

3 December 2020  
Your reference:  
Our reference: LAS/ZB  
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**To: Members and Officers of  
the Planning Committee**  
Councillors Iqbal (Chair), Borrow (Vice-Chair), Bax, Darby, Ms Eaves,  
Landless, Mein, Morgan, Moss, Shannon and Mrs Whittam

Dear Sir/Madam

### **Planning Committee - 3 December 2020**

I am now able to enclose, for consideration at the above meeting, the following report that was unavailable when the agenda was printed.

#### **Agenda No    Item**

**5.            Planning Applications List (Pages 1 - 8)**

Report by the Director of Development and Housing is enclosed giving details of:

- (ii)    late changes list.

Yours faithfully

*Jackie Wilding*

**Director of Resources**

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**PRESTON CITY COUNCIL  
PLANNING COMMITTEE meeting 3<sup>rd</sup> December 2020  
LATE CHANGES LIST**

Listed below are changes to the list of planning applications made as a result of additional information received since the publication of the agenda.

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**Agenda Item 5a: 06/2020/0222**

**Address/Location – Harris Knowledge Park, Garstang Road**

**Pages 31 - 64**

**Changes:**

**Section 3.5 Consultation Responses**

Sport England – Following the receipt of amended plans, Sport England maintain their objection.

County Education – As of 27<sup>th</sup> November 2020, no contribution towards primary or secondary school places is required.

Lead Local Flood Authority – No objections subject to conditions requiring the submission of a final sustainable drainage scheme for both the full and outline portions of the scheme, and that all sustainable drainage features are constructed and operational prior to the commencement of any development.

War Memorials Trust – No objection to the relocation of the war memorial however further details regarding its protection and landscaping would be required.

Publicity – Following the receipt of amended plans on 10<sup>th</sup> November 2020, a second round of public consultation was undertaken. 183 objections from 165 households have been received. All of the representations received object to the amendments made and raise no new issues beyond those covered in the committee report.

One letter of support has been received. The comments in support of the application echo those listed in the committee report.

One letter has also been received from a private planning consultant (different to the planning agent), on behalf of the applicant, requesting the application be deferred for four weeks to allow a detailed review of the proposals, including the effect on the heritage assets, landscape and setting within the site, to take place.

**Officer comment**

The applicant and agent have, since at least 17<sup>th</sup> July 2020, been aware of the Council's concerns (being: the substantial harm to the conservation area and historic park and garden; the less than substantial harm to the setting of the listed buildings, the lack of affordable housing and lack of financial contribution towards an off-site cricket pitch with no robust viability assessment to justify the applicant's position; and an unsatisfactory vehicular access from Garstang Road to the north of the site). The applicant chose to address the heritage and access concerns, and confirmed a financial contribution towards an off-site cricket pitch was, in their view, unnecessary, in October 2020. A revised scheme was presented to officers the same month. Officers confirmed in early November 2020 that the revised scheme did not address their heritage concerns. County Highways have also confirmed their concerns have not been addressed. With no evidence that all of the Council's concerns could or would be addressed some three months after they were raised officers considered there was no reason to further delay determination. The applicant was informed that the application would be considered at December's Planning Committee meeting. The applicant

chose to formally submit revised plans in the knowledge that the revised scheme was unacceptable to officers.

Contrary to the view of the private planning consultant, officers consider that four weeks would be an insufficient amount of time to address all their concerns. Furthermore, notwithstanding the heritage issues that the private planning consultant wishes to address, to date there is still no confirmation that the lack of affordable housing, lack of financial contribution towards an off-site cricket pitch and unsatisfactory vehicular access from Garstang Road to the north of the site can or will be addressed by the applicant. Therefore officers remain of the view that there is no reason to further delay determination of the application.

### Planning Balance

Remove the following text:

However, whilst the minimum housing requirement of Policy 4 is out-of-date, it does not follow that other parts of Policy 4 and other most important policies for determining the application are out-of-date. Policy 4 also seeks to ensure, in locations that are in line with Policy 1, that at least 70% of new housing developments are located on brownfield sites. Therefore whilst Policy 4 is, on the whole, considered to be out-of-date, this part of Policy 4 is not considered to be out-of-date.

