



## **PLANNING STATEMENT**

### **FULL PLANNING APPLICATION FOR A LEISURE DEVELOPMENT INCLUDING ELECTRIC MOTORSPORT ADVENTURE FACILITY AND SUPPORT BUILDING, CAFÉ BUILDING, NATURAL PLAYGROUND AND 10 GLAMPING PODS.**

**CARR HALL, WHALLEY ROAD, LANGHO, BLACKBURN, LANCASHIRE, BB1 9NB.**

### **ON BEHALF OF DONELAN TRADING LTD.**

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED) PLANNING AND COMPULSORY PURCHASE ACT 2004

Date: JULY 2020

Pegasus Reference: P19-1597 R001 v3

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## **1. INTRODUCTION**

1.1 This planning application has been prepared by Pegasus Group on behalf of Donelan Trading Ltd. The application relates to a detailed planning application proposing full planning permission for a leisure development including electric motorsport facility and support building, café and 10 glamping pods and a natural playground at Carr Hall, Whalley Road, Langho.

1.2 The following documents have been submitted to support the Planning Application:

- Workshop for electric bikes Elevation and Floor Plan (prepared by Entwistle Design Service) July 2019;
- Café Layout Drawing (prepared by Entwistle Design Service) July 2019;
- Existing and Proposed Site with proposed buildings shown in red (prepared by Entwistle Design Service) July 2019;
- Proposed Site Plan with Topographical Layout (prepared by Entwistle Design Service) June 2020;
- Existing Site Topographical Survey (Prepared by Site Surveying Services Ltd ref sss-9269)
- Pre-application response from Lancashire County Council regarding Highways (from Simon Hardie dated 9<sup>th</sup> July 2020);
- Business Plan and Appendices (prepared by Donelan Trading Ltd);
- Phase 1 Arboricultural Impact Assessment (prepared by TEP) July 2020;
- Highway and Transport Report for Leisure Development (prepared by VTC Highway and Transportation Consultancy) July 2020; and
- Ecology Report Survey & Assessment in Respect of Protected/Notable Species Including Bats etc., and Nesting Birds (including Barn Owl) (prepared by Echo Calls Bat Surveys) March 2020.

### **Report Structure**

1.3 The remainder of this report includes the following sections:

- Section 2 introduces the site and surrounding area;
- Section 3 provides an overview of the planning history of the site;
- Section 4 describes the proposed development;
- Section 5 covers the pre-application feedback received regarding the proposal;
- Section 6 details the relevant national and local planning policies;

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- Section 7 provides an assessment of the development proposal against the relevant local and national planning policy; and
  - Section 8 explains the benefits of the proposal; and
  - Section 9 provides a summary and conclusions.

1.4 The purpose of this Planning Statement is to analyse the proposed development, evaluating it against relevant policies in the National Planning Policy Framework (NPPF) and the Local Development Plan. It also establishes and assesses other material planning considerations which relate to this application.

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## **2. SITE DESCRIPTION AND SURROUNDINGS**

- 2.1 The application site is located at Carr Hall, Whalley Road, Langho, Lancashire, BB1 9NB. Carr Hall includes a residential property and existing land and buildings provide a base for the applicants plant and haulage business. The design and construction company Mott MacDonald Bentley (MMB) is located immediately adjacent, but outside the red-line boundary. This is a large office complex which was formerly a garden centre with a 400 seater café and restaurant. There is a large area of hardstanding associated with the complex of buildings.
- 2.2 The access to this site is from the main vehicular access from the A666 and once onto the site would utilize the existing car parking area areas that exist adjacent to cafe building. The area is currently hard standing.
- 2.3 The application site includes an area of woodland to the north of Carr Hall which is proposed as a location for adventure trails for electric bike/vehicles. The built development includes the vehicle support building, café and glamping pods will be built on the fringes of the woodland.
- 2.4 To the southern boundary of the site is also a slight hill which screens the site from the wider views.
- 2.5 The site is located within the Green Belt and is therefore not within the settlement hierarchy. The site is located in close proximity to Langho which is allocated as a Tier 1 Village (the 9 most sustainable of the defined settlements).
- 2.6 The population of Langho according to the 2011 Census is 2,261.
- 2.7 The Local village centre of Langho is located 0.6 miles to the east of the site.
- 2.8 Brownhill Health Centre is located 2 miles from the site.
- 2.9 Pleckgate High School is located 1.9 miles from the site and St Augustine's Roman Catholic High School is located 2.3 miles from the site. Ribblesdale School is located 7.4 miles from the site in Clitheroe.
- 2.10 The Carr Hall bus stop is located at the end of the drive, opposite the site and offers a regular bus service to Clitheroe Town Centre, Billington, Shadsworth, Blackburn Town Centre and Roe Lee.
- 2.11 The nearest train station is Langho Train Station which is located 0.9 miles east of the site and offers services to Rochdale, Clitheroe and Manchester Victoria.
- 2.12 The site is within Flood Zone 1 and is not within a Conservation Area or has any listed buildings.

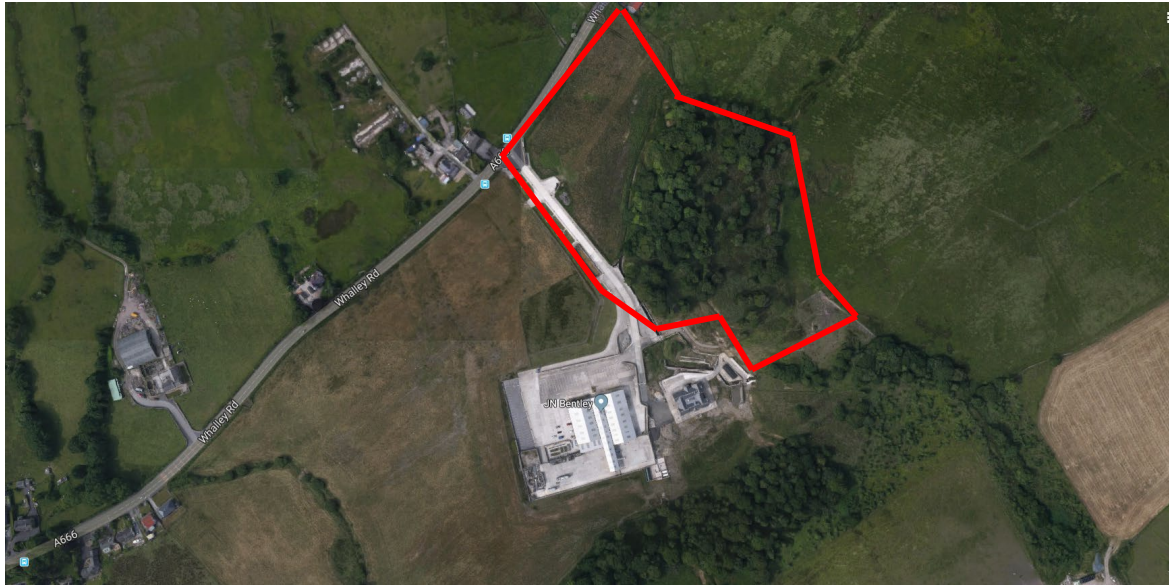


Figure 1 Site Area – Taken from Google Maps

- 2.13 The site is located in the local authority area of Ribble Valley, in its Wilpshire parish. The immediate site surrounds are characterised by the existing Carr Hall office building and parking area to the north and the east, with fields beyond the southern and western site boundaries.
- 2.14 Considered more widely, the Carr Hall complex of buildings is set within a rural location. Beyond Whalley Road to the north are three residential dwellings. There is a further residential dwelling, Carr Hall Farm, to the east of the office site. Beyond the southern site boundary is a wooded area known as Carr Hall Wood, and the wider surrounding area is characterised by agricultural fields.
- 2.15 The topography and landscape ensure that the site is largely screened from view in the wider landscape.
- 2.16 The HED DPD was adopted on 15th October 2019. Within the Policy Map part of the Carr Hall site is allocated as a protected employment site. However, this protected employment area only covers the former garden centre used as an office. The application proposal site is shown as falling within land designated as Green Belt, as defined by the adopted HED DPD proposals map.

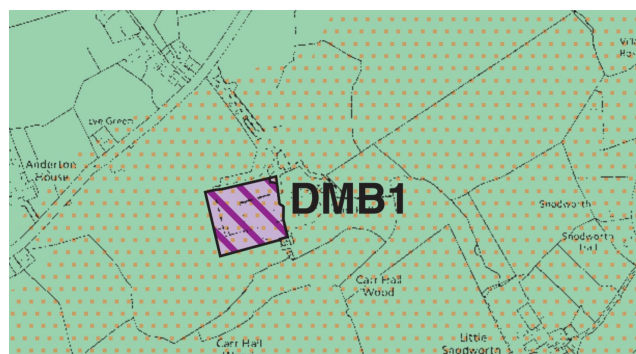


Figure 2 Site Allocation within the HED DPD

### **3. PLANNING HISTORY**

- 3.1 In 2000, planning permission and listed building consent were granted for a large extension and alterations to Carr Hall which, at that time, was a Listed Building. When these extensive works were commenced, a number of major structural faults and weaknesses, which had been concealed at earlier stages, were revealed. Following a request by the applicant, the building was therefore subsequently de-listed by English Heritage. Following this de-listing, all of the original building was demolished and rebuilt, along with continued work on the approved extension. An application to regularise these demolition and rebuilding works, and also to incorporate a basement into the building (3/2005/0072/P) was subsequently submitted, and was approved by the Committee on 14<sup>th</sup> June 2005. The building has been rebuilt on the footprint of the original Hall. These previous permissions included the erection of a detached single storey building to the rear (south) of the main building to comprise a storeroom and three car garages. That approved building, which has commenced development, has dimensions of approximately 24m x 8.5m.
- 3.2 Following a refusal in 2006, for a proposed extension at the rear of the main house to form a recreation block including garages, swimming pool and granny flat (3/2006/0684/P) permission was then sought, in 2007 (application ref 3/2007/0048) for a similar development, slightly reduced in size.
- 3.3 The committee report for this application stated that: *"Whilst this was still a large extension on to an already substantial house, a refusal of the application would have to be based on detriment to the openness of the Green Belt. Now that the previous excessive length of the extension was reduced, it was considered by Ribble Valley Borough Council that a refusal on that particular ground would have been difficult to sustain".*
- 3.4 In 2014 permission was sought (3/2014/1044) for a change of use of the from garden centre to B1 (office) and the retention of the existing B8 storage. This was approved with conditions in 2015. In the committee report it states that *"it is clear that this proposal is situated within the Green Belt and that there has been an existing history of use in connection with the garden centre and ancillary activities. In terms of impact on the Green Belt regard needs to be given as to whether or not this proposal would materially harm the aim of protecting the Green Belt from inappropriate development. In doing so it is important to assess both the visual impact of any changes resulting from new development or new extensions and whether or not the activity itself would significantly impinge on the safeguarding objective associated with Green Belt land. The proposal does not involve any extensions or alterations of significance to the main building and although it may result in more parked cars on a permanent basis than the garden centre, the footprint of the car parking area is not altered. In relation to physical harm I therefore conclude there will be no impact on the Green Belt status associated with the plan and as such no tangible harm as a result of the change of use application ... The site does offer reasonable accessibility, with both a train station and bus route in close proximity to the site. The objections also relate to the traffic flow and it is clear that*

*the Highway Authority does not object to the scheme having regarded to the implications of the trips generated from such a use”.*

- 3.5 The wider site also has three Endurance 50Kw wind turbines, 46m in overall height (i.e. to blade tip). This application was approved at appeal on 7<sup>th</sup> November 2013 (ref APP/T2350/A/13/2193882). The Inspector’s decision letter concluded that *“the only harm to be the inappropriate nature of the development in the Green Belt. The three turbines would be slim features and their impact on openness would be limited. For the same reason and, in light of my findings regarding the impact of the development on the character and appearance of the area, I do not consider that any visual encroachment would be significant. However, the turbines constitute inappropriate development in the Green Belt, and it is necessary to consider whether the harm by reason of inappropriateness is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development. The NPPF acknowledges that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources. The NPPF also states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. The appellant produces a letter from Electricity North West supporting the proposal as a form of distributed generation (DG), stating that ‘DG through wind PV and CHP is key to achieve our low carbon future’ I heard that the existing electricity connection at Carr Hall Garden Centre is of insufficient capacity to serve all the equipment required to run the business. Further, that reliance on diesel generators has had an adverse impact on the business due to the seemingly ever-increasing cost of fuel and the inability to offer potential franchises a reliable supply of electricity. The proposal would facilitate a three-phase connection and, in addition to providing some renewable energy to the grid, would help secure and create local employment. I consider that these matters amount to the very special circumstances necessary to justify the development in the Green Belt. For the reasons given above and having regard to all matters raised, I conclude that the appeal should be allowed.*
- 3.6 Please see the table below with a selection of relevant planning applications. The full list of planning history is found at Appendix 1.

**Table 1 Relevant Planning History of the Site**

<b>Application Number</b>	<b>Description Proposal</b>	<b>Decision</b>	<b>Date</b>
<b>3/2015/0547</b>	Full application for change of use to a secure vehicle storage area, with ancillary development comprising the siting of 1No. welfare facilities cabin, 1 No. drying room cabin and 3No. containers for storage at United Utilities.	Approved with conditions	11/08/2015
<b>3/2014/1044</b>	Change of use from garden centre to B1 (office) and the retention of the existing B8 storage	Approved with conditions	19/01/2015

<b>3/2012/0539</b>	Proposed installation of three endurance 50kw wind turbines 46m in overall height (i.e.to blade tip).	Appeal Granted	07/11/2013
<b>3/2009/0721</b>	Proposed infill and link extensions including 6no. planting tunnels to rear of existing garden centre building. Creation of accessible access ramps to provide fully accessible route to all areas from existing garden centre building and proposed landscaping scheme for the site.	Approved with Conditions	04/02/2010
<b>3/2005/0072</b>	Alterations and extensions to de-listed dwelling through total demolition and rebuilding in lieu of partial demolition and rebuilding, as approved by approval reference 3/2000/0777P	Approved with Conditions	14/06/2005
<b>3/2004/1020</b>	Redevelopment of existing site/buildings for garden/garden crafts centre. Amendment of permission 3/93/0196P	Approved with Conditions	07/07/2005
<b>3/1993/0196</b>	Detailed scheme of conversion of existing buildings to discharge condition 5 on planning approval 3/91/0584	Approved with conditions	27/05/1993
<b>3/1991/0584</b>	Use of buildings and land adjoining as garden craft centre	Approved with Conditions	06/11/1992

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#### **4. PROPOSED DEVELOPMENT**

- 4.1 The application is for full planning permission for a leisure development including electric motorsport facility and support building, café and 10 glamping pods and natural playground at Carr Hall, Whalley Road, Langho.
- 4.2 The proposal includes a number of elements which will join to create a natural, environmentally friendly, corporate and family leisure use within the Ribble Valley and will be a unique offering in the area. These will be discussed in more detail below.

##### 4x4 Electric Bike Adventure Area and Support Building

- 4.3 The proposed development addresses a gap in the market for environmental and sustainable energy within the recreation and corporate event industry. Therefore, the main component of this application is to create an adventure area for the use of 100% all electric motor sport adventure facility
- 4.4 The electricity used to charge all of these vehicles overnight will come from the wind turbines located on-site. The water used to clean the bike will come from the grey water holding tanks which are also located on site. This grey water will also be used for the toilets.
- 4.5 The facility will be open to families at the weekends and corporate client during the week. These corporate clients include staff day out trips, school groups and those seeking training for these vehicles for example if they are seeking to purchase an electric bike, UTV etc. The track days will consist of full and half day experiences for all capabilities. The track will be able to be set so that different abilities would be able to complete the track comfortably.
- 4.6 The maximum group size will be 25 people at both the full and half day experiences. At peak operation the facility will be open 7 days a week with 25 members of staff working on a rota basis. When the facility reaches full operation there will be 28/30 vehicles required as spare equipment will be required for training purposes and for use in case of mechanical failure. These electric vehicles will be 100% electric so will have no engine noise and will have a negligible environmental impact.
- 4.7 The storage building will provide a secure facility to store, clean, charge and maintain the vehicles. The building will also contain an office space and staff welfare area, changing rooms, clothes storage and a room for training and induction purposes. There will also be a storage room for the outside equipment to wash and maintain the tracks and vehicles.



