess change in condition. This should be undertaken as near to the commencement of development as possible (within 6 months);
  - ii) Badger survey of whole site and including buffer of 30m. This should be undertaken 6 months prior to scheduled start of works;
  - iii) Invasive non-native species including Himalayan Balsam, Japanese knotweed and rhododendron (including a Construction Methodology and Treatment Plan to ensure that areas supporting these species are appropriately identified (to 7m of the growing margins) for Japanese Knotweed, treated and spoils supporting plant materials are disposed of in an effective and legal manner;
  - iv) Breeding birds. Given the complex nature of the site and the phased construction it should include a detailed protocol in relation to all breeding birds (in accordance with the TEP Ecological Mitigation Report 5.18 – 5.25);The development shall be carried out in accordance with the approved protocol(s) and any mitigation measures.
- 10) Prior to any site clearance, vegetation removal, earth moving or topsoil stripping, as part of each relevant phase, full details of the location for

translocated bluebells from that phase shall be submitted to and approved in writing by the local planning authority. The details shall then be implemented in accordance with the approved details.

- 11) Prior to any site clearance or soil stripping as part of each phase, an Arboricultural Method Statement for that phase shall be submitted to and approved in writing with the local planning authority. This shall include details for the protection of all trees to be retained and details of how construction works will be carried out within any Root Protection Areas of retained trees. It shall also include specification for pipe installation (using trenchless techniques) in relation to the foul water sewage connection proposed underneath tree group G5. The development shall only be carried out in accordance with the approved Arboricultural Method Statement. No construction materials, spoil, rubbish, vehicles or equipment shall be stored or tipped within the Root Protection Areas.
- 12) Prior to commencement of the development, a Landscape and Ecological Management Plan shall be submitted to and approved in writing by the local planning authority to:
  - i) secure the on-going management and maintenance of the Great Crested Newt Mitigation area, unless this requirement is removed through the District-Level Licensing approach to be adopted; and
  - ii) secure the on-going management and maintenance of the 15m buffer.

The approved Landscape and Ecological Management Plan shall be implemented in accordance with the approved details.

- 13) For each phase, no development shall take place until a Construction Management Plan for that phase has been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) Vehicle routeing and the parking of vehicles of site operatives and visitors;
  - ii) hours of operation (including deliveries) during construction;
  - iii) loading and unloading of plant and materials;
  - iv) storage of plant and materials used in constructing the development;
  - v) siting of cabins, site compounds and material storage area (ensuring it complies with any Great Crested Newt mitigation requirements);
  - vi) the erection of security hoarding where appropriate;
  - vii) wheel washing facilities;
  - viii) measures to control the emission of dust and dirt during construction;
  - ix) a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - x) fencing of the 15m buffer zone to the woodland during construction.
- 14) Prior to the commencement of the 10th dwelling, the construction of the site access and the off-site works of highway improvement (relating to the widening of footways, carriageways, works relating to the site access and the extension of the left turn lane at the A6 Bolton Road/B5252 Myles Standish Way) shall be carried out in accordance with drawing no. S278 General Arrangement 1924-D001 Rev C, S278 Site Clearance 1924-

D002 Rev C, S278 Construction Materials 1924-D003 Rev C, S278 Signs & Markings 1924-D004 Rev C and S278 Standard Details 1924-D005 Rev B.