### Conclusion

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.

The application site is located in the existing residential area of Preston as shown on the policies map of the Preston Local Plan 2012-2026 (Site Allocations and Development Management Policies). The principle of the proposed development complies with Core Strategy Policy 1 and Local Plan AD1(a). The proposed development however fails to comply with Core Strategy Policies 3, 16 and 24 and Local Plan Policies ST2, EN8 and HS3. All of above policies are up to date and accord with the Framework.

Objections have been received in relation to the proposed development and have been fully considered as part of the analysis of the proposal. The proposal would introduce an unacceptable suburban development to the Harris Children's Home Conservation Area and Historic Park and Garden, harming its character and appearance, and would adversely impact upon the setting of several grade II listed buildings, in particular the surrounding character and how the listed buildings would be appreciated within the wider landscape setting. The proposal is considered to represent less than substantial harm, to a high level, to the setting of the listed buildings, and substantial harm on the character and appearance of the conservation area and Historic Park and Garden. The entire site is considered to be a rare and intact purpose built and designed orphanage, the only one to be included in the statutory list of buildings of architectural and historic interest compiled by Historic England. The public benefits in this case are limited and in accordance with Section 66(1) and Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 the considerable importance and weight (greater weight given the importance of the asset) to be attached to the preservation of the heritage assets outweighs the limited public benefits therefore paragraphs 193, 195 and 196 of the Framework indicate that the proposed development should be refused. Aside from profound heritage impacts, whilst any harm arising from contaminated land or flooding could be suitably mitigated via conditions and a section 106 obligation could mitigate its predicted impacts sports facilities, deliver affordable housing either on-site or off-site and maintenance and manage new opens space on site, the non-compliance with Chapter 16 of the Framework that protects heritage assets of particular importance, together with the overarching statutory duty imposed by Section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, provide a clear reason for refusing the development proposed.

**No change to recommendation**

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**Agenda Item 5b: 06/2020/0223**

**Address/Location – Harris Knowledge Park, Garstang Road**

**Pages 65 - 74**

**Changes:**

**Section 3.5 Consultation Responses**

Historic England – Do not wish to offer any comments on the amended scheme. Recommend advice is sought from the Council's specialist Conservation Advisor.

War Memorials Trust – A Separate application for listed building consent would be required to move the war memorial.

Ancient Monuments Society – Object to the application as the revised proposal will still result in substantial harm to the setting and significance of a number of Grade II and non-designated heritage assets and the Harris Park (Former Harris Orphanage) Conservation Area.

Publicity – Following the receipt of amended plans on 10<sup>th</sup> November 2020, a second round of public consultation was undertaken. 72 objections from 66 households have been received. All of the representations received object to the amendments made and raise no new issues beyond those covered in the committee report.

**No change to recommendation**

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**Agenda Item 5d: 06/2020/1002**

**Address/Location – Land north of Jepps Lane**

**Pages 89-111**

**Changes:**

**Section 3.5 Consultee Responses**

Lead Local Flood Authority – No objection subject to a condition requiring a final sustainable drainage scheme be submitted for approval, as well as an informative detailing how any granting of planning permission does not automatically permit connection to the ordinary watercourse.

On 24<sup>th</sup> November 2020, after the agenda was published and 9 weeks after the application was submitted, the applicant asked if they could submit an alternative affordable housing offer and the application be deferred to a later Planning Committee meeting. On 1<sup>st</sup> December 2020 the applicant submitted an advice note prepared by counsel (dated 30<sup>th</sup> November 2020), which specifically looks at the matter of the 'tilted balance' and its consideration within the committee report, which is set out in more detailed in the next paragraph. The applicant also requested a further opportunity to consider affordable housing on site, expressing the need to undertake a viability review to determine the revised provision that could be offered. The applicant gave no timescale for this work to be completed and submitted to the Council and did not offer an extension of time. The statutory target date for this application to be determined is 16<sup>th</sup> December 2020.