Figure 3 Examples of Natural Ramps and Bikes

#### Natural Playground

- 4.8 The natural playground is aimed at children aged 2-12 years old. The facilities will use the natural contouring of the land to provide a play space and will use natural materials in order to have a minimal impact upon the Green Belt. The playground facility will complement the other uses proposed on the site.



Figure 4 Example of a Natural Playground

#### Glamping Pods

- 4.9 The applicant proposes to erect up to 10 Glamping Pods with the capacity for 20 people to stay on site. The guests staying in the pods would be able to participate in all activities that would be available as part of the leisure use.

- 4.10 The Glamping Pods have been located so that there is no view of the A666 and neighbouring properties and therefore create a secluded environment. The proposal will include a fire-pit / BBQ area with wooden seating that has previously been reclaimed from the site to re-use the natural resources that are on the site. The applicant believes this will enhance the authentic experience for guests.



Figure 5 Example of proposed Glamping Pods

#### Café

- 4.11 The café will complement the Natural Playground and the Glamping Pods by having a facility on site to get a breakfast or lunch. The facility will also be used by clients of the electric vehicle track and a lunch will be included in the full day track packages. The café will therefore compliment the proposed development well to make a contained and self-sustained leisure development.
- 4.12 There will also be showers in the café building for use by guests of the Glamping Pods. The proposed Pods do not have any showers included as that would require installing pipes and septic tanks for each pod which would have a greater impact on the environment and the Green Belt.
- 4.13 The proposed development will provide new local employment opportunities in the Whalley area and there will be good opportunities for future employees to walk, cycle or travel by public transport to, and from, the site, as described later in the report. There will also be car-sharing opportunities and the promotion of electric vehicles to reduce the environmental impact of the proposed development.
- 4.14 Parking will be provided within the proposed development in accordance with the Parking Standards of Ribble Valley Borough Council including mobility parking spaces, cycle parking and parking for 2 wheeled powered vehicles (motorcycles and scooters).

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## 5. PRE-APPLICATION FEEDBACK

- 5.1 There have been three pre-application feedback enquiry responses in relation to this planning application. The client received the feedback for application ref RV/2019/ENQ/00042 from Mr Lee Greenwood in May 2019 on behalf of the Head of Planning Nicola Hopkins. This was responding to proposed industrial, leisure and hotel development. It followed a site visit attended by Mrs Hopkins and Mr Greenwood.
- 5.2 Subsequently, the client received feedback for application RV/2019/ENQ/00104 from Mr Stephen Kilmartin on 4<sup>th</sup> October 2019. This was responding to a proposed café building and hire shop with a bike store for the electric bikes. This pre-application feedback was received without any site visit or discussion with the applicant and therefore did not benefit from understanding the complex situation of the site. This feedback did not into account any of the positive discussion that previous took place with Lee Greenwood and the applicant, Donelan Trading Ltd. These discussion with Mr Greenwood led to changes of the proposal to significantly reduce the scale of built form, which was considered to be acceptable by Mr Greenwood but was not taken into consideration by Mr Kilmartin.
- 5.3 A subsequent meeting was then held with Nicola Hopkins on site on the 4<sup>th</sup> December 2019 and a feedback response letter was sent to the applicant on 20<sup>th</sup> February 2020. Each response will be addressed in turn below.

### RV/2019/ENQ/00042 Proposed industrial, leisure and hotel development – May 2019.

- 5.4 The response concludes that *“Whilst the Council would be broadly supportive of the economic growth which could arise from the scheme, for the reasons detailed in this response, I have concerned that large elements of the proposal would represent inappropriate development in the Green Belt. In order to overcome this, you would not only need to demonstrate that ‘very special circumstances’ exist to outweigh this harm, but also any other harm, such as openness and landscape impact.*

*The aforementioned appeal decision demonstrates the level of justification required to establish such circumstances (having initially progressed on the basis of meeting nationally important rail infrastructure requirements). Based on the information provided at this stage and with due consideration that I must give substantial weight to any Green Belt harm, I do not believe that the scheme would meet local or national policy tests.*

*Should you wish to proceed to a full application, I would reaffirm my view that you seek independent planning advice and appoint an experienced consultant to act on your behalf due to the complexities of the submission.*

*The application package would need to contain a substantial amount of supporting information to outweigh the issues I have identified.*

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*You would also need to demonstrate that the site represents a suitable and appropriate location for this scale of employment development, accounting for the Council's strategic policies in this regard and recent draft allocations in the Housing and Economic Development DPD.*

RV/2019/ENQ/00104 Café Building, Glamping and Natural Playground and Hire Shop with Bike Store – October 2019

- 5.5 This response from Stephen Kilmartin concludes that, *“taking account of the above matters it is my view that the proposals could not be supported in that they are likely to cause significant harm to the character, appearance and openness of the Green Belt. As such, I consider that the proposals represent inappropriate development in the Green Belt and that ‘very special circumstances’ have not been demonstrated that would outweigh such harm”.*

Nicola Hopkins Letter – 20<sup>th</sup> February 2020

- 5.6 This letter was sent after a follow up site meeting on 4<sup>th</sup> December 2019 after the two pre-application reports above for Proposed Industrial, Leisure and Office Development. Regarding the Leisure Facilities the feedback states:

*For the proposed leisure facilities (off road track, café, play area, glamping pods) it will be necessary to demonstrate why you consider these elements of the proposals fall to be considered appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport / recreation to constitute an exception to Green Belt Policy. It is important to note that such facilities are required to preserve the openness of the Green Belt.*

*We discussed the proposed café building, a significant proportion of which is detailed to be used by a catering company. As discussed, there is no need for a commercial catering company to be located on this site particularly when it requires the erection of a new building. This would constitute inappropriate development. To justify the erection of a new building on this site you will need to demonstrate that this infrastructure directly supports a use which is beneficial to the area.*

*I would recommend that the leisure elements of the proposal are supported by a robust justification, outlining the business case; management plan and detailing how the development responds to the landscape.*

*The cumulative introduction of further buildings (camping pods; utilities buildings; café etc.) are likely to impact on the openness of the area. Given the very large building which already exists on the site have your clients considered retaining part of this building to provide the accommodation to support the leisure uses? This would negate the need for new building within this location and may be considered more favourably in respect of the proposed development.*

- 5.7 It is worthwhile noting the inconsistency of the second response which was received without the Case Officer benefiting from a site visit and raises issues that were not raised during any previous discussions. This is considerably more negative than the first and third responses which identify

the need for an evidence-based approach to supporting the proposed development. It is these responses which have been used to guide the submission of this application.

5.8 In response to the pre-application consultations the applicant has undertaken the following:

- Appointed Pegasus Planning Group as professional planning consultants and provided justification for the proposed use in this statement and detailed how the proposal relates to the landscape and the benefits it will bring to the local area;
- Drawn up a business plan and commissioned ecology, tree survey and transport studies to inform the application; and
- Revised the proposals to include two smaller buildings rather than one larger one to minimise any impact on openness and visual impact.

## 6. RELEVANT PLANNING POLICY

6.1 The Planning and Compulsory Purchase Act 2004 ("The Act") establishes the legislative background for town planning in England and Wales. Section 38(6) of The Act establishes a 'plan-led' system which states that planning applications should be determined in accordance with the statutory Development Plan unless material considerations indicate otherwise.

### Local Planning Policy

- 6.2 The Ribble Valley Borough Council Local Development Framework (LDF) comprises the following:
- Core Strategy 2008-2028 A Local Plan for Ribble Valley (adopted 16 December 2014).
  - Housing and Economic Development – Development Plan Document and Map (adopted 16 October 2019).
- 6.3 The Ribble Valley Core Strategy 2008-2028 was formally adopted in December 2014 and now represents the primary policy document upon which current and future planning decisions in the Borough will be based.
- 6.4 The HED DPD was adopted on 15th October 2019. Within the Policy Map part of the Carr Hall site is allocated as a protected employment site. However, this protected employment area only covers the former garden centre used as an office. The application proposal site is shown as falling within land designated as Green Belt, as defined by the adopted HED DPD proposals map.

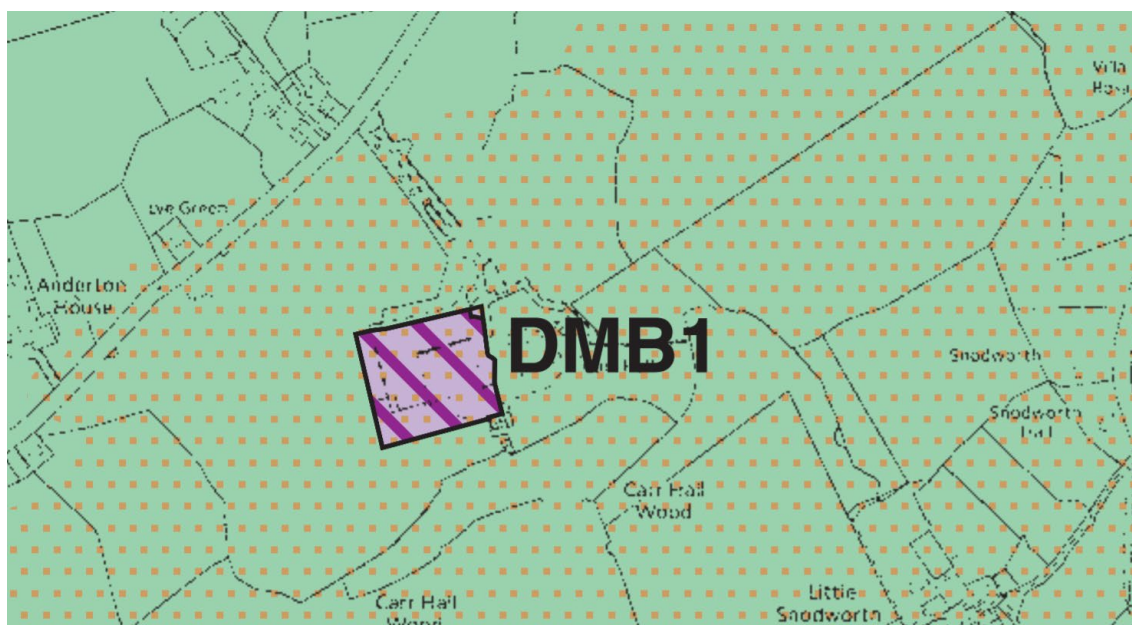


Figure 6 Site Allocation within the HED DPD

6.5 Therefore, the following Core Strategy policies are considered to be relevant to this application.

6.6 **Key Statement DS1: Development Strategy** – the majority of new housing development will be:

- Concentrated within an identified strategic site located to the south of Clitheroe towards the A59; and
- The principal settlements of:
  - Clitheroe;
  - Longridge; and
  - Whalley.

Strategic employment opportunities will be promoted through the development of:

- The Barrow Enterprise Site as a main location for employment; and
- The Samlesbury Enterprise Zone.

New retail and leisure development will be directed toward the centres of:

- Clitheroe;
- Longridge; and
- Whalley.

6.7 In allocating development, the Council will have regard to the AONB, Green Belt and similar designations when establishing the scale, extent and form of development to be allocated under this strategy. The relevant constraints are set out as part of the strategic framework included in this plan.

6.8 Development that has recognised regeneration benefits, is for identified local needs or satisfies neighbourhood planning legislation, will be considered in all the borough's settlements, including small-scale development in the smaller settlements that are appropriate for consolidation and expansion or rounding-off of the built-up area. Through this strategy, development opportunities will be created for economic, social and environmental well-being and development for future generations.

6.9 **Key Statement DS2: Presumption in Favour of Sustainable Development** – The Council will take a positive approach that reflects the presumption in favour of sustainable development contained within the NPPF when assessing development proposals.

6.10 **Key Statement EN1: Green Belt** - The overall extent of the green belt will be maintained to safeguard the surrounding countryside from inappropriate encroachment. The development of new buildings will be limited to the purposes of agriculture, forestry, essential outdoor sport and recreation, cemeteries and for other uses of land which preserve the openness of the green belt and which do not conflict with the purposes of the designation.

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- 6.11 **Key Statement EN2: Landscape** – states that as a principle the Council will expect development to be in keeping with the character of the landscape, reflecting local distinctiveness, vernacular style, scale, style, features and building materials.
- 6.12 **Key Statement EC1: Business and Employment Development** - The expansion of existing businesses will, wherever appropriate, be considered favourably.
- 6.13 **Key Statement EC3: Visitor Economy** - Proposals that contribute to and strengthen the visitor economy of Ribble Valley will be encouraged, including the creation of new accommodation and tourism facilities through the conversion of existing buildings or associated with existing attractions. Significant new attractions will be supported, in circumstances where they would deliver overall improvements to the environment and benefits to local communities and employment opportunities.
- 6.14 **Key Statement DMI2 Transport Considerations** - New development should be located to minimise the need to travel. Also, it should incorporate good access by foot and cycle and have convenient links to public transport to reduce the need for travel by private car. In general, schemes offering opportunities for more sustainable means of transport and sustainable travel improvements will be supported. Sites for potential future railway stations at Chatburn and Gisburn will be protected from inappropriate development. Major applications should always be accompanied by a comprehensive travel plan.
- 6.15 **Policy DMG1: General Considerations** – states Policy DMG1 (General Considerations) states that in determining planning applications, all development must consider design, access, amenity, environment and infrastructure. This includes:
- Being of a high design standard and be sympathetic to the surrounding buildings.
  - Consider traffic and parking implications;
  - Not affect and mitigate the amenity of the surrounding area;
  - Consider environmental implications;
  - Not result in a loss of open space, and have regard to key infrastructure capacity; and
  - Not prejudice future development which would provide environmental and amenity improvements.
- 6.16 **Policy DME1 (Protecting Trees and Woodlands)** states that there will be a presumption against the clearance of broad-leaved woodland for development purposes.
- 6.17 **Policy DMB1 (Supporting Business Growth and The Local Economy)** states proposals that are intended to support business growth and the local economy will be supported in principle.
-

Development proposals will be determined in accord with the core strategy and detailed policies of the LDF as appropriate. The borough council may request the submission of supporting information for farm diversification where appropriate. The expansion of existing farms within settlements will be permitted on land within or adjacent to their existing sites, provided no significant environmental problems are caused and the extension conforms to the other plan policies of the LDF. The expansion of established firms on land outside settlements will be allowed provided it is essential to maintain the existing source of employment and can be assimilated within the local landscape. There may be occasions where due to the scale of the proposal relocation to an alternative site is preferable. Proposals for the development, redevelopment or conversion of sites with employment generating potential in the plan area for alternative uses will be assessed with regard to the following criteria:

- 1) The provisions of policy DMG1, and*
- 2) The compatibility of the proposal with other plan policies of the LDF, and*
- 3) The environmental benefits to be gained by the community, and*
- 4) The economic and social impact caused by loss of employment opportunities to the borough, and*
- 5) Any attempts that have been made to secure an alternative employment generating use for the site (must be supported by evidence (such as property agents details including periods of marketing and response) that the property/ business has been marketed for business use for a minimum period of six months or information that demonstrates to the council's satisfaction that the current use is not viable for employment purposes).*

6.18 **Policy DMB3: Recreation and Tourism Development** states that planning permission will be granted for development proposals that extend the range of tourism and visitor facilities in the borough. This is subject to the following criteria being met:

1. The proposal must not conflict with other policies of this plan;
2. The proposal must be physically well related to an existing main settlement or village or to an existing group of buildings, except where the proposed facilities are required in conjunction with a particular countryside attraction and there are no other suitable existing buildings or developed site available;
3. The development should not undermine the character, quality or visual amenities of the plan area by virtue of its scale, siting, materials or design;
4. The proposal should be well related to the existing highway network. It should not generate additional traffic movements of a scale and type likely to cause undue problems or disturbance. Where possible the proposals should be well related to the public transport network;

5. The site should be large enough to accommodate the necessary car parking, service areas and appropriate landscaped areas; and
6. The proposals must consider any nature conservation impacts using suitable survey information and where possible seek to incorporate any important existing associations with the development. Failing this then adequate mitigation will be sought.

6.19 **Key Statement DMI2: Transport Considerations** - New development should be located to minimise the need to travel. Also, it should incorporate good access by foot and cycle and have convenient links to public transport to reduce the need for travel by private car.