- 15) For each phase, notwithstanding any indication on the approved plans, no development approved by this permission shall commence until a scheme for the disposal of foul waters for that phase has been submitted to and approved in writing by the local planning authority. For the avoidance of doubt, surface water must drain separate from the foul and no surface water will be permitted to discharge directly or indirectly into existing sewerage systems. The development shall be completed, maintained and managed in accordance with the approved details.
- 16) A scheme of landscaping for each phase or sub-phase shall be submitted and approved in writing by the local planning authority prior to the commencement of that phase or sub-phase of development. The scheme shall indicate the types and numbers of trees and shrubs to be planted, their distribution on the site and those areas to be seeded. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of any buildings or the completion of the development within the relevant phase or sub-phase, whichever is the earlier. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 17) Prior to commencement of development on each relevant phase, a scheme for remedial works in relation to past coal mining activities on that phase should be submitted to and approved in writing by the local planning authority. The remedial works shall be implemented in accordance with the approved details.
- 18) For each phase, prior to the commencement of the laying of any roads or footway (or any sub-surface of them), the location and detailed design of highway details and furniture associated with the highways/footpaths for that phase (including wildlife dropped kerbs, off-set gulley pot locations and specification to prevent trapping of Great Crested Newts and other amphibians) along with full engineering, drainage and constructional details of any roads proposed for adoption shall be submitted to and approved in writing by the local planning authority. The development shall then be carried out in accordance with the relevant approved details.
- 19) Prior to the commencement of any dwelling on each phase, full details of the existing and proposed ground levels and proposed dwelling finished floor levels (all relative to ground levels adjoining the site) for that phase shall be submitted to and approved in writing by the local planning authority, notwithstanding any such details shown on previously submitted plans(s). The development shall be carried out strictly in conformity with the approved details.
- 20) Prior to the commencement of any dwelling on each phase, details of the location of bird and bat boxes (in accordance with the Ecological Mitigation and Enhancement Strategy submitted with the application) for that phase shall be submitted to and approved in writing by the local

planning authority. The development shall then be implemented in accordance with the approved details.

- 21) Prior to the commencement of any phase of the development, an Open Space Management Scheme for the open space within that phase shall be submitted to and approved in writing by the local planning authority. The Scheme shall include the full details of the layout, location, design, specifications, phasing and delivery of the open space. The scheme shall also identify the details of the management company and shall include a scheme for the future maintenance and management of the open space (including a timetable for carrying out of maintenance). The Open Space Management Scheme shall be implemented as approved and the open space shall thereafter be made available for use in accordance with that approved scheme. The open space shall at all times be maintained in accordance with the approved Open Space Management Scheme.
- 22) For the relevant phase, no above ground works shall commence until details of the improvements to Burgh Lane South track (footpaths – FP3, FP1 and FP2) including a bollard lighting and safety signage scheme have been submitted to and approved in writing by the local planning authority. The improvements shall be constructed and completed in accordance with the approved details prior to occupation of any of the plots numbered 124 or higher on the approved plans.
- 23) For each phase, prior to excavation of the foundations for any dwellings, samples of all external facing and roofing materials for that phase (notwithstanding any details shown on previously submitted plan(s) and specification) shall be submitted to and approved in writing by the local planning authority. All works shall be undertaken strictly in accordance with the approved details.
- 24) For each phase, prior to the construction of any part of any dwelling above ground level, full details of the alignment, height and appearance of all fences, walls and gates to be erected on the site (notwithstanding any such details shown on previously approved plans) for that phase shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until all fences, walls and gates shown on the approved details to bound its plot have been erected in conformity with the approved details. Other boundary treatments shown in the approved details shall be erected in conformity with the approved details prior to occupation of the final dwelling of the development.
- 25) For each phase, prior to the construction of any retaining walls to be used as part of that phase, full details of them 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.
- 26) For each phase, prior to the laying of any hard landscaping (ground surfacing materials) full details of their colour, form and texture for that phase shall be submitted to and approved in writing by the local planning authority. The development shall be undertaken strictly in accordance with the approved details and shall be completed in all respects before occupation of the final dwelling in that phase.
- 27) Prior to the installation of any permanent external lighting as part of each phase, a lighting design strategy for that phase shall be submitted to and approved in writing by the local planning authority. The strategy shall

identify areas/features on site that are potentially sensitive to lighting for bats and any other species that may be disturbed and show how and where the external lighting will be installed (through appropriate lighting contour plans) so that it can be clearly demonstrated that any impacts on wildlife are negligible (in particular bats). All external lighting shall be installed in accordance with approved specifications and locations set out in the strategy and retained as such.