The advice note prepared by counsel (dated 30<sup>th</sup> November 2020) instructed by the applicant is summarised as follows:

- The relevant policies, ‘most important’ for determining the application, are out of date;
- Core Strategy Policy 4 as a whole is out of date, meaning the tilted balance is engaged;
- The assessment of whether Policy 4 or any other Core Strategy policy is out of date must be applied consistently across the plan area. Core Strategy Policy 1 and Local Plan Policy EN1 are bound by the same housing requirement set out in Core Strategy Policy 4, therefore use of the standard method means that the spatial strategy within the Core Strategy is out of date;
- Policy 1 is at odds with the application of the standard method across Central Lancashire. A policy which applies and is expressly committed to apply consistently across a plan area cannot be out of date in one part of the plan area and up to date in another;
- The application of the standard method means that not only Policy 1 is out of date but also Local Plan Policy EN1 is out of date;
- The advice set out to Members in the Planning Balance section of the report is entirely flawed;
- Members should determine the application on the basis that the most important policies in the development plan relevant to the determination of the application are out-of-date such that the tilted balance is engaged;
- It is necessary for Members to be advised of the recommendation of officers on the basis that the tilted balance is engaged and this should be done in a manner consistent with previous advice on the application of the tilted balance (*although not specified, this is considered to be advice provided to Members in 2019 up to the Chain House Lane appeal decision in December 2019*);
- It is considered that Members would have been seriously misled if they concluded that the development plan was up to date on the basis of Planning Balance section of the report.

### Officer comment

It is accepted that Core Strategy Policy 4 is out of date. This will be addressed below. Officers do not agree with the view that applying the standard methodology renders Core Strategy Policy 1 and Local Plan Policy EN1 out of date. The claim that the tilted balance should be engaged is not new and is a view that has been put to the Council in recent months. Officers disagree and deal with the proposition under “Planning Balance” below. Furthermore a revised conclusion is set out below.

### **Section 3.6 Analysis**

#### Traffic and Highway Safety

The applicant has confirmed their agreement to the financial contributions of £157,542.65 towards improving sustainable transport facilities in the area, £6,000 towards the monitoring of a Travel Plan and that the upgrading of two bus stops on Garstang Road to quality bus stops with new shelters. Should Members be minded to approve this application the financial contributions would be secured within a Section 106 Obligation, and the bus stop improvements would form part of a Section 278 Agreement with County Highways.

#### Utilities, Flood Risk and Drainage

The Lead Local Flood Authority (LLFA) raises no objection subject to a condition requiring a final sustainable drainage scheme be approved prior to development commencing, should planning permission be granted. Subject to this condition and the condition proposed by United Utilities in the main agenda report, the proposed development would not have any unacceptable adverse impacts upon utilities, flood risk and drainage.

#### Planning Balance

The submitted Planning Statement details how the applicant considers, that regardless of Council’s Housing Land Supply position, the tilted balance should be engaged by virtue of the most important policies for determining this application being out of date. The submission

details that when the tilted balance was engaged in December 2019 the application was considered to be acceptable and this should now be the case for determining this application. The Council's position on this matter is detailed below:

The assessment as to whether it is appropriate to engage the tilted balance in Paragraph 11(d) of the Framework is comprised of three stages. Firstly, the most important policies for determining the application must be identified. Secondly, those policies must be assessed to ascertain whether or not they are out-of-date. Thirdly the basket of policies must be looked at to determine if, in the round, it is out-of-date thereby engaging the tilted balance.

The most important policies for determining this planning application are considered to be:

Central Lancashire Core Strategy

Policy 1: Locating Growth

Policy 4: Housing Delivery

Preston Local Plan 2012-2026 (Site Allocations & Development Management Policies)

Policy EN1: Development in the Open Countryside

Core Strategy Policy 1 and Policy EN1 are relevant to the principle of the development proposed. Policy 4 is housing-related and contains the housing requirement figure for Central Lancashire. It has been accepted earlier in this report that Core Strategy Policy 4 is out of date. However, whilst the minimum housing requirement of Policy 4 is out-of-date, it does not follow that the other most important policies for determining the application are out-of-date.