6.20 **Key Statement EN3: Sustainable Development and Climate Change** - All development should optimise energy efficiency by using new technologies and minimising the use of energy through appropriate design, layout, material and landscaping and address any potential issues relating to flood risk. Ribble Valley Borough Council will liaise with the County Council over development within Mineral Safeguarding Areas (MSAs) in both proposing future site allocations and in determining planning applications. This liaison will include consideration of the issue of preventing the unnecessary sterilisation of mineral resources within MSAs and, where feasible and practicable, the prior extraction of mineral resources.

#### **Housing and Economic Development Plan Document (HED DPD) (Adopted 15<sup>th</sup> October 2019)**

6.21 Following the adoption of the Core Strategy in December 2014, the Council began preparing a Housing and Economic Development Plan Document (HED DPD). This plan sets out more detailed policy coverage for matters relating to housing and economy to fully implement the policies of the Core Strategy. The HED DPD is accompanied by a Proposals Map which shows on an Ordnance Survey base the extent of allocations and designations arising from the adopted Core Strategy and the HED DPD. The adopted HED DPD and Proposals Map form part of the statutory development plan for the borough.

6.22 Within the HED DPD, part of the site is allocated for employment use. This allocation covers the existing employment area and does not cover this proposed site area.

#### **Ribble Valley Destination Management Plan (September 2018)**

6.23 The Ribble Valley Tourism Destination Management Plan (DMP) 2018/19 was discussed at the Economic Development Committee on 20<sup>th</sup> September 2018. Within the Committee Report it states that this document is of relevance to the Council's ambitions and priorities:

- Community Objectives – To encourage economic development throughout the borough with a specific focus on tourism, the delivery of sufficient land for business development, and supporting high growth business opportunities

- Corporate Priorities – To sustain a strong and prosperous Ribble Valley
- Other Considerations – To develop with relevant partners measures to support the visitor economy.

6.24 It was recommended at committee that the document was approved and that a summary promotional version should be shared with consultees and partners.

6.25 Within this document it states that “*Visitor expectations are constantly rising, and the tourism offer must meet demands for quality and service. This applies to the attractions, retail businesses and the restaurant or cafe (food and drink sector) offering locally sourced produce. In addition, the natural landscape is a valuable asset of Ribble Valley and a balance between promoting tourism and the protection and enhancement of the natural environment is essential*”.

6.26 The document also states that “*The Ribble Valley landscape also welcomes visitors involved in a multitude of sports and active pastimes, each with the ability to benefit the visitor economy. The following are just a selection of those with a significant impact on tourism and, more importantly, with potential to grow*”. The document then goes onto list a number of activities, including cycling and mountain biking.

6.27 The Motorsports activity area that is proposed is a unique offering for the area and will be a big draw for The Ribble Valley.

### **Emerging Planning Policy Documents**

6.28 The Local Development Framework (LDF) replaces the previously adopted Districtwide Local Plan (DWLP) and provides the basis for planning decisions in the Ribble Valley and sets the pattern for development and investment over the coming years. The LDF comprises the Core strategy, the Proposals Map and the HED DPD.

6.29 Now that this has been completed, the Council is moving forward to produce a Local Plan. This will involve a review of which documents will comprise the Local Plan and the evidence documents that will be required. The Review of the Local Plan will provide planning policy coverage comprising:

- The Local Plan;
- The adopted Proposals Map;
- Statement of Community Involvement;
- Authority Monitoring Report; and
- Infrastructure Delivery Schedule.

6.30 The proposed adoption is currently anticipated in March 2022.

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## **National Planning Policy Framework**

- 6.31 The National Planning Policy Framework (NPPF), which was adopted in February 2019, is the Government's latest planning policy guidance and therefore represents a material consideration of significant weight in the determination of the planning application.
- 6.32 The NPPF, outlines the Government's fundamental objectives for the planning system. Within the NPPF there is an overarching principle of sustainable development, outlined in Paragraph 8. This outlines three interdependent objectives for achieving sustainable development, which are to be pursued in mutually supportive ways. These are:
- a) An economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
  - b) A social objective – to support, strong vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
  - c) An environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.
- 6.33 For decision-taking, the presumption in favour of sustainable development means: approving development that accords with an 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
  - If any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 6.34 Paragraph 47 states that planning law requires that applications for planning permission are to be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible and within statutory timescales unless a longer period has been agreed by the applicant in writing.
- 6.35 Paragraph 80 states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to

support economic growth and productivity, considering both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.

- 6.36 In the section "Supporting a Prosperous Rural Economy", Paragraph 83 states that planning policies and decisions should enable:
- a) The sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;
  - b) The development and diversification of agricultural and other land-based rural businesses;
  - c) Sustainable rural tourism and leisure developments which respect the character of the countryside; and
  - d) The retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.
- 6.37 Paragraph 84 states that Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist
- 6.38 Paragraph 133 states that the Government attaches great weight to Green Belts. The fundamental aim is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
- 6.39 Paragraph 134 states that the Green Belt serves five purposes:
- a) To check the unrestricted sprawl of large built-up areas;
  - b) To prevent neighbouring towns merging into one another;
  - c) To assist in safeguarding the countryside from encroachment;
  - d) To preserve the setting and special character of historic towns; and
  - e) To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 6.40 NPPF Paragraph 141 states that local planning authorities should plan positively to enhance the beneficial use of Green Belts. This includes amongst other matters by looking for opportunities to

provide opportunities to provide access, to provide opportunities for outdoor sport and recreation and to enhance landscapes, visual amenity and biodiversity.

6.41 Paragraph 145 states that exceptions to inappropriate development are (inter alia):

- a) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

**Planning Practice Guidance – Impact on Openness.**

6.42 On 22nd June 2019 the Ministry of Housing, Communities and Local Government (MHCLG) updated the Planning Practice Guidance (PPG) on the role of the Green Belt in the planning system.

6.43 The PPG on the Green Belt covers the following:

- What factors can be taken into account when considering the potential impact of development on the openness of the Green Belt?
- How might plans set out ways in which the impact of removing land from the Green Belt can be offset by compensatory improvements?
- How can the strategic policy-making authority ensure that compensatory improvements to the environmental quality and accessibility of the Green Belt will be secured?

6.44 In terms of assessing the potential impact of development on the openness of the Green Belt this requires a judgement based on the case. The PPG refers to the examples that the Courts have identified which may be considered in making an assessment. Importantly it should be noted that these are examples and the PPG states that an assessment is not limited to the points identified in the paragraph:

- spatial and visual impacts,
- duration and remediability, and
- degree of activity likely to be generated e.g. traffic generation.

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## **7. PLANNING ASSESSMENT**

- 7.1 Section 38(6) of the Planning and Compulsory Purchase Act confirms planning applications must be determined in accordance with the adopted Development Plan for the area, unless material considerations indicated otherwise.
- 7.2 In this instance, the adopted development plan is the Ribble Valley Local Development Framework (LDF) comprising the following:
- Core Strategy 2008-2028 A Local Plan for Ribble Valley (adopted 16 December 2014).
  - Housing and Economic Development – Development Plan Document and Map (adopted 16 October 2019).
- 7.3 This section assesses the main issues associated with the proposed development against the planning policy and material considerations.

### **Principle of Development**

- 7.4 The NPPF sets out that the purpose of planning is to help achieve sustainable development. The Framework makes clear that local councils should be positive and proactive in encouraging sustainable growth and addressing barriers to investment and sets a presumption in favour of sustainable development. It makes clear that where plans are not in place or up-to-date, development should be allowed unless this would compromise the key principles for sustainability in the Framework, including protecting the Green Belt.

### Appropriate Development in the Green Belt

- 7.5 Paragraph 145 and 146 of the NPPF (2019) indicate types of development that are inappropriate in the Green Belt, and those that may be appropriate. Development in the Green Belt is considered inappropriate (and thus can only be permitted only in very special circumstances) unless it falls within one of the exceptions identified in Paragraphs 145 and 146.
- 7.6 Paragraph 145 refers to the erection of buildings and states that the following is an exception to inappropriate development: "The provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;".
- 7.7 The proposed outdoor electric motorsport, playground and recreation facility falls within this exception to Green Belt Development. The proposal addresses a gap in the market for environmental and sustainable energy innovation within the recreation and corporate event industry. This adventure facility will be for the use of 100% electric motorsport vehicles. This will provide an excellent outdoor recreation centre within Ribble Valley that will attract local residents and tourists alike.

- 7.8 The location of the leisure facility on this site enables it to be a sustainable, green proposal. The site is already served by the wind turbines which will charge the electric vehicles that will be used on the site. The wind turbines will also be used to power the glamping pods, café and the storage building. The grey water storage tanks will be used to flush toilets and to wash the electric vehicles.
- 7.9 Additionally, the noise and amenity impact would be minimal as the vehicles would be electric.
- 7.10 Having established that the proposed development is for a type of facility which is deemed by the NPPF to be appropriate in the Green Belt, the next steps are to determine, in accordance with paragraph 145 of the NPPF, whether the facility would preserve the openness of the Green Belt and not conflict with the purposes of including land within it.

#### Impact on Openness

- 7.11 The definition of Openness is defined at great length in the Supreme Court Judgement on R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) (Respondents) v North Yorkshire County Council (Appellant) (5<sup>th</sup> February 2020). This Judgement states at Paragraph 22 that:
- "The concept of "openness" in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: "to prevent urban sprawl by keeping land permanently open ...". Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept.*
- 7.12 Paragraph 25 of the Judgement goes onto quote Turner v Secretary of State for Communities and Local Government [2016] EWCA Civ 466; [2017] 2 P & CR 1:
- "The concept of 'openness of the Green Belt' is not narrowly limited to the volumetric approach suggested by [counsel]. The word 'openness' is open-textured, and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents." (para 14)."*
- 7.13 The judgement states that *"there was no challenge to the correctness of this statement of approach. However, it tells one nothing about how visual effects may or may not be considered in other circumstances. That is a matter not of legal principle, but of planning judgement for the planning authority or the inspector"*.
- 7.14 The judgement is relevant to the applications proposals in the following respects:

- The proposal will have no impact on urban sprawl as the site is a contained unit and development will only take place there. The site is bounded so the opportunity to expand the site is minimal and the site is well screened in the wider landscape. The site is also some distance away from the nearest settlement at Langho;
- There will be no impact on purposes of include land in Green Belt as discussed within this statement;
- The surrounding area to the site is already a built-up area the Green Belt as the site is adjacent to an allocated employment site. The area proposed for the motorsport activity area is currently not built up and the proposal is to keep built form and impact on the Green Belt to a minimum which will also lead to a lack of visual effects on the Green Belt.

7.15 The following examples demonstrate how the issue of openness has been dealt with in similar leisure developments and are relevant for consideration of this application.

Application 19/2513M at Former Mere Farm Quarry, Chelford Road/Alderley Road, Nether Alderley, Cheshire, SK10 4SZ for Delivery of Watersports and Outdoor Activity Centre on the North Lake of the former Mere Farm Quarry, including new vehicular access, car parking, and multi-use building. Approved at Planning Committee on 26<sup>th</sup> February 2020.

7.16 This application was an excellent precedent case as the proposal is to provide appropriate facilities for outdoor sport and recreation. The introduction of buildings would inevitably result in some harm to openness in its immediate context. However, the nature of the use means a countryside location, where restrictive policies apply is highly likely. The built form proposed would also be the minimum necessary to enable the use to take place. The harm to the openness of the Green Belt would be limited by the limited spread of development and the low height of the structures. A condition requiring the removal of all structures and hardstanding on cessation of use would further limit the harm. Taking all of the above into account, it was considered on balance that the development would not be inappropriate within the Green Belt. The proposal would result in some harm to biodiversity on the lakes, even with the implementation of the mitigation scheme. However, this harm would not be so significant, as to warrant a refusal on biodiversity grounds.

7.17 In relation to the proposed development at Carr Hall, application 19/2513M also needed to establish whether the development as proposed would preserve the openness of the Green Belt and not conflict with the purposes of including land within it. If the development would not preserve the openness of the Green Belt, then it would, by definition be inappropriate development.

7.18 The committee report stated that if it is accepted that openness is taken to mean the absence of development, the introduction of any built form, irrespective of its size, onto the application site or any other undeveloped site would undermine openness.

7.19 However, the Case Officer stated that following this argument would preclude any building for appropriate outdoor sport and recreation regardless of its size. Neither the NPPF or the Core Strategy

is worded as such so it is clearly not the intention to prevent any buildings for outdoor sport and recreation. Such an approach would also conflict with the Green Belt aims set out within the NPPF paragraph 141 of providing opportunities for outdoor sport and recreation.

- 7.20 The proposed buildings for the application at Mere Quarry have been designed and would not include facilities which could not be viewed as superfluous to the provision of outdoor sport and recreation. Similarly, at Carr Hall, in addition to the adventure facility and the glamping pods, the proposal will simply provide a reception, changing and toilet facilities, an associated café and storage and staff rooms.
- 7.21 The proposed development would have the least possible impact on openness to enable the use to take place. It would also provide opportunities for outdoor sport and recreation, one of the key aims of Green Belt policy as set out in NPPF paragraph 141. This view is supported in the committee report for Cheshire East Planning Application 19/2513M.
- 7.22 The proposal would constitute appropriate facilities for outdoor sport and recreation. The proposed buildings and associated facilities would inevitably have some impact on openness, given the undeveloped nature of the site. They would also be visible from the public footpath. However, it is considered that due to its minimal proportions, the development would not conflict with the objective of preserving the openness of the wider site.
- 7.23 At Mere Quarry the level of built form was considered to be acceptable, as it is for the provision of outdoor sport and recreation. This is considered to be the same situation as at Carr Hall as the proposal is for an outdoor motorsport adventure facility and the other components of the application are ancillary to this primary use.

Appeal Decision reference APP/K3605/A/13/2205008 AT Apps Court Farm, Hurst Road, Walton on Thames, Surrey, KT12 2EG for the change of use from agricultural land to D2 leisure (for the purpose of installing six camping pods on 0.5 hectares of land). Appeal allowed on 24<sup>th</sup> March 2014.

- 7.24 This appeal granted permission for the change of use from agricultural land to D2 leisure to install six camping pods on 0.5 hectares of land. The Inspector considered that the main issues of this proposal were whether the proposed development would constitute inappropriate development in the Green Belt, the effect of openness of the Green Belt and if inappropriate development, whether any harm by reason of inappropriateness would be outweighed by other considerations, the full details of this appeal decision can be found at Appendix 4 of this report. Therefore, the considerations of this appeal are very similar to those that the application at Carr Hall must address.
- 7.25 The appeal goes onto assess whether the site is inappropriate development. As the site's considered use is an established fishery and is an acceptable sport/recreational use within the Green Belt, the Inspector considered that the existing use of the site involves outdoor sport and recreation. The statement quotes that Framework advises that the provision of appropriate buildings for outdoor sport or recreation is an exception to inappropriate development, so as long as openness of the

Green Belt is preserved. Therefore, the scheme is not considered inappropriate development in the Green Belt.

- 7.26 Regarding Openness the inspector stated that, like the Carr Hall Glamping Pod area, the site was adjacent to woodland on one side. Whilst there would be no significant views of the pods from any public area, the pods would still be visible in various relatively open views across this part of the farm. Nevertheless, each would be a relatively small structure in such views and each would have a fairly low-key informal appearance and be set against the backdrop of the woodland. Furthermore, the bulk of built form would be significantly diluted by the pattern of their arrangement and by their limited number especially in context to the wider site. In these circumstances it was not considered that the glamping pod development would significantly add to the built form and character of the host site or appear conspicuous and so lead to a significant reduction in openness.
- 7.27 This is also considered to be the case at Carr Hall as there is already a built form on the wider site including the Carr Hall complex itself, plus the large MMB office building and associated areas of hardstanding, car parking and access road. It is not considered that the 10 glamping pods proposed would significantly add to the built form already present on the site and appropriate landscaping can be used to mitigate any further visual impact.
- 7.28 Additionally, as the proposal would be made of predominantly natural materials and will be incorporated within the natural contours of the site, the impact on the openness is minimal.
- 7.29 Within the Planning Practice Guidance on the Impact of Openness (June 2019) it explains the terms of assessing the potential impact of development on the openness of the Green Belt this requires a judgement based on the case. The PPG refers to the examples that the Courts have identified which may be considered in making an assessment. Importantly it should be noted that these are examples and the PPG states that an assessment is not limited to the points identified in the paragraph. It is considered that this planning application, as explained above, has addressed each of these issues:
- spatial and visual impacts,
- 7.30 The impact of spatial and visual impacts is a subjective one and is not readily defined by clear standards or other objective measures. The proposed buildings and associated facilities would inevitably have some impact on openness however, it is considered that due to its minimal proportions, careful siting within the landscape, use of natural materials and the built-up nature of the wider Carr Hall site, such impact would be limited and the development would not conflict with the objective of preserving the openness of the Green Belt. Each building would be a relatively small structure and would have a fairly low-key informal appearance and be set against the backdrop of the woodland. Furthermore, the bulk of built form would be significantly diluted by the pattern of their arrangement and by their limited number especially in context to the wider site.