- 28) Prior to the construction/provision of any services, a strategy to facilitate super-fast broadband for future occupants of the site shall be submitted to and approved in writing by the local planning authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a super-fast broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works within the site boundary only.
- 29) No dwelling hereby permitted shall be occupied until full details of an appropriate management and maintenance plan for the sustainable drainage system for that phase for the lifetime of the development have been submitted which, as a minimum, shall include:
- i) The arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company
  - ii) Arrangements concerning appropriate funding mechanisms for its ongoing maintenance of all elements of the sustainable drainage system (including mechanical components) and will include elements such as:
    - a) on-going inspections relating to performance and asset condition assessments
    - b) 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;
  - iii) Means of access for maintenance and easements where applicable.
  - iv) Arrangements for phasing of management works to take account of biodiversity features, particularly protected species.

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.

- 30) No dwelling hereby approved shall be occupied until each dwelling has been installed with hard wiring for an electrical vehicle charging point, the details of which shall have been submitted and approved in writing by the local planning authority prior to the installation.
- 31) All the dwellings hereby approved shall achieve a minimum Dwelling Emission Rate of 19% above 2013 Building Regulations. No dwelling shall be occupied until a SAP assessment (Standard Assessment Procedure), or other alternative proof of compliance (which has been previously approved in writing by the Local Planning Authority) such as an Energy Performance Certificate, has been submitted to and approved in writing



- by the local planning authority demonstrating that the dwelling has achieved the required Dwelling Emission Rate.
- 32) For each phase, no dwellings shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets and any other areas not to be within the development adopted (including details of any Management Company) for that phase have been submitted to and approved in writing by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details, until such time as an agreement has been entered into under section 38 of the Highways Act 1980 or a private management and maintenance company has been established.
- 33) For each phase, prior to the first occupation of any dwelling hereby approved, a Travel Plan for that phase shall be submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented within the timescale set out in the approved plan and will be audited and updated at intervals not greater than 18 months to ensure that the approved Plan is carried out.
- 34) Prior to the occupation of plots 133, 152, 153, 155 or 156, the access road through to the adjoining land (marked 'Future Connection to LPA Land') shall have been constructed up to the application boundary in accordance with the approved plans.
- 35) The car parking spaces for each dwelling shall be surfaced or paved, drained and marked out all in accordance with the approved plan before that dwelling is first occupied. The car parking spaces and vehicle manoeuvring areas shall not thereafter be used for any purpose other than the parking of and manoeuvring of vehicles.
- 36) The development shall proceed in full accordance with the proposals detailed in *Section 15: Outline Strategy for Risk Reduction/Remediation Strategy*, as detailed in the: *Desk Study & Ground Investigation Report for Eaves Green, Chorley, Lancashire dated February 2016 Report No: 15TAY021/DSGI*. Upon completion of any necessary remediation works, a validation report which demonstrates works have been completed shall be submitted to and approved in writing by the local planning authority.
- 37) The area shown on drawing ref: G5170.010A Rev A shall be reserved and used as a Great Crested Newt mitigation area in order to implement key elements of the Great Crested Newt Mitigation Strategy as set out within TEP Ecological Mitigation Report (Ref: 5170.015), unless an alternative location or mitigation approach (such as Natural England Impact Assessment Conservation Payment Certificate (IACPC) under District-Level Licensing) is submitted to and approved in writing by the local planning authority.
- 38) The 15m buffer shown on the approved plans where it is contiguous with the woodland and Biological Heritage Sites shall be maintained throughout the development and shall be fenced off during construction with no vehicles or machinery entering the buffer, no earth moving taking place and nothing stored within the area.
- 39) A draft European Protected Species Licence (EPSL) application shall be submitted to the local planning authority prior to submission to Natural

England if an EPSL is required for any phase. Should the development use the District Level Licensing route for Great Crested Newts, the countersigned Impact Assessment Conservation Payment Certificate shall be submitted to the local planning authority.

- 40) Each bin collection areas/point shown on the approved plans shall be provided prior to occupation of any of the dwellings they serve.

**\*\*\*END OF CONDITIONS\*\*\***