Core Strategy Policy 1 promotes the spatial strategy for growth across Central Lancashire. For Preston this means focussing growth and investment in the main urban area (comprising of the Central Preston Strategic Location and adjacent inner city suburbs), the Cottam Strategic Site, the North West Preston Strategic Location and the Key Service Centre of Longridge. Policy 1 does not unreasonably constrain the ability of Preston to accommodate its local housing need calculated by way of the standard methodology. Policy 1 is therefore not out-of-date.

Policy EN1 restricts development which takes place in the open countryside to that needed for the purposes of agriculture and forestry (or other rural appropriate uses), the re-use of existing buildings and infill within groups of buildings, as well as development permissible in other policies contained within the Local Plan (namely Policies HS4 and HS5). Given the local housing need in Preston (250 net additional homes per annum) is currently substantially below the housing requirement contained in Policy 4 (507 net additional homes per annum), it is clear that more than sufficient land has been allocated in the current Local Plan to meet the local housing need. Policy EN1 does not unreasonably constrain the ability of Preston to accommodate its local housing need calculated by way of the standard methodology. As a consequence, the rural settlement boundaries do not need to be reconsidered at this time and remain relevant and up-to-date. Policy EN1 is therefore not out-of-date.

Accordingly the tilted balance is not engaged.

Notwithstanding the above, the Council has received an advice note prepared by counsel (dated 30<sup>th</sup> November 2020) instructed by the applicant. Counsel is of the view that the application of the standard methodology renders Core Strategy Policy 1 and Local Plan Policy EN1 out of date and should apply the presumption in favour of sustainable development, the 'tilted' balance, when determining planning applications. Whilst officers do not agree with this view, it is addressed below.

Paragraph 11 of the Framework sets out a 'presumption in favour of sustainable development' and for decision-taking this means 11(c) approving development proposals that accords with an up-to-date development plan without delay; or 11(d) where there are no

relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting planning permission unless:

- i. 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
- ii. 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.

If all the most important policies for determining this application, which in this case are deemed to be Policies 1 and 4 of the Core Strategy and Policy EN1 of the Local Plan, which accord with the Framework save for Policy 4, were considered to be out of date and Paragraph 11 was engaged, there are no policies in the Framework that protect areas or assets of particular importance that provide a clear reason for refusing the development proposed with regard to bullet point (i) above. In terms of bullet point (ii) above, the adverse impacts of granting planning permission contrary to the development plan (The Central Lancashire Core Strategy and the Preston Local Plan 2012-26) would significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework taken as a whole. Paragraph 12 of the Framework is clear that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. The Council can demonstrate a 13.6 year supply (as of 1<sup>st</sup> October 2020) therefore even if the tilted balance were to apply the contribution that the proposed development would make towards housing supply would not be significant and would attract limited weight. Furthermore the other benefits resulting from the proposed development are generic and no more than would be expected from any major housing development and as such they attract limited positive weight. The proposed development would be contrary to the hierarchy of locations for focussing growth and investment at urban, brownfield and allocated sites, within key service centres and other defined places. It would lead to the unplanned expansion of a rural village and is not the type of development deemed permissible in the open countryside. The proposed development is contrary to Policy 1 of the Central Lancashire Core Strategy and Policy EN1 of the Preston Local Plan 2012-26 (Site Allocations and Development Management Policies), which even if deemed to be out of date, should be accorded significant weight in such circumstances .

In summary if all the most important policies for determining this application, which in this case are deemed to be Policies 1 and 4 of the Core Strategy and Policy EN1 of the Local Plan, were considered to be out of date and Paragraph 11 were engaged, the adverse impacts of granting planning permission contrary to the development plan, which accords with the Framework save for Policy 4 of the Core Strategy, would significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework taken as a whole.