7.31 The proposal will therefore cause no visual impact on wider views.

- duration and remediability, and

7.32 The nature of the proposal is to use as many of the natural materials that already exist on the site as possible. The motorsport activity area will be constructed from the natural undulations in the land and will use fallen trees where available on the site to make the ramps. The proposal will have a "light touch" on the Countryside by using sustainable energy sources and use as many natural materials as possible. The built form will be in context with the character of the countryside area by being constructed of wood and will be easily demountable at the end of the use.

- degree of activity likely to be generated e.g. traffic generation.

7.33 The proposed motorsport activity facility will only be catering for 25 guests at one time and the Glamping Pods will also cater for 20 people, and it is likely that there will be a cross over between the guests as it is intended that the guests of the leisure facility will also stay in the Glamping Pods. Additionally, the café is designed to cater for the guests of the leisure facility and the Glamping Pods and there may be some passing trade from the footpath that crosses the site and also from the employees of the adjacent MMB office, who would walk over to the café as they are already on site. Therefore, in the context of the site with the adjacent office building which employs over 200 people, the impact of this proposal in terms of activity and the level of traffic generation is considered to be negligible.

7.34 Therefore, the proposal is considered to not be harmful to the openness of the Green Belt and would thereby not be inappropriate development in the Green Belt. It is therefore considered not necessary to consider whether the very special circumstances exist necessary to justify the scheme.

#### Five Purposes of the Green Belt

7.35 Paragraph 134 states that the Green Belt serves five purposes:

- a) To check the unrestricted sprawl of large built-up areas;

7.36 The proposal will not contribute to the sprawl of built-up areas. As the site is a contained unit, development will only take place there. The site is bounded by the steep slope to the rear of the site, the A666 to the south of the site, MMB to the west and a thick boundary of trees to the east. Therefore, the opportunity to expand the site is minimal and the site is well screened in the wider landscape. The site is also some distance away from the nearest settlement at Langho that would mean that the sprawl of this settlement would not occur.

- b) To prevent neighbouring towns merging into one another;

7.37 The site is not located next to the boundary of a settlement so would therefore there would be no risk of the towns merging.

- c) To assist in safeguarding the countryside from encroachment;

7.38 As already explained the site is contained and already considerably built up and there would be no physical or visual impact on the wider countryside. The electric vehicle track will be within a woodland area and will make use of the existing undulations of the site, the trees on the site and natural materials to create the track and the playground. The proposed storage and café buildings will be of a high quality and will be designed to be in keeping with the natural environment. Additionally, the impact of two small buildings that would be well designed, would be negligible when seen against the backdrop of the existing substantial built development within the Carr Hall site, including the MMB office. The wider site already features a range of buildings including some which are very substantial in size. The proposed leisure facility and associated small buildings would not have any impact on the wider countryside.

d) To preserve the setting and special character of historic towns; and

7.39 The site is not in close proximity to any historic towns or an area of special character so will therefore have no impact.

e) To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

7.40 The proposed development is one which by its nature requires a countryside setting and therefore it would not be appropriate to apply this Green Belt purpose to this development.

7.41 In conclusion therefore the proposed development is appropriate in Green Belt terms, would not have any adverse impact on openness and would not compromise any of the purposes of including land within the Green Belt. It therefore complies with the Green Belt policies set out in the NPPF.

7.42 Furthermore, as the development complies with the NPPF it also accords with Key Statement EN1 in the HED DPD.

#### Tourism and Visitor Economy

7.43 This adventure facility will be for the use of 100% electric vehicles consisting of bikes, scramblers, quad bikes, UTV's (utility terrain vehicle) and ATV's (all-terrain vehicle). Along with the Natural Playground and café, this will provide an excellent outdoor recreation centre within Ribble Valley that will attract local residents and tourists alike.

7.44 This is in accord with Policy DMB3 (Recreation and Tourism Development) which states that planning permission will be granted for development proposals that extend the range of tourism and visitor facilities in the borough.

7.45 This policy also states that recreation and tourism development are often well suited to rural areas and there is a need to have in place effective measures to ensure that facilities and infrastructure can be enhanced in a sustainable way. It is important to note that this part of Ribble Valley is not currently well served by outdoor recreation facilities. As it is outside the AONB it has the capacity to absorb such development without harm to the wider landscape.

7.46 The proposal also complies with Policy EC3 (Visitor Economy) which states that proposals that contribute to and strengthen the visitor economy of Ribble Valley will be encouraged, including the creation of new accommodation and tourism facilities through the conversion of existing buildings or associated with existing attractions. Significant new attractions will be supported, in circumstances where they would deliver overall improvements to the environment and benefits to local communities and employment opportunities. These are explained in greater detail in the following "sustainability" section of this statement.

### **Sustainability**

7.47 The NPPF outlines three dimensions of sustainability, these being economic, social and environmental. It is therefore worthwhile analysing these three principles against the proposed development.

#### *Economic and Social*

7.48 The proposal will provide significant economic potential through the provision of jobs, for local builders, increased spending in the local economy enhancing tourism and leisure provision in this part of Ribble Valley where there are few existing facilities.

7.49 The maximum group size will be 25 people at both the full and half day experiences. At peak operation the facility will be open 7 days a week with 25 members of staff working on a rota basis.

7.50 The creation of 25 new jobs will include instructors for the various activities, shop and café staff, admin and marketing positions and maintenance roles. Every effort will be made to fill these positions from the local rural area. The new jobs will be attractive to a variety of people, including school leavers, in particular.

7.51 Paragraph 83 of the NPPF supports the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings; the development and diversification of agricultural and other land-based rural businesses; sustainable rural tourism and leisure developments which respect the character of the countryside; and the retention and development of accessible local services and community facilities.

7.52 The scheme will promote economic prosperity by creating conditions for business growth including promoting leisure facilities to satisfy a growing population and attract visitors from further afield. The delivery of a purpose built leisure facility in an area with limited other leisure resources is a planning merit of the proposal. The site perfectly lends itself to the activities proposed and will be delivered in a location that is highly accessible to large areas of the surrounding population. The privately funded project will be utilised by various local groups including local schools and businesses. The benefits of the proposals will be economically far reaching and are directly encouraged by national and local planning policy.

- 7.53 The proposed development would result in benefit in terms of education, skills and health and wellbeing. Furthermore, although predominantly a destination activity and with eating facilities provided on site, there is likely that there will be some secondary spend in the local area and the centre would become a tourist attraction.
- 7.54 Paragraph 84 also recognises that "...sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport)".
- 7.55 The site is accessible by foot and by public transport and private vehicles. The site is served by a bus stop located on Whalley Road at the entrance to the site. This offers regular services from Blackburn town centre to Clitheroe town centre with a stopping point 30m from the site. There is also a public footpath that goes through the site and an excellent pedestrian route that runs along Whalley Road into Langho Village Centre which is a 9-minute walk. In Langho there is also a Train Station which offers frequent Northern services between Clitheroe, Wilpshire, Rochdale and Manchester Victoria. The train journey duration between Ramsgreave and Wilpshire is 4 minutes on the Northern Line.

#### *Environmental*

- 7.56 The proposed development addresses a gap in the market for environmental and sustainable energy within the recreation and corporate event industry. Therefore, the main component of this application is to create an adventure area for the use of 100% electric vehicles consisting of bikes, scramblers, quad bikes, UTV's (utility terrain vehicle) and ATV's (all-terrain vehicle) along with a natural playground and associated buildings.
- 7.57 The application proposed will use electricity from the Wind Turbines approved at appeal (ref. APP/T2350/A/13/2193882) to charge all of these vehicles overnight will come from the wind turbines located on-site. The water used to clean the bike will come from the grey water holding tanks which are also located on site. This grey water will also be used for the toilets.
- 7.58 This site will therefore be entirely self-contained, and the leisure proposal will use the infrastructure already existing on the wider Carr Hall site to operate. The site is also sustainably located in order to reduce the number of private vehicles coming to the site as it is well located for public transport. The NPPF states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. Wood from fallen trees within the site will also be used to make playground equipment benches etc. If any fallen timber is available, it will be used on site. The applicant is also willing to plant replacement trees to compensate for any which needs to be removed. Such planting will screen the development from wider views and contribute to enhancing biodiversity.

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### **Public Right of Way (PROW)**

- 7.59 There is a public footpath which runs through the site. It is considered that the development would have a positive impact on the footpath as the proposed development will offer facilities along the path and the footpath will be marked out clearly with the potential to pave or surface the path.
- 7.60 The PROW will not be blocked or altered as a result of the planning application.

### **Trees**

- 7.61 A tree survey has been conducted by TEP to conduct a survey of land at Carr Hall, Langho of and a review of designations, policies and other instruments of relevance to arboriculture.
- 7.62 The report concluded that tree removal and pruning associated with the quad bike track has not been determined but would be minimised during route design. There is no 'in principle' reason that the woodland would be significantly degraded or altered in character by the creation of an extended quad bike track, subject to sensitive design. Temporary tree protection measures and working methodologies to be observed during construction should be provided, in the form of an Arboricultural Method Statement. It should quantify any additional tree removal and pruning required for the quad bike track.

### **Highways**

- 7.63 A Highway & Transport Report has been prepared by VTC Highways Consultancy to accompany this planning applications at Carr Hall Business Park. The report has been completed to assess both Phases of development that are proposed on this site. The first planning application will be for a leisure development comprising an electric motorsport facility (with a building), a café, 10 no. glamping pods and a children's play area. This is the section that is relevant to this planning application.
- 7.64 The proposed developments have been the subject of a favourable pre-application consultation with Lancashire County Council Highways and the requirements of LCC have been included in the highway report but have also been submitted as part of this application.
- 7.65 The report prepared by VTC shows that the existing highway network in the vicinity of the site operates satisfactorily and has a, relatively, good road safety record during the most recent 5-year data period. The proposed developments will generate a low number of additional vehicles, corresponding to less than 1 per minute during the weekday peak periods, and many of these vehicle movements will divert from the wider highway network to reduce traffic flows on the A666 to the south of the site and the A59 to the west (or reduce the future potential traffic flows on these roads relating to work journeys within Ribble Valley).
- 7.66 The proposed developments will be sustainable, in transport terms, with good access to existing bus and rail services. There are regular (30 minute), bus services operating along Whalley Road,

between Clitheroe and Blackburn, with bus stops located near the existing site access. Langho railway station is located 1200 metres from the site (15 minute walking time), with hourly train services to, and from, Clitheroe, Blackburn and Manchester. A Travel Plan will be implemented at the proposed development and this will promote sustainable transport, car sharing and electric vehicles.

- 7.67 The report concludes that based on the information in this report, it is recommended that there should be no highway or transport objections raised towards both planning applications.

### **Ecology**

- 7.68 A Survey & Assessment in Respect of Protected/Notable Species Including Bats etc., and Nesting Birds (including Barn Owl) was prepared by Echo Call Bat Surveys. As part of the process to obtain planning permission to develop the site, a full ecological assessment of the site was carried out, including, a daytime evidence and opportunity bat survey, a pre-nesting bird survey, and a search for other protected/notable species. The purpose of these surveys was to provide evidence on habitats, and protected/notable species, within the site boundaries.
- 7.69 The report concluded that there were no historic or current evidence of roosting bats in any part of the hedgerows, shrubs or trees located within the site or around the site perimeter. The site was deemed to offer low to moderate potential value for foraging bats, primarily pipistrelle species, but it was thought that small numbers of other species could be present.
- 7.70 It was concluded that since there is currently no evidence of the presence of bat roosts within any part of the site, that the proposed development of the site and the construction of new buildings on the site, will not have significant implications on the population status of local bat species.
- 7.71 Also, as any planned development would not drastically alter the footprint of the site, and, as bats use linear features such as lines of trees or walls, as foraging, navigating and commuting routes, it was concluded therefore, that any small loss of the habitats and any future development works on the site, would not affect the overall foraging or commuting potential for bats in the area.
- 7.72 It was concluded from the results of the survey, that great crested newts and other amphibians, water vole, badger, otter and hedgehog were all absent from the site, and the likelihood of their colonising the site in the foreseeable future was unlikely. As no evidence of roosting barn owls was observed in any part of the site, it was concluded that barn owls do not use the site, either as a regular nesting roost, a breeding roost, or for foraging.

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## **8. BENEFITS OF THE PROPOSAL**

- 8.1 This adventure facility will be for the use of 100% electric vehicles consisting of bikes, scramblers, quad bikes, UTV's (utility terrain vehicle) and ATV's (all-terrain vehicle) along with a natural playground and associated buildings. This will provide an excellent outdoor recreation centre within Ribble Valley that will attract local residents and tourists alike. The proposal also complies with Policy EC3 (Visitor Economy) which states that proposals significant new attractions will be supported, in circumstances where they would deliver overall improvements to the environment and benefits to local communities and employment opportunities.
- 8.2 The creation of 25 new jobs will include instructors for the various activities, shop and café staff, admin and marketing positions and maintenance roles. Every effort will be made to fill these positions from the local rural area. The new jobs will be attractive to a variety of people, including school leavers, in particular.
- 8.3 The Ribble Valley Tourism Destination Management Plan states that "*The Ribble Valley landscape welcomes visitors involved in a multitude of sports and active pastimes, each with the ability to benefit the visitor economy. The following are just a selection of those with a significant impact on tourism and, more importantly, with potential to grow*". The document then goes onto list a number of activities, including cycling and mountain biking. The all electric Motorsports activity area that is proposed is a unique offering for the area and will be a big draw for The Ribble Valley. This development would be a positive addition to the area, and it is considered to be a potential benefit for Ribble Valley which would significantly outweigh any development on the Green Belt.
- 8.4 The NPPF states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. The proposal will provide a leisure use that will use sustainable energy for a recreation and corporate event industry. The main component of this application is to create an adventure area for the use of 100% electric vehicles which will use electricity from the on-site Wind Turbines to charge all of these vehicles overnight will come from the wind turbines located on-site. The water used to clean the bike will come from the grey water holding tanks which are also located on site. This grey water will also be used for the toilets. The site is also sustainably located in order to reduce the number of private vehicles coming to the site as it is well located for public transport.
- 8.5 The proposal will help to safeguard areas of higher quality such as Areas of Natural Beauty that covers much of the Ribble Valley Borough Council.
- 8.6 In summary, the application will deliver an innovative and unique leisure and tourism use to the Ribble Valley in line with the Council's strategy.

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## **9. CONCLUSION**

- 9.1 This planning application has been prepared on behalf of Donelan Trading Ltd, and seeks full planning permission for a Leisure Development Including an Electric Motorsports Adventure Facility, Support Building, Café, Natural Playground and 10 Glamping Pods at Carr Hall, Whalley Road, Langho, Blackburn, Lancashire, BB1 9NB.
- 9.2 Paragraph 145 refers to the erection of buildings and states that the following is an exception to inappropriate development: "The provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;".
- 9.3 The proposed outdoor electric motorsport and recreation facility falls within this exception to Green Belt Development. This will provide an excellent outdoor recreation centre within Ribble Valley that will attract local residents and tourists alike. The location of the leisure facility on this site enables it to be a sustainable, green proposal. Additionally, the noise and amenity impact would be minimal as the vehicles would be electric. Therefore, it is established that the proposed development is for a type of facility which is deemed by the NPPF to be appropriate in the Green Belt,
- 9.4 The harm of the buildings on the openness of the Green Belt is limited by the design of the buildings being of low height and limited spread. The development would be absorbed into the landscape and there will be little impact beyond the site. Therefore, it is considered on balance that the development would not be harmful on the openness of the Green Belt and therefore is not considered to be inappropriate development within the Green Belt.
- 9.5 The proposed development is appropriate in Green Belt terms as assessed above against the five purposes of the Green Belt. It would not have any adverse impact on openness and would not compromise any of the purposes of including land within the Green Belt. It therefore complies with the Green Belt policies set out in the NPPF. Furthermore, as the development complies with the NPPF it also accords with Key Statement EN1 in the HED DPD.
- 9.6 The proposal will also bring a number of benefits to the area by delivering an innovative and unique leisure and tourism use to the Ribble Valley in line with the Councils strategy. The proposed development will provide appropriate facilities for outdoor sport and recreation. The proposal will also create employment for the area and provide benefits to the local community.
- 9.7 On this basis, the proposals accord with the NPPF and the Development Plan and should be approved without delay.