The advice note (dated 30<sup>th</sup> November 2020) asserts it is necessary for Members to be advised of the recommendation of officers on the basis that the tilted balance is engaged and this should be done in a manner consistent with previous advice on the application of the tilted balance. This refers to the previous application on this site considered by Members on 5<sup>th</sup> December 2019. At that time the Council could not demonstrate a five year housing land supply. In desperate need for new housing to significantly boost supply, in accordance with paragraph 59 of the Framework, officers gave significant weight to the contribution that the proposed dwellings would make to boosting the significant undersupply that was evident at that time. However the Council is now satisfied, some 12 months later, that it can use the standard methodology to monitor and assess its housing land supply position. Consequently the Council can currently demonstrate a 13.6 year supply (as of 1<sup>st</sup> October 2020) of deliverable housing land. In this position the Council is not in desperate need for new housing to address a significant undersupply. More than sufficient land has been allocated in the current Local Plan to meet the local housing need. Core Strategy Policy 1 and Local Plan Policy EN1 do not unreasonably constrain the ability of Preston to accommodate its local



housing need calculated by way of the standard methodology. As a consequence, the rural settlement boundaries remain relevant and up-to-date.

### Conclusion

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.

The application site is located in the open countryside as shown on the policies map of the Preston Local Plan 2012-2026 (Site Allocations and Development Management Policies). The proposed development would be contrary to the hierarchy of locations for focussing growth and investment at urban, brownfield, allocated sites, sites within key service centres and other defined places, contrary to Core Strategy Policy 1. The proposed development is not the type of development deemed permissible under Policy EN1 and the loss of open countryside for the development proposed is therefore contrary to this policy.

Statutory consultee comments and representations have been received which have been carefully considered and taken into account as part of this planning application. Whilst the proposal is contrary to the development plan, it would not result in the loss of a valued or distinctive landscape and would deliver 35% on site affordable housing, include open space and provide sustainable access to local services. Subject to the imposition of conditions the proposed dwellings would be energy efficient and be supplied with electric vehicle charging points. There would be no unacceptable harm to protected species and their habitats due to mitigation measures that could be secured by condition. Any harm arising from potential contamination and flood risk could be mitigated by condition. Furthermore, the education and highways impacts of the proposed development could be successfully mitigated by conditions and/or planning obligation. Whilst these are considered to be benefits resulting from the proposed development, the majority of these benefits are generic and no more than would be expected from any major housing development, and as such they attract limited positive weight in the balance against the conflict with the development plan.

Furthermore whilst the above demonstrates that the proposed development could achieve some of the three overarching objectives of sustainable development (Paragraph 8 of the Framework), they are not criteria against which every decision can or should be judged. Paragraph 10 of the Framework states that at the heart of the Framework is a presumption in favour of sustainable development. However paragraph 12 of the Framework states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. The planning application conflicts with the Council's up-to-date development plan, in such circumstances permission should not be granted.

In light of the applicant's claims in the planning statement and the view of the advice note prepared by leading counsel (dated 30<sup>th</sup> November 2020), a scenario whereby all the most important policies for determining this application could be out of date and the tilted balance within paragraph 11(d) of the Framework could be engaged has been considered above. The Council has drawn different conclusions now to the previous occasion it engaged the tilted balance on the same site in December 2019, because the overriding need to boost significantly the supply of housing no longer carries significant weight in the tilted balance like it did in December 2019, and is of the view that if all the most important policies for determining this application could be out of date and the tilted balance could be engaged, the planning application should still be refused. The adverse impacts of granting planning permission contrary to the development plan (which accords with the Framework save for Policy 4 of the Core Strategy) would significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework taken as a whole.

Returning to the standard planning balance, in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, the proposed development fails to comply

with the development plan, the benefits of the proposal are generic and attract limited positive weight in the balance against the conflict with the development plan, therefore planning permission should be refused.

**No change to recommendation**

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