**APPENDIX 1 – FULL PLANNING HISTORY**

<b>Application Number</b>	<b>Description Proposal</b>	<b>Decision</b>	<b>Date</b>
<b>3/2015/0547</b>	Full application for change of use to a secure vehicle storage area, with ancillary development comprising the siting of 1No. welfare facilities cabin, 1 No. drying room cabin and 3No. containers for storage.	Approved with conditions	11/08/2015
<b>3/2014/1044</b>	Change of use from garden centre to B1 (office) and the retention of the existing B8 storage	Approved with conditions	19/01/2015
<b>3/2014/0732</b>	Discharge of conditions 6 (construction method statement) and 8 (breeding bird survey) of application 3/2012/0539	Approved	07/10/2014
<b>3/2012/0539</b>	Proposed installation of three endurance 50kw wind turbines 46m in overall height (i.e.to blade tip).	Appeal Granted	07/11/2013
<b>3/2010/0729</b>	6no. fascia signs, 2no. remote totem signs and 4no. sets of letters.	That Advertisement Consent be granted for all the signs at the site entrance and on the front of the building, but that Advertisement Consent be refused for the two remote totem signs (signs 9 and 10).	14/04/2011
<b>3/2010/0656</b>	Application for the discharge of condition no. 1 (time), no.2 (amended drawings), no.3 (landscaping), no.4 (roof colour of poly-tunnels) and condition no.5 (lighting columns) of planning consent 3/2009/0721P.	Approved with Conditions	07/04/2011
<b>3/2009/0721</b>	Proposed infill and link extensions including 6no. planting tunnels to rear of existing garden centre building. Creation of accessible access ramps to provide fully accessible route to all areas from existing	Approved with Conditions	04/02/2010

	garden centre building and proposed landscaping scheme for the site.		
<b>3/2009/0503/N</b>	Determination as to whether the Council's prior approval of details will be required for an agricultural implement and hay store building measuring 27.5m x 12.5m.	It WILL BE necessary for a full planning application to be submitted and approved prior to the commencement of any development.	14/07/2009
<b>3/2009/0210/P</b>	Erection of an agricultural cattle shed at Carr Hall, Whalley Road, Langho	Refusal	27/05/2009
<b>3/2008/0043</b>	The erection of a steel portal framed building to house livestock.	Withdrawn	18/03/2008
<b>3/2006/0684/P</b>	Proposed extension to rear to form recreation block including garages, pool and granny flat etc at Carr Hall, Whalley Road, Wilpshire	Refusal	05/10/2006
<b>3/2007/0048</b>	Proposed extension to rear to form recreation block including garages, pool and granny flat, etc. Re-submission.	Approved with conditions	16/03/2007
<b>3/2005/0072</b>	Alterations and extensions to de-listed dwelling through total demolition and rebuilding in lieu of partial demolition and rebuilding, as approved by approval reference 3/2000/0777P	Approved with Conditions	14/06/2005
<b>3/2004/1020</b>	Redevelopment of existing site/buildings for garden/garden crafts centre. Amendment of permission 3/93/0196P	Approved with Conditions	07/07/2005
<b>3/2004/0408</b>	Temporary change of use of existing steel portal framed building from farm building to furniture store	Approved with Conditions	16/06/2004
<b>3/2001/0238</b>	Development of farm buildings for industrial purposes (resubmission)	Withdrawn	15/03/2002

<b>3/2000/0874</b>	Development of existing farm buildings to convert to industrial/ leisure use	Withdrawn	07/02/2001
<b>3/2000/0777</b>	Extension and internal alterations	Approved with Conditions	18/03/2002
<b>3/2000/0778</b>	Extension and internal alterations (listed building consent)	Approved with Conditions	16/05/2002
<b>3/2000/0755</b>	Access road (retrospective)	Refused	19/12/2000
<b>3/1994/0030</b>	Use of land as golf driving range	Refused  Appeal dismissed	05/04/1994  06/09/1994
<b>3/1993/0635</b>	Use of land as golf driving range	Withdrawn	07/12/93
<b>3/1993/0343</b>	Removal of condition no. 7 on consent 3/91/0584 to allow outside storage on site	Approved no conditions	22/06/1993
<b>3/1993/0196</b>	Detailed scheme of conversion of existing buildings to discharge condition 5 on planning approval 3/91/0584	Approved with conditions	27/05/1993
<b>3/1993/0163</b>	Non illuminated agents advertisement board	Approved with conditions	27/04/1993
<b>3/1991/0584</b>	Use of buildings and land adjoining as garden craft centre	Approved with Conditions	06/11/1992
<b>3/1991/0451</b>	Alteration to existing vehicular access and crossing (re-submission)	Approved with conditions	10/09/1991
<b>3/1990/0786</b>	Proposed alterations to existing vehicular access and crossing	Approved with conditions	28/11/1990

**APPENDIX 2 - SUPREME COURT JUDGEMENT ON R (ON THE APPLICATION OF SAMUEL SMITH OLD BREWERY (TADCASTER) AND OTHERS) (RESPONDENTS) V NORTH YORKSHIRE COUNTY COUNCIL (APPELLANT) (5<sup>TH</sup> FEBRUARY 2020)**



Hilary Term  
[2020] UKSC 3  
*On appeal from: [2018] EWCA Civ 489*

## **JUDGMENT**

**R (on the application of Samuel Smith Old Brewery  
(Tadcaster) and others) (Respondents) v North  
Yorkshire County Council (Appellant)**

before

**Lady Hale  
Lord Carnwath  
Lord Hodge  
Lord Kitchin  
Lord Sales**

**JUDGMENT GIVEN ON**

**5 February 2020**

**Heard on 3 December 2019**

*Appellant*  
Daniel Kolinsky QC  
Hannah Gibbs

(Instructed by North  
Yorkshire County Council  
Legal Services)

*Respondents (1 and 2)*  
Peter Village QC  
James Strachan QC  
Ned Helme  
Ruth Keating  
(Instructed by Pinsent  
Masons LLP (Leeds))

*Respondent (3)*  
Alison Ogley  
(Instructed by Walker  
Morris LLP)

Respondents:-

- (1) Samuel Smith Old Brewery (Tadcaster)
- (2) Oxton Farm
- (3) Darrington Quarries Ltd

**LORD CARNWATH: (with whom Lady Hale, Lord Hodge, Lord Kitchin and Lord Sales agree)**

*Introduction*

1. The short point in this appeal is whether the appellant county council, as local planning authority, correctly understood the meaning of the word “openness” in the national planning policies applying to mineral working in the Green Belt, as expressed in the National Planning Policy Framework (“NPPF”). The Court of Appeal ([2018] EWCA Civ 489), disagreeing with Hickinbottom J ([2017] EWHC 442 (Admin)) in the High Court, held that, in granting planning permission for the extension of a quarry, the council had been misled by defective advice given by their planning officer. In the words of Lindblom LJ, giving the leading judgment:

“It was defective, at least, in failing to make clear to the members that, under government planning policy for mineral extraction in the Green Belt in para 90 of the NPPF, visual impact was a potentially relevant and potentially significant factor in their approach to the effect of the development on the ‘openness of the Green Belt’, ...” (para 49, per Lindblom LJ)

He thought that, having regard to the officer’s own assessment, it was “quite obviously relevant”, and therefore a necessary part of the assessment. The court quashed the permission.

2. In this court, the council, supported by the quarry operator (the third respondent), argues that the Court of Appeal’s reasoning was based on misunderstandings both of the relevant policies and of the officer’s report, and that the permission should be reinstated. The first and second respondents (collectively referred to as “Samuel Smith”) seek to uphold the decision and reasoning of the Court of Appeal.

## *Green Belt policy*

### *History and aims*

3. Although we are directly concerned with the policies in the NPPF (in its original 2012 version), Green Belt policies have a very long history. It can be traced back to the first national guidance on Green Belts in Circular 42/55 (issued in August 1955). More recently Planning Policy Guidance 2: Green Belts (published in 1995 and amended in 2001) (“PPG2”) confirmed the role of Green Belts as “an essential element of planning policy for more than four decades”; and noted that the purposes of Green Belt policies and the related development control policies set out in 1955 “remain valid today with remarkably little alteration” (para 1.1). The NPPF itself, as appears from ministerial statements at the time, was designed to consolidate and simplify policy as expressed in a number of ministerial statements and guidance notes, rather than to effect major policy changes (see *Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government* [2014] EWCA Civ 1386; [2015] PTSR 274, paras 16ff, 22 per Sullivan LJ).

4. In the NPPF the concept of “openness” first appears in the introduction to section 9 (“Protecting Green Belt land”) which gives a statement of the fundamental aim and the purposes of Green Belt policy:

“79. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

80. Green Belt serves five purposes:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;

- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”

5. This statement of the “fundamental aim” of the policy and the “five purposes” is unchanged from PPG2. The PPG included a fuller statement of certain “objectives” for the use of land within defined Green Belts, including (for example) providing opportunities for access to open countryside, and retaining and enhancing attractive landscapes (para 1.6), but adding:

“The extent to which the use of land fulfils these objectives is however not itself a material factor in the inclusion of land within a Green Belt, or in its continued protection. For example, although Green Belts often contain areas of attractive landscape, the quality of the landscape is not relevant to the inclusion of land within a Green Belt or to its continued protection. The purposes of including land in Green Belts are of paramount importance to their continued protection, and should take precedence over the land use objectives.” (para 1.7)

It is clear therefore that the visual quality of the landscape is not in itself an essential part of the “openness” for which the Green Belt is protected.

#### *Control of development in Green Belts*

6. Key features of development control in Green Belts are the concepts of “appropriate” and “inappropriate” development, and the need in the latter case to show “very special circumstances” to justify the grant of planning permission. In *R (Lee Valley Regional Park Authority) v Epping Forest District Council* [2016] EWCA Civ 404; [2016] Env LR 30 (“the *Lee Valley* case”), Lindblom LJ explained their relationship:

“18. A fundamental principle in national policy for the Green Belt, unchanged from PPG2 to the NPPF, is that the construction of new buildings in the Green Belt is ‘inappropriate’ development and should not be approved except in ‘very special circumstances’, unless the proposal is within one of the specified categories of exception in the ‘closed lists’ in paras 89 and 90. ... The distinction between

development that is ‘inappropriate’ in the Green Belt and development that is not ‘inappropriate’ (ie appropriate) governs the approach a decision-maker must take in determining an application for planning permission. ‘Inappropriate development’ in the Green Belt is development ‘by definition, harmful’ to the Green Belt - harmful because it is there - whereas development in the excepted categories in paras 89 and 90 of the NPPF is not. ...”

7. These concepts are expressly preserved in the policies for the control of development set out in paras 87ff of the NPPF:

“As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

... ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.” (paras 87-88)

8. Paragraph 89 indicates that construction of new buildings is to be regarded as “inappropriate” with certain defined exceptions. The exceptions include, for example, “buildings for agriculture and forestry”, and (relevant to authorities discussed later in this judgment):

“- provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;

- limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.”

9. Paragraph 90, which defines forms of development regarded as “not inappropriate” is directly in issue in the present case:

“90. Certain other forms of development are also not inappropriate in Green Belt *provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt*. These are:

- mineral extraction;
- engineering operations;
- local transport infrastructure which can demonstrate a requirement for a Green Belt location;
- the re-use of buildings provided that the buildings are of permanent and substantial construction; and
- development brought forward under a Community Right to Build Order.” (Emphasis added. I shall refer to the words so emphasised as “the openness proviso”)

10. Paragraphs 89-90 replace a rather fuller statement of policy for “Control of Development” in section 3 of PPG2. Paragraphs 3.4-3.6 (“New buildings”), and paras 3.7-3.12 (“Re-use of buildings”, and, under a separate heading, “Mining operations, and other development”) cover substantially the same ground, respectively, as NPPF paras 89 and 90, but in rather fuller terms. The policy for “Mining operations, and other development” was as follows:

“3.11 Minerals can be worked only where they are found. Their extraction is a temporary activity. Mineral extraction *need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored*. Mineral and local planning authorities should include appropriate policies in their development plans. Mineral planning authorities should ensure that planning conditions for mineral working sites within Green Belts achieve suitable environmental standards and restoration ...

3.12 The statutory definition of development includes engineering and other operations, and the making of any

material change in the use of land. The carrying out of such operations and the making of material changes in the use of land are inappropriate development *unless they maintain openness and do not conflict with the purposes of including land in the Green Belt ...*” (Emphasis added)

11. It will be noted that a possible textual issue arises from the way in which the PPG2 policies have been shortened and recast in the NPPF. In the PPG the openness proviso is in terms directed to forms of development other than mineral extraction (it also appears in the section on re-use of buildings: para 3.8). By contrast, mineral extraction is not expressly subject to the proviso, but may be regarded as not inappropriate, subject only to “high environmental standards” and the quality of restoration. In the shortened version in the NPPF these categories of potentially appropriate development have been recast in para 90, and brought together under the same proviso, including the requirement to preserve openness.

12. I do not read this as intended to mark a significant change of approach. If that had been intended, one would have expected it to have been signalled more clearly. To my mind the change is explicable as no more than a convenient means of shortening and simplifying the policies without material change. It may also have been thought that, whereas mineral extraction in itself would not normally conflict with the openness proviso, associated building or other development might raise greater problems. A possible example may be seen in the *Europa Oil* case discussed below (para 26).

#### *Other relevant policies*

13. *Mineral policies* A later part of the NPPF (section 13, headed “Facilitating the sustainable use of minerals”) deals with mineral development generally. It emphasises the importance of ensuring a sufficient supply of minerals to support economic growth (para 142); and gives advice on the inclusion of mineral policies in local plans (para 143), and on the determination of planning applications (para 144). The latter includes (inter alia) a requirement to ensure that there are “no unacceptable adverse impacts on the natural and historic environment ...”, and that provision is made for “restoration and aftercare at the earliest opportunity to be carried out to high environmental standards ...”. No issue arises under these policies in the present case, but they show that development which is “appropriate” in Green Belt may be found unacceptable by reference to other policy constraints.

14. *Local plan policies* The proposal was also subject to Green Belt and other policies in the local plan (the Selby District Core Strategy Local Plan). These are

summarised by Lindblom LJ (para 9). It is not suggested by either party that these materially affect the legal issues arising in the present appeal.

### ***The application and the officer's report***

15. The application was for an extension to the operational face of Jackdaw Crag Quarry, a magnesian limestone quarry owned and operated by the third respondent, Darrington Quarries Ltd. The quarry, which extends to about 25 hectares, is in the Green Belt, about 1.5 kilometres to the south-west of Tadcaster. It has been operated by Darrington Quarries for many years, planning permission for the extraction of limestone having first been granted in July 1948 and subsequently renewed. The proposed extension is for an area of about six hectares, expected to yield some two million tonnes of crushed rock over a period of seven years.

16. The application had received planning permission in January 2013, but that permission was quashed because of failings in the environmental impact assessment. The application came back to the county council's Planning and Regulatory Functions Committee on 9 February 2016, when the committee accepted their officer's recommendation that planning permission be granted. Following completion of a section 106 agreement planning permission was granted on 22 September 2016.

17. The officer's report, prepared by Vicky Perkin for the Corporate Director, Business and Environmental Services, was an impressively comprehensive and detailed document, running to more than 100 pages, and dealing with a wide range of planning considerations. Under the heading "Landscape impact", the report summarised the views of the council's Principal Landscape Architect, who had not objected in principle to the proposal, but had drawn attention to the potential landscape impacts and the consequent need to ensure that mitigation measures are maximised (paras 4.118, 7.42-5).

18. For present purposes the critical part of the report comes under the heading "Impacts of the Green Belt" (paras 7.117ff). Having summarised the relevant national and local policies, she referred (para 7.120) to the consultation response from Samuel Smith stating that:

*"... the application site falling within the Green Belt is critical in the determination of the proposal and added that 'mineral extraction remains inappropriate development in the Green Belt unless it can be demonstrated that the proposal both preserves the openness of the Green Belt and doesn't conflict*

*with the purposes of including land within the Green Belt’ . The objector also stated that one of the aims of the Green Belt, in ‘assisting in urban regeneration will be materially harmed by the development’ ...” (her italics)*

19. The officer commented:

“7.121 When considering applications within the Green Belt, in accordance with the NPPF, it is necessary to consider whether the proposed development will firstly preserve the openness of the Green Belt and secondly ensure that it does not conflict with the purposes of including land within the Green Belt.

7.122 It is considered that the proposed development preserves the openness of the Green Belt and does not conflict with the purposes of including land within the Green Belt. Openness is not defined, but it is commonly taken to be the absence of built development. Although the proposed development would be on existing agricultural land, it is considered that because the application site immediately abuts the existing operational quarry, it would not introduce development into this area of a scale considered to conflict with the aims of preserving the openness of the Green Belt.

7.123 In terms of whether the proposed development does not conflict with the purposes of including land within the Green Belt, the proposed quarrying operations are not considered to conflict with the purposes of including land within the Green Belt. Equally, it is not considered that the proposed development would undermine the objective of safeguarding the countryside from encroachment as it should be considered that the site is in conjunction with an operational quarry which will be restored. The proposed development is a temporary use of land and would also be restored upon completion of the mining operations through an agreed [restoration plan].

7.124 The purposes of including land within the Green Belt to prevent the merging of neighbouring towns and impacts upon historic towns are not relevant to this site as it is considered the site is adequately detached from the settlements of Stutton,

Towton and Tadcaster. It is also important to note that the A64 road to the north severs the application site from Tadcaster.

7.125 As mentioned in the response from [Samuel Smith], one of the purposes of the Green Belt is assisting in urban regeneration which the objector claims will be undermined by the proposed development. Given the situation of the application site, adjacent to an existing operational quarry and its rural nature, and the fact that minerals can only be worked where they are found, it is considered that the site would not, therefore, undermine this aim of the Green Belt.

7.126 The restoration scheme is to be designed and submitted as part of a section 106 Agreement, it is considered that there are appropriate controls to ensure adequate restoration of the site. Due to the proposed restoration of the temporary quarry and the fact that it is considered the proposal doesn't conflict with the aims of the Green Belt, it is considered that the proposed development would not materially harm the character and openness of the Green Belt, and would, therefore, comply with Policy SP3 and SP13 of the Selby District Core Strategy Local Plan and NPPF."

20. Section 8 of the report gives the planning officer's conclusion:

"8.4 It is considered that the proposed screening could protect the environment and residential receptors from potential landscape and visual impacts.

8.5 Due to the proposed restoration of the temporary quarry and the fact that it is considered the proposal doesn't conflict with the aims of the Green Belt, it is considered that the proposed development would not materially harm the character and openness of the Green Belt."

### *Legal principles*

21. Much time was taken up in the judgments below, as in the submissions in this court, on discussion of previous court authorities on the relevance of visual impact under Green Belt policy. The respective roles of the planning authorities and the courts have been fully explored in two recent cases in this court: *Tesco Stores Ltd v*

*Dundee City Council (Asda Stores Ltd intervening)* [2012] UKSC 13; [2012] PTSR 983, and *Hopkins Homes Ltd v Secretary of State for Communities and Local Government* [2017] UKSC 37; [2017] 1 WLR 1865. In the former Lord Reed, while affirming that interpretation of a development plan, as of any other legal document, is ultimately a matter for the court, also made clear the limitations of this process:

“Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse ...” (para 19)

In the *Hopkins Homes* case (paras 23-34) I warned against the danger of “over-legalisation” of the planning process. I noted the relatively specific language of the policy under consideration in the *Tesco* case, contrasting that with policies:

“expressed in much broader terms [which] may not require, nor lend themselves to, the same level of legal analysis ...”

22. The concept of “openness” in para 90 of the NPPF seems to me a good example of such a broad policy concept. It is naturally read as referring back to the underlying aim of Green Belt policy, stated at the beginning of this section: “to prevent urban sprawl by keeping land permanently open ...”. Openness is the counterpart of urban sprawl and is also linked to the purposes to be served by the Green Belt. As PPG2 made clear, it is not necessarily a statement about the visual qualities of the land, though in some cases this may be an aspect of the planning judgement involved in applying this broad policy concept. Nor does it imply freedom from any form of development. Paragraph 90 shows that some forms of development, including mineral extraction, may in principle be appropriate, and compatible with the concept of openness. A large quarry may not be visually attractive while it lasts, but the minerals can only be extracted where they are found, and the impact is temporary and subject to restoration. Further, as a barrier to urban sprawl a quarry may be regarded in Green Belt policy terms as no less effective than a stretch of agricultural land.

23. It seems surprising in retrospect that the relationship between openness and visual impact has sparked such legal controversy. Most of the authorities to which we were referred were concerned with the scope of the exceptions for buildings in para 89 (or its predecessor). In that context it was held, unremarkably, that a building which was otherwise inappropriate in Green Belt terms was not made appropriate by its limited visual impact (see *R (Heath and Hampstead Society) v Camden London Borough Council* [2007] EWHC 977 (Admin), upheld at *R (Heath and Hampstead Society) v Vlachos* [2008] EWCA Civ 193; [2008] 3 All ER 80). As Sullivan J said in the High Court:

“The loss of openness (ie unbuilt on land) within the Green Belt or Metropolitan Open Land is of itself harmful to the underlying policy objective. If the replacement dwelling is more visually intrusive there will be further harm in addition to the harm by reason of inappropriateness ...” (para 22)

To similar effect, in the *Lee Valley* case, Lindblom LJ said:

“The concept of ‘openness’ here means the state of being free from built development, the absence of buildings - as distinct from the absence of visual impact.” (para 7, cited by him in his present judgment at para 19)

24. Unfortunately, in *Timmins v Gedling Borough Council* [2014] EWHC 654 (Admin) (a case about another familiar Green Belt category - cemeteries and associated buildings), Green J went a stage further holding, not only that there was “a clear conceptual distinction between openness and visual impact”, but that it was:

“wrong *in principle* to arrive at a specific conclusion as to openness by reference to visual impact.” (para 78, emphasis in original)

25. This was disapproved (rightly in my view) in *Turner v Secretary of State for Communities and Local Government* [2016] EWCA Civ 466; [2017] 2 P & CR 1, para 18. This concerned an inspector’s decision refusing permission for a proposal to replace a mobile home and storage yard with a residential bungalow in the Green Belt. In rejecting the contention that it was within the exception for redevelopment which “would not have a greater impact on the openness of the Green Belt”, the inspector had expressly taken account of its visual effect, and that it would “appear as a dominant feature that would have a harmful impact on openness here”. The Court of Appeal upheld the decision. Sales LJ said:

“The concept of ‘openness of the Green Belt’ is not narrowly limited to the volumetric approach suggested by [counsel]. The word ‘openness’ is open-textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. Prominent among these will be factors relevant to how built up the Green Belt is now and how built up it would be if redevelopment occurs ... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents.” (para 14)

Before us there was no challenge to the correctness of this statement of approach. However, it tells one nothing about how visual effects may or may not be taken into account in other circumstances. That is a matter not of legal principle, but of planning judgement for the planning authority or the inspector.

26. The only case referred to in argument which was directly concerned with mineral extraction as such was *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643 (Admin); [2014] 1 P & CR 3 (upheld at [2014] EWCA Civ 825; [2014] PTSR 1471). That concerned an application for permission for an exploratory drill site to explore for hydrocarbons in the Green Belt, including plant and buildings. The inspector had considered the potential effect of the development on the Green Belt:

“... I consider Green Belt openness in terms of the absence of development. The proposal would require the creation of an extensive compound, with boundary fencing, the installation of a drilling rig of up to 35 metres in height, a flare pit and related buildings, plant, equipment and vehicle parking on the site. Taking this into account, together with the related HGV and other traffic movements, I consider that the Green Belt openness would be materially diminished for the duration of the development and that there would be a conflict with Green Belt purposes in respect of encroachment into the countryside over that period.” (quoted by Ouseley J at para 16)

He refused permission, taking the view that it did not fall within the exception for “mineral extraction”, and that there were no very special circumstances to out-weigh the harm to the Green Belt identified in that passage.

27. It was held that he had erred in failing to treat the proposal as one for mineral extraction, and therefore potentially within the exception in NPPF para 90. Ouseley J noted the special status of mineral extraction under Green Belt policy. As he said:

“67. One factor which affects appropriateness, the preservation of openness and conflict with Green Belt purposes, is the duration of development and the reversibility of its effects. Those are of particular importance to the thinking which makes mineral extraction potentially appropriate in the Green Belt. Another is the fact that extraction, including exploration, can only take place where those operations achieve what is required in relation to the minerals. Minerals can only be extracted where they are found ...

68. Green Belt is not harmed by such a development because the fact that the use has to take place there, and its duration and reversibility are relevant to its appropriateness and to the effect on the Green Belt ...”

28. However, he made clear that it remained necessary for the decision-maker to consider the proposal under the proviso to para 90. Affirming his decision in the Court of Appeal, Richards LJ said (para 41):

“The key point, in my judgment, is that the inspector approached the effect on Green Belt openness and purposes on the premise that exploration for hydrocarbons was necessarily inappropriate development since it did not come within any of the exceptions. He was not considering the application of the proviso to para 90 at all: on his analysis, he did not get that far. Had he been assessing the effect on Green Belt openness and purposes from the point of view of the proviso, it would have been on the very different premise that exploration for hydrocarbons on a sufficient scale to require planning permission is nevertheless capable in principle of being appropriate development. His mind-set would have been different, or at least it might well have been different ...”

Although the decision turned principally on a legal issue as to the meaning of “mineral extraction”, it is significant that the impact on the Green Belt identified by the inspector (including a 35 metre drill rig and related buildings) was not thought necessarily sufficient in itself to lead to conflict with the openness proviso. That was a matter for separate planning judgement.

### *Material considerations*

29. Section 70(2) of the Town and Country Planning Act 1990 (“the Act”) required the council in determining the application to have regard to the development plan and “any other material consideration”. In summary Samuel Smith’s argument, upheld by the Court of Appeal, is that the authority erred in failing to treat the visual effects, described by the officer in her assessment of “Landscape impact” (para 17 above) as “material considerations” in its application of the openness proviso under para 90.

30. The approach of the court in response to such an allegation has been discussed in a number of authorities. I sought to summarise the principles in *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2009] EWHC 1729 (Admin); [2010] 1 P & CR 19. The issue in that case was whether the authority had been obliged to treat the possibility of alternative sites as a material consideration. I said:

“17. It is one thing to say that consideration of a possible alternative site is a potentially relevant issue, so that a decision-maker does not err in law if he has regard to it. It is quite another to say that it is *necessarily* relevant, so that he errs in law if he fails to have regard to it ...

18. For the former category the underlying principles are obvious. It is trite and long-established law that the range of potentially relevant planning issues is very wide (*Stringer v Minister of Housing and Local Government* [1970] 1 WLR 1281); and that, absent irrationality or illegality, the weight to be given to such issues in any case is a matter for the decision-maker (*Tesco Stores Ltd v Secretary of State for the Environment and West Oxfordshire District Council* [1995] 1 WLR 759, 780). On the other hand, to hold that a decision-maker has erred in law by *failing* to have regard to alternative sites, it is necessary to find some legal principle which compelled him (not merely empowered) him to do so.”

31. I referred to the discussion of this issue in a different context by Cooke J in the New Zealand Court of Appeal, in *CreedNZ Inc v Governor General* [1981] 1 NZLR 172, 182 (adopted by Lord Scarman in the House of Lords in *In re Findlay* [1985] AC 318, 333-334, and in the planning context by Glidewell LJ in *Bolton Metropolitan Borough Council v Secretary of State for the Environment and Greater Manchester Waste Disposal Authority* (1991) 61 P & CR 343, 352):

“26. Cook J took as a starting point the words of Lord Greene MR in the *Wednesbury* case [1948] 1 KB 223, 228:

‘If, in the statute conferring the discretion there is to be found expressly or by implication matters which the authority exercising the discretion ought to have regard to, then in exercising the discretion it must have regard to those matters.’

He continued:

‘What has to be emphasised is that it is only when the statute *expressly or impliedly identifies considerations required to be taken into account by the authority as a matter of legal obligation* that the court holds a decision invalid on the ground now invoked. It is not enough that it is one that may properly be taken into account, nor even that it is one which many people, including the court itself, would have taken into account if they had to make the decision ...’ (Emphasis added)

27. In approving this passage, Lord Scarman noted that Cook J had also recognised, that -

‘... in certain circumstances there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them by the ministers ... would not be in accordance with the intention of the Act.’ (*In re Findlay* at p 334)

28. It seems, therefore, that it is not enough that, in the judge’s view, consideration of a particular matter might realistically have made a difference. Short of irrationality, the question is one of statutory construction. It is necessary to show that the matter was one which the statute expressly or impliedly (because ‘obviously material’) requires to be taken into account ‘as a matter of legal obligation’.”

32. *Mutatis mutandis*, similar considerations apply in the present case. The question therefore is whether under the openness proviso visual impacts, as identified by the inspector, were expressly or impliedly identified in the Act or the

policy as considerations required to be taken into account by the authority “as a matter of legal obligation”, or alternatively whether, on the facts of the case, they were “so obviously material” as to require direct consideration.

### *The reasoning of the courts below*

33. Hickinbottom J in the High Court held in summary that consideration of visual impact was neither an implicit requirement of the openness proviso, nor obviously relevant on the facts of this case. He said:

“64. I stress that we are here concerned with differential impact, ie the potential adverse visual impact over and above the adverse spatial impact. On the facts of this case ... it is difficult to see what the potential visual impact of the development would be over and above the spatial impact, which, as Mr Village concedes, was taken into account. In any event, even if there were some such impact, that does not mean that openness would be adversely affected; because, in assessing openness, the officers would still have been entitled to take into account factors such as the purpose of the development, its duration and reversibility, and would have been entitled to conclude that, despite the adverse spatial and visual impact, the development would nevertheless not harm but preserve the openness of the Green Belt.

65. In this case, the potential visual impact of the development falls very far short of being an obvious material factor in respect of this issue. In my judgment, in the circumstances of this case, the report did not err in not taking into consideration any potential visual impact from the development. Indeed, on the facts of this case, I understand why the officers would have come to the view that consideration of visual impact would not have materially added to the overarching consideration of whether the development would adversely impact the openness of the Green Belt.”

34. Lindblom LJ took the opposite view. He summarised the visual impacts described by the officer:

“42. The proposed development was a substantial extension to a large existing quarry, with a lengthy period of working and

restoration. As the Principal Landscape Architect recognized in her response to consultation, and the officer acknowledged without dissent in her report, there would be permanent change to the character of the landscape (paras 4.109 and 4.115 of the report). The ‘quality of the Locally Important Landscape Area as a whole would be compromised’ (para 7.41). *The exposed face of the extended quarry would be as visible as that of the existing quarry, if not more so* (paras 4.111 and 7.42). *Long distance views could be cut off by the proposed bunding and planting.* Agricultural land would ultimately be replaced by a ‘deep lower level landscape’ of grassland (para 4.113). The ‘character and quality’ of the landscape would be ‘permanently changed’ and the ‘impact cannot be described as neutral’ (paras 4.115 and 7.44). Concluding her assessment of ‘Landscape Impact’, the officer was satisfied that the ‘proposed screening could protect the environment and residential receptors from potential landscape and visual impacts’, and that with the proposed mitigation measures the development would comply with national and local policy (paras 7.47 and 8.4).

43. That assessment did not deal with the likely effects of the development on the openness of the Green Belt as such, either spatial or visual. *It does show, however, that there would likely be - or at least could be - effects on openness in both respects, including the closing-off of long distance views by the bunding and planting that would screen the working* (para 4.111 of the officer’s report). The officer’s conclusion overall (in para 7.47) was, in effect, that the proposed screening would be effective mitigation, without which the development would not be acceptable. But this was not followed with any discussion of the harmful effects that the screening measures themselves might have on the openness of the Green Belt.” (Emphasis added)

35. He then directed particular attention to para 7.122 of the report, which he understood to encapsulate her views on the application of the openness proviso under NPPF para 90:

“45. So it is to para 7.122 that one must look, at least in the first place, to see whether the officer considered the relevance of visual impact to the effect of this development on the openness of the Green Belt. Did she confront this question, and bring the committee’s attention to it? I do not think she did. *She neither considered, in substance, the likely visual impact of the*

*development on the openness of the Green Belt nor, it seems, did she ask herself whether this was a case in which an assessment of visual impact was, or might be, relevant to the question of whether the openness of the Green Belt would be preserved. Indeed, her observation that openness is 'commonly taken to be the absence of built development' seems deliberately to draw the assessment away from visual impact, and narrow it down to a consideration of spatial impact alone. And the burden of the assessment, as I read it, is that because the further extraction of limestone would take place next to the existing quarry, the 'scale' of the development would not fail to preserve the openness of the Green Belt. This seems a somewhat surprising conclusion. But what matters here is that it is a consideration only of spatial impact. Of the visual impact of the quarry extension on the openness of the Green Belt, nothing is said at all. That was, it seems to me, a significant omission, which betrays a misunderstanding of the policy in para 90 of the NPPF.*

46. One must not divorce para 7.122 from its context. The report must be read fairly as a whole. The question arises, therefore: did the officer address the visual impact of the development on the openness of the Green Belt in the remaining paragraphs of this part of her report, or elsewhere? I do not think she did. *Her consideration of the effects of the development on the 'purposes of including land in the Green Belt', in paras 7.123 to 7.125, is unexceptionable in itself. However, she did not, in these three paragraphs, revisit the question of harm to the openness of the Green Belt, either in spatial or in visual terms.* The conclusion to this part of the report, in para 7.126, is that the 'character and openness of the Green Belt' would not be materially harmed by the development - a conclusion repeated in para 8.5 - and that the proposal would therefore comply with Policy SP3 and Policy SP13 of the local plan and the NPPF. But I cannot accept that this conclusion overcomes the lack of consideration of visual impacts on 'openness' in the preceding paragraphs. It seems to treat 'character' as a concept distinct from 'openness'. Even if these two concepts can be seen as related to each other, and however wide the concept of 'character' may be, there is no suggestion here that the officer was now providing a conclusion different from that in para 7.122, or additional to it.

47. The same may also be said of the officer's earlier discussion of 'Landscape Impact' in paras 7.41 to 7.47. Her assessment and conclusions in that part of her report are not imported into para 7.122, or cross-referred to as lending support to her conclusion there ..." (Emphasis added)

36. This led to the overall conclusion in para 49 (quoted in part at the beginning of this judgment):

"49. I can only conclude, therefore, that the advice given to the committee by the officer was defective. It was defective, at least, *in failing to make clear to the members that, under government planning policy for mineral extraction in the Green Belt in para 90 of the NPPF, visual impact was a potentially relevant and potentially significant factor* in their approach to the effect of the development on the 'openness of the Green Belt', and hence to the important question of whether the proposal before them was for 'inappropriate' development in the Green Belt - and, indeed, in implying that the opposite was so ... One can go further. *On the officer's own assessment of the likely effects of the development on the landscape, visual impact was quite obviously relevant to its effect on the openness of the Green Belt. So the consideration of this question could not reasonably be confined to spatial impact alone.*" (Emphasis added)

37. Although it is necessary to read the discussion in full, I have highlighted what seem to me the critical points in Lindblom LJ's assessment of the failure to take account of visual effects; in summary:

i) In paras 42 and 43, he extracts from the officer's own landscape assessment the observation that "the exposed face of the extended quarry would be as visible as that of the existing quarry, if not more so ..." and that "long distance views could be cut off by the proposed bunding and planting". This leads to the view that:

"there would likely be - or at least could be - effects on openness in both respects, including the closing-off of long distance views by the bunding and planting that would screen the working."

ii) In para 7.122, where the officer purported to address the issue of openness, she failed to consider the likely effect of such visual impact nor its relevance to whether the openness of the Green Belt would be preserved. Instead, by in effect equating openness with absence of built development, she tended to narrow the issue down to a consideration of spatial impact alone. That betrayed a misunderstanding of the policy in para 90 of the NPPF.

iii) The subsequent paragraphs dealt with other aspects of the effect on the purposes of the Green Belt, and were unexceptionable in themselves; but they did not revisit the question of visual impact or so make up for the deficiency in para 7.122.

iv) The officer's advice was defective in this respect. Further on her own assessment visual effect was "quite obviously relevant" to the issue of openness, and the committee could not reasonably have thought otherwise.

38. I hope I will be forgiven for not referring in detail to the arguments of counsel before this court, which substantially reflected the reasoning respectively of the High Court and the Court of Appeal. I note that Mr Village QC for Samuel Smith made a further criticism of para 7.122, not adopted by Lindblom LJ, that the officer treated the fact that the site abutted the existing quarry as reducing its impact on openness.

### *Discussion*

39. With respect to Lindblom LJ's great experience in this field, I am unable to accept his analysis. The issue which had to be addressed was whether the proposed mineral extraction would preserve the openness of the Green Belt or otherwise conflict with the purposes of including the land within the Green Belt. Those issues were specifically identified and addressed in the report. There was no error of law on the face of the report. Paragraph 90 does not expressly refer to visual impact as a necessary part of the analysis, nor in my view is it made so by implication. As explained in my discussion of the authorities, the matters relevant to openness in any particular case are a matter of planning judgement, not law.

40. Lindblom LJ criticised the officer's comment that openness is "commonly" equated with "absence of built development". I find that a little surprising, since it was very similar to Lindblom LJ's own observation in the *Lee Valley* case (para 23 above). It is also consistent with the contrast drawn by the NPPF between openness and "urban sprawl", and with the distinction between buildings, on the one hand, which are "inappropriate" subject only to certain closely defined exceptions, and

other categories of development which are potentially appropriate. I do not read the officer as saying that visual impact can never be relevant to openness.

41. As to the particular impacts picked out by Lindblom LJ, the officer was entitled to take the view that, in the context of a quarry extension of six hectares, and taking account of other matters, including the spatial separation noted by her in para 7.124, they did not in themselves detract from openness in Green Belt terms. The whole of paras 7.121 to 7.126 of the officer's report address the openness proviso and should be read together. Some visual effects were given weight, in that the officer referred to the restoration of the site which would be required. Beyond this, I respectfully agree with Hickinbottom J that such relatively limited visual impact which the development would have fell far short of being so obviously material a factor that failure to address it expressly was an error of law. For similar reasons, with respect to Mr Village's additional complaint, I see no error in the weight given by the officer to the fact that this was an extension of an existing quarry. That again was a matter of planning judgement not law.

### ***Conclusion***

42. For these reasons, I would allow the appeal and confirm the order of the High Court dismissing the application.

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**APPENDIX 3 – APPLICATION 19/2513M AT FORMER MERE FARM QUARRY, CHELFORD ROAD/ALDERLEY ROAD, NETHER ALDERLEY, CHESHIRE, SK10 4SZ**

Application No: 19/2513M

Location: FORMER MERE FARM QUARRY, CHELFORD ROAD/ALDERLEY ROAD, NETHER ALDERLEY, CHESHIRE, SK10 4SZ

Proposal: Delivery of Watersports and Outdoor Activity Centre on the North Lake of the former Mere Farm Quarry, including new vehicular access, car parking, and multi-use building

Applicant: ADV. Holdings Ltd

Expiry Date: 28-Feb-2020

### **SUMMARY**

The proposed development would provide appropriate facilities for outdoor sport and recreation. The introduction of buildings would inevitably result in some harm to openness in its immediate context. However, the nature of the use means a countryside location, where restrictive policies apply is highly likely. The built form proposed would also be the minimum necessary to enable the use to take place.

The harm to the openness of the Green Belt would be limited by the limited spread of development and the low height of the structures. A condition requiring the removal of all structures and hardstanding on cessation of use would further limit the harm.

Taking all of the above into account, it is considered on balance that the development would not be inappropriate within the Green Belt.

The proposal would result in some harm to biodiversity on the lakes, even with the implementation of the mitigation scheme. However, this harm would not be so significant, as to warrant a refusal on biodiversity grounds.

### **SUMMARY RECOMMENDATION:**

**Approve subject to conditions**

### **DESCRIPTION OF SITE AND CONTEXT**

The application site lies to the east of Alderley Road and comprises two lakes and an area of open grassland, which lies between Alderley Road and the north lake. The site is a former quarry, which has undergone restoration works.

The site boundary includes the North Lake and part of the South Lake. There is a third larger lake, which lies outside of the site boundary.

A public right of way passes through the site on the banked area between the north and south lake.

## **DETAILS OF PROPOSAL**

The application is for the construction of a water sports activity centre. The ancillary facilities would be provided in a series of container type structures. They would comprise a reception and office, kit stores, changing facilities and toilets. On the lake, there would be two buoy lines and an area for a seasonal inflatable course. The remainder of the lake would be available for swimming, with the exception of an exclusion zone around the existing island.

The scheme would also include a new access onto Alderley Road. Parking would be provided for 54 cars, including four accessible parking spaces. There would also be space for coach parking.

The parking and ancillary features would be located on an area of grassland between the north lake and Alderley Road

The watersports activities would be restricted to the north lake. The proposal also includes two new islands, which would be constructed on the south lake, as part of the ecology measures.

## **RELEVANT PLANNING HISTORY**

16/1353M – appeal dismissed – 2 October 2017

Delivery of water-sports and outdoor activity centre on the North and South Lakes of the former Mere Farm Quarry, including new vehicular access, car parking and multi-use building.

In dismissing the appeal, the Inspector concluded that, while the development would provide appropriate facilities for outdoor sport and recreation, it would constitute inappropriate development in the Green Belt, due to its harmful impact on openness. There were no material considerations, which would outweigh this harm. Consequently, very special circumstances were not found to exist. Whilst the development would result in some residual harm to the biodiversity, they concluded that it would not be so significant as to warrant a rejection of the proposal in accordance with NPPF paragraph 118 or conflict with Policy NE11 of the MBLP or SE3.

17/0510M – refused – 26 May 2017

Delivery of water sports and outdoor activity centre on the north and south lake of the former mere farm quarry, including new vehicular access, car parking and multi use building.

The reasons for refusal are summarised below:

1. The proposed development, which includes activities on both the north and south lakes, would likely have a significant adverse impact on the nature conservation value of the lakes. The site is in an unsustainable location, which is not highly accessible by

a choice of transport. The proposals would not be environmentally sustainable contrary to MBLP policy NE 11, emerging CELPS policies SE 3 and SC 1 and the NPPF.

2. The proposed use of the site and the associated built development are inappropriate by definition, the use is not listed as an exception and the building impacts on openness, therefore very special circumstances are required to outweigh the significant harm. In this case it is not considered that very special circumstances exist to outweigh the harm by inappropriateness or the harm to the openness of the Green Belt, contrary to policy GC1 of the Macclesfield Borough Local Plan and paragraph 89 of the NPPF.

16/0117S – EIA not required – 27 July 2016  
EIA Screening Opinion for a Wakeboarding facility park

14/1944W – approved – 15 March 2017  
Variation of conditions 4 and 59 of permission 5/06/2940 to allow to extend the date in condition 4 from 28th April 2014 to 30th September 2016, and amend the approved restoration scheme to that shown on plan M103/222 rev C.

14/1788W – approved – 15 March 2017  
Variation of condition 2 and 54 of permission 09/2806W to extend the date in condition 4 from 28th April 2014 to 30th September 2016, and amend the approved restoration scheme to that shown on plan M103/222 rev 'C'

09/2806W – approved – 2 December 2011  
Interim extension to sand workings at mere farm quarry

CY/5/06/2940 – approved – 23 April 2007  
Application to carry out development without complying with condition 65 of planning permission 5/99/0235P dated 28 April 2000, to allow for a revised restoration scheme.

CY/5/06/2940 – approved – 27 December 2006  
Application to carry out development without complying with condition 65 of planning permission 5/99/0235P dated 28 April 2000, to allow for a revised restoration scheme.

CY/5/99/0235P – approved – 28 March 2000  
Application to extend the area of sand extraction and continuation of existing sand quarry operations

CY/5/53134 – refused – 10 January 1989  
Winning and working of construction sand and gravel with restoration to a landscaped fishing lake

## **Adopted Planning Policies**

### Cheshire East Local Plan Strategy

MP 1 – Presumption in Favour of Sustainable Development

PG 3 – Green Belt  
SD 1 – Sustainable Development in Cheshire East  
SD 2 – Sustainable Development Principles  
EG 2 – Rural Economy  
EG 4 – Tourism  
SC 1 – Leisure and Recreation  
SC 2 – Indoor and Outdoor Sports Facilities  
SE 1 – Design  
SE 3 – Biodiversity and Geodiversity  
SE 4 – The Landscape  
SE 5 – Trees, Hedgerows and Woodland  
SE 12 – Pollution, Land Contamination and Land Instability  
SE 13 – Flood Risk and Water Management  
CO1 – Sustainable Travel and Transport  
Appendix C – Adopted Parking Standards

#### Macclesfield Borough Local Plan

GC1 – Green Belt  
RT7 - Cycleways, Bridleways and Footpaths  
RT8 – Access to the countryside  
DC3 – Amenity  
DC6 – Circulation and Access  
DC15 – Design- provision of facilities  
DC33 – Outdoor Commercial Recreation

#### Chelford Neighbourhood Plan

NE1 – Biodiversity  
NE2 – Landscape  
NE3 – Trees and Hedgerows  
GI 3 – Public Rights of Way and Footpaths  
T1 – Transport

#### **Other Material Policy Considerations**

National Planning Policy Framework (NPPF 2019)

#### **CONSULTATIONS**

The responses are summarised as follows:

##### United Utilities

Condition should be imposed requiring drainage to be provided in accordance with the flood risk assessment. The applicant should contact United Utilities regarding waste management and water supply.

##### Manchester Airport Safeguarding

The bird management strategy accords with Birdstrike avoidance interests of Manchester Airport. No aerodrome safeguarding objections.

Ramblers Association

No reply

Natural England

No comments. There is standing advice, which should be used to assess impacts on protected species and ancient woodland.

Environment Agency

No objection in principle to the development. The discharge of sewage will require an environmental permit from the Environment Agency.

Cheshire Wildlife Trust

The proposal should be assessed under the EIA process. This is to ensure that the original impacts of the scheme are adequately mitigated or compensated for and that there are no additional significant impacts created. The application should have been flagged as a potential EIA scheme and screened accordingly.

The site meets the selection criteria for Local Wildlife Site status and should be considered in a similar manner to existing Local Wildlife sites.

Cheshire and Wirral Ornithological Society provided records to support their concerns. The LPA is required to consider the impact on wild birds under the Conservation of Habitats and Species Regulations 2010. The environmental impacts of the scheme must be properly evaluated and appropriately assessed.

The known impacts on breeding priority/BoCC red or amber listed birds and wintering birds must be addressed. The compensation measures are for species, which have not been recording at the site and are therefore not addressing the known impacts.

The applicant has not addressed Biodiversity Net Gain. Biodiversity Net Gain assessment should be undertaken.

The application fails to adequately consider environmental impacts, undermining one of the core principles of sustainability. Should the Council be minded to approve the plans, mitigation measures should address the actual impacts and measurable biodiversity new gain should be achieved.

RSPB

No reply

Mid Cheshire Footpath Society

No reply

Minerals and Waste

No reply

### Flood Risk

Include conditions requiring the development to be carried out in accordance with submitted FRA and the submission of a detailed SUDS scheme

### Environmental Health

Conditions are required relating to lighting, electric vehicle infrastructure and testing of soils for contamination.

### Countryside and Rights of Way

If granted the development would have a direct, yet insignificant effect on the public footpath no. 2. This is a material planning consideration. In the event that planning permission is granted, conditions should be imposed requiring the submission of a public right of way management scheme, the line of the footpath to be marked out and surveys of the footpath surfaces. The applicant should also be advised of their obligations with regards to the public right of way.

### Highways

No highways objections. Similar development considered under application 16/1353M. The plans show a new 460sqm building with 76 parking spaces and 3 coach bays. Single point of access proposed onto Alderley Road.

Traffic generation may vary significantly in comparison to applicant estimates. However, the majority of movements likely to be outside of AM and PM weekday peaks, when there are no capacity problems. Even if traffic is substantially more than estimated, it would not have a severe impact.

Adequate visibility would be provided in both directions from the proposed access. The access would be acceptable for larger vehicles with turning space available on the site.

Given the rural location, the predominant mode of travel would be by car, due to limited footways and cycleways and the distance to bus stops.

### ANSA Green Space

No reply

### Cadent Gas Ltd

There is an intermediate pressure pipeline in the vicinity. The building proximity for this pipeline is 6m. HSE should be formally consulted.

The applicant should be made aware of the standards, which apply when working within the vicinity of pipelines. They should contact Cadent Gas for further information and prior to works commencing on the site.

### Cheshire and Wirral Ornithological Society

Objection. The applicants' claims that the site has very limited ecological value are inaccurate. CAWOS data shows protected and priority species to be present on the site.

The records indicate that BAP priority species, including Little Ringed Plover, Lapwing, Skylark and Reed Bunting, all breed on the banks of the North Pool. Additionally species of

dabbling ducks and diving ducks use the North Pool for feeding and resting. Whilst occurring in small numbers, they amount to assemblages qualifying for Local Wildlife Site Status.

The development as a result of habitat loss and disturbance would pose such a severe threat that these species would no longer breed, feed or rest at the north pool.

There is no mitigation offered on the North Pool for the loss of County Value status there. The size of the pool and the nature of the activities make on-site mitigation impossible.

Lack of mitigation opportunities for waterfowl on North Pool. Further clarification is required regarding the need for safety/maintenance boats, the measures no longer retained, the purpose of the external speakers and the impact of noise on the South Pool. Risk of trespass onto the South Pool, assurances are required that the public will be excluded from the South Pool.

Implication that birds on North Pool will move to the South Pool is speculative. This is not basis on which to build a case for nature conservation.

The revised plans submitted would not mitigate the loss of habitat on the North Lake. Disturbance caused by development would mean the assemblages of dabbling and diving ducks currently using North Lake cannot be maintained. These assemblages qualify North Lake for Local Wildlife Site status and confer a 'County' level nature conservation value for birds on North Lake, increasing the significance of any loss.

107 Pochard diving ducks counted on North and South Lakes, despite being in decline in Europe. If development went ahead, unlikely the sites would hold such numbers in future.

The revised Habitat Enhancement Plan omits measures previously suggested, such as: commitment to keeping existing island free from vegetation; the creation of a wildflower meadow; the creation of reedbeds; the creation of a length of hedgerow and the erection of public signage boards. The loss of several of these items may have negative effects on biodiversity. Meaning of point 7, which relates to the Bird Strike Hazard management plan, is unclear.

Queries raised regarding the need for safety boats on the South Lake and external speakers; and the impact on the south lake.

The revised plans reduce the size of the car park and footprint of the building, but due to the harm to the ornithological value of the site, the development fails to meet para 141 of the NPPF.

#### Health and Safety Executive (HSE)

Does not cross any consultation zones. Do not need to be consulted on the application.

#### Nether Alderley Rural Protection Association

Object. When planning permission was granted for sand excavations, it was on the condition that the land was restored to greenfield status, including paths for the public to enjoy. The site is of ecological interest and has ornithological importance. Strongly object to any

intrusion into the green belt and peaceful environment for wildlife, local residents and visitors when the restoration programme is fully established.

Already facilities for water sports within the region. No local need or desire for this facility. Much of the support comes from outside the area. Concerns over noise disturbance from external speakers, corporate use and competitions, and impact on nearby residents.

If business is unsuccessful, potential for other commercial developments or if successful it could grow into a full-scale theme park with increased noise and light pollution.

Insufficient transport analysis. Concerns regarding the impact of Increased traffic on the site exit and surrounding roads. Concerns regarding the safety and security of the site and lake for visitors and local residents. No benefits arising from the proposal to the local area.

### Chelford Parish Council

Objection:

- Section.106 Agreement that this green belt site should return to its former state, and that it has conservation value and ecological worth, which needed to be preserved and protected.
- Contrary to NPPF - development would result in unwarranted disturbance to the area.
- The site and the north lake meet the criteria for selection as a local wildlife site and being of county value. Development would result in disturbance and habitat loss for the north lake. The site's County status for birds would possibly be lost as a result of the proposal.
- Insufficient information is provided regarding the mitigation for birds and how successful it would likely be. Mitigation proposed may fail to compensate sufficiently for the negative impact on birds
- No net biodiversity gain – contrary to NPPF 2019.
- Reduction in towers and cables an improvement but building footprint only marginally reduced. Represents an unacceptable incursion into the Green Belt and loss of openness
- Unsustainable location
- Application doesn't reference Chelford Neighbour Plan. This plan has considerable weight, as it is at referendum stage.
- Inaccurate information regarding the facilities within Chelford

### Nether Alderley Parish Council

It would be inappropriate development within the Green Belt and would have a detrimental impact on openness.

Previous permissions required the land to be restored to green-field green belt status and landscaping to be provided for wildlife. This has now matured.

Ecology within the area would have become more established over the last two years. The proposal would have a considerably more damaging impact on wildlife than walkers

Adverse noise impacts on local residents from the scheme.

## **REPRESENTATIONS**

Full copies of all representations made are available to view on the Council's website.

The main points raised in support of the planning application are summarised as follows:

- Proposal would create new jobs and opportunities

- Proposal would support local businesses
- It would enhance tourism in the area.
- It would enhance and find a positive use for the disused quarry
- Wildlife concerns have been taken into consideration and there would be limited environmental impact resulting from the development
- No similar facilities within the area. Local residents would no longer have to travel
- Community benefits – supporting outdoor exercise facilities
- Other similar facilities are well run
- Opportunities for traffic calming as the 60mph zone outside the site
- Site is accessible by train, bus, car, walking and cycling

The main points raised, objecting to the application are summarised as follows:

- Proposal would increase traffic in the village, already affected by the new housing being built
- Danger to highway safety, due to the access onto a 60mph road and the lack of crossing for the public using the site
- Development would result in light and noise disturbance to nearby residents from activity, cars, music and entertainment
- After years of use as a quarry, the site should be restored as agreed by the previous planning permission
- Development is not suitable due to its location under a flight path. It can only be carried out if the larger birds are culled, which would not be possible as birds are a protected species.
- Proposal is not needed by local residents, many of the supporters are not from the local area – plenty of watersports facilities within the local area
- Development would encroach into the Green Belt and would be out of keeping with surrounding countryside
- Benefits associated with walking in the open countryside by local residents and visitors outweigh the demand by extreme water sports enthusiasts.
- Development could deter walkers and ramblers from using the site
- Future expansion could cause unacceptable impact on the local environment
- Inaccuracies within the transport survey regarding the facilities within the village
- Application site is of ornithological importance (site of county importance for wetland birds), with very important species breeding on the site in 2018 and 2019. The proposed mitigation may not work in practice and noise and light pollution risks disturbance to birds using the site. Status of site as being of county importance would be lost by the development
- The site has potential as a wildlife reserve and this should be explored
- Concerns over trespass and safety and what measures will be taken to protect people swimming in the lake.
- Location is not sustainable; car-based development goes against current climate change thinking. Other sites closer to more accessible settlements would be more appropriate
- Public footpaths have been moved without following the formal process
- Development would devalue nearby properties
- Previous concerns raised by the Inspector have not been overcome.
- The revised plans do not overcome the concerns previously raised

## **OFFICER APPRAISAL**

### **Principle of development**

As a starting point, section 38(6) of the Planning and Compulsory Purchase Act 2004 states that where making any determination under the planning Acts, regard is to be had to the development plan. The determination shall be made in accordance with the plan unless material considerations indicate otherwise.

As such the development needs to be assessed in line with the adopted plan policies, including Neighbourhood Plan policies.

In line with NPPF paragraphs 11 and 12, if the development is found to be in accordance with the development plan policies, permission should be granted. If it is found to conflict with the development plan policies, permission should not be granted, unless there are material considerations, which indicate that the plan should not be followed.

### **Green Belt**

The application site lies within the Green Belt. Both national and local policies confirm that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence.

NPPF paragraph 141 states that local planning authorities should plan positively to enhance the beneficial use of Green Belts. This includes amongst other matters by looking for opportunities to provide access, to provide opportunities for outdoor sport and recreation and to retain and enhance landscapes, visual amenity and biodiversity.

NPPF paragraph 145 states that new buildings should be regarded as inappropriate development, subject to a number of exceptions. One of these exceptions is for the provision of appropriate facilities for outdoor sport and recreation, as long as they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

NPPF paragraph 146 states that engineering operations and changes of use of land are not inappropriate development. This is subject to the proviso that they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

CELPS policy PG 3 reiterates the exceptions set out within the NPPF and confirms the extent of the Green Belt within Cheshire East. It also confirms, as set out within the NPPF that permission will not be granted for inappropriate development, except in very special circumstances.

The Inspector acknowledged that the appeal scheme would provide appropriate facilities for outdoor sport and outdoor recreation. Given that the current proposal is also for a wakeboarding facility on the same site, this recent appeal decision is a material consideration. Taking the same approach as the Inspector, it is accepted that the current proposal would provide appropriate facilities for outdoor sport and recreation.

## Openness

It needs to be established whether the development as proposed would preserve the openness of the Green Belt and not conflict with the purposes of including land within it. If the development would not preserve the openness of the Green Belt, then it would, by definition, be inappropriate development.

Openness is not just restricted to visual impacts. It is more broadly defined as an absence of built form.

Whilst the Inspector accepted that the appeal scheme would constitute appropriate facilities, they considered that the level of built development, along with the car park and supporting infrastructure would result in a loss of openness. In dismissing the appeal, they concluded that the proposals would result in a significant loss of openness and would therefore be inappropriate development in the Green Belt.

This appeal scheme proposed a building of around 535sqm, a covered terrace area covering 260sqm and 4 shelters adjacent to the lake. In total the built form would have covered around 850sqm. The supporting infrastructure included two starting docks and a cable start dock with the course going around the lake. The proposed car park was shown to accommodate 100 parking spaces and three coach spaces.

In dismissing the appeal, the Inspector noted that the proposed development as a whole would *“have an urbanising effect on the overall character and appearance of this intrinsically open, tranquil and rural site, particularly when viewed from the public footpath that runs through it.”*

The current application has been revised and reduced. The proposed buildings would now consist of five timber clad containers, encompassing a reception, office, changing and wash facilities, lockers and storage. The total area of these buildings would cover approximately 116sqm. The structures would have a maximum height of 2.6m.

The café, covered terrace and shelters along the boardwalk have all been omitted. The car park has been reduced to 54 spaces, with three coach spaces. The course would now be limited to one part of the lake, with two cables.

The changes to the scheme and the substantial reduction in built form would result in a development, which is materially different to the scheme dismissed at appeal. The impact on the openness of the Green Belt would be substantially less than the scheme dismissed at appeal.

There have been no material changes to the site condition since the appeal. It is still open and largely devoid of development. The proposed scheme would change that, introducing buildings, supporting infrastructure and parking areas.

If as accepted, openness is taken to mean the absence of development, the introduction of any built form, irrespective of its size, onto the application site or any other undeveloped site would undermine openness.

However, following this argument would preclude any building for appropriate outdoor sport and recreation regardless of its size. Neither the NPPF nor CELPS policy PG 3 is worded as such. It is clearly not their intention to prevent any buildings for outdoor sport and recreation. Such an approach would also conflict with the Green Belt aims set out within NPPF paragraph 141 of providing opportunities for outdoor sport and recreation.

The buildings have been substantially reduced and would not include any facilities, which could be viewed as superfluous to the provision of outdoor sports and recreation. They simply provide a reception, changing and toilet facilities, storage and staff rooms.

The proposed containers are low level structures, which provide the minimum facilities necessary to enable the proposed sporting activity to take place. The substantial reductions in floor area and height, along with the removal of much of the supporting infrastructure would mean that the impact of the development on the openness of the Green Belt would be limited, particularly when viewing the site as a whole.

The parking areas and external structures have also been reduced, with the parking area relocated so that it is more closely linked to the containers.

The Local Planning Authority accepts that the proposed development would have the least possible impact on openness to enable the use to take place. It would also provide opportunities for outdoor sport and recreation, one of the key aims of Green Belt policy as set out in NPPF paragraph 141.

The proposal would constitute appropriate facilities for outdoor sport and recreation. The proposed buildings and associated facilities would inevitably have some impact on openness, given the undeveloped nature of the site. They would also be visible from the public footpath. However, it is considered that due to its minimal proportions, the development would not conflict with the objective of preserving the openness of the wider site.

The level of built form is only considered to be acceptable, as it is for the provision of outdoor sport and recreation. While it would not normally be reasonable to condition a building to be removed, in this case, the structures proposed are containers, which could readily be removed from the site when no longer in use. These structures would have a temporary appearance, which would not be suitable for other purposes.

To ensure that the level of harm is kept to a minimum, a condition is necessary, requiring the removal of all the containers, hardstanding and supporting infrastructure, when the use ceases.

Subject to this condition, on balance, the development would comply with the requirements of CELPS policy PG 3 and NPPF paragraph 145. The reductions in the size and scale of the proposal mean that it is materially different to the appeal scheme. The impact on openness is reduced to the extent that it would not conflict with the aims of these policies.

## **Residential amenity**

Concerns have been raised regarding the impact of the development on the amenities of nearby residents. These concerns relate primarily to noise and light disturbance from the proposed use.

The site lies at some distance from the closest residents. Given the low height of the building and infrastructure, there would be no adverse impact from the built form of the development.

The proposal does not include any lighting of the lake or facilities. As such the likelihood of light pollution would be limited.

The proposed loud speaker has the potential to result in disturbance. However, the application indicates that this will only be used in case of emergency. Subject to a condition restricting the use of the loudspeaker and preventing music to be played externally, there would be no adverse impact in this regard.

Environmental Health has not raised any concerns regarding the use and its impact on local residents subject to a condition regarding lighting. It is also noted that the Inspector did not raise any concerns regarding the impact of the larger scheme on residential amenity.

It is noted that the Inspector did not raise any concerns about residential amenities with the dismissed scheme. Given the reductions included as part of this proposal, there is nothing to suggest that this revised scheme would result in an unacceptable impact on residential amenities.

## **Trees**

CELPS policy SE 5 deals with trees, hedgerows and woodland. It seeks to protect trees, hedgerows and woodlands, which make a significant contribution to the amenity biodiversity, landscape character or historic character of the surrounding area.

CNP policy NE3 broadly reflects the same constraints and restrictions.

Three trees would be removed as part of the development to accommodate the proposed access. These trees are not protected by TPOs.

The Council's Forestry Officer has advised that the loss of these trees would not be significant in terms of the impact on the wider amenity of the area. The original proposal included a restoration masterplan and this has been updated to reflect the changes.

Conditions are required regarding tree protection and the submission and adherence to an updated landscaping plan. Subject to these conditions, the proposed development would be acceptable in terms of its forestry implications.

## **Ecology**

NPPF Paragraph 170 states that, amongst other matters, planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing sites of biodiversity value and minimising impacts on and providing net gains for biodiversity.

NPPF paragraph 175 sets out the principles that local planning authorities should follow when assessing the impact on biodiversity. It states that *'if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused'*.

CELPs policy SE 3 confirms that development proposals, which are likely to have a significant impact on various sites, species and habitats will not be supported, except where the reasons for or benefits of the proposed development outweigh the impact of the development. This includes Sites of Biological Importance (SBI), Local Wildlife Sites, habitats and species within the Cheshire Biodiversity Action Plan, national priority species and habitats and legally protected species.

Chelford Neighbourhood Plan identifies the site as a potential Local Wildlife Site. Similar to CELPS policy SE 3, it advises that development proposals which are likely to have a significant adverse effect on local wildlife corridors or wildlife habitat will not be permitted, except where it can be clearly demonstrated that the reasons for or the benefits of the proposed development outweigh the impact of the development. It also sets out a need for detailed, independent surveys to ascertain the impacts and ameliorate any adverse effect.

The Council's Nature Conservation Officer has reviewed both the original proposal and the revised scheme. They have advised that there are a significant number of birds associated with Mere Farm Quarry and the two lakes associated with the application. This includes those considered to be a priority for nature conservation. Based on the survey data from the Cheshire and Wirral Ornithological Society, the north and south lakes they have confirmed that the site would readily meet the criteria for selection as a Local Wildlife Site. The site is therefore of County Importance.

The usage of the application site by birds is likely to have changed as the restoration process has progressed. However, species for which the quarry meets the Local Wildlife Site Selection criteria have been present throughout. As the habitats at the restored quarry develop and change, there are likely to be changes in the types of birds present. Given this, the Nature Conservation Officer has advised that it is difficult to fully predict which of the existing species would remain once restoration is complete. Nevertheless, the completely restored north and south lakes are likely to continue to be of County value for birds.

They have advised that the proposal is likely to have a significant adverse impact on the nature conservation value of the lakes, as a result of direct habitat loss, increased disturbance and the potential risk to birds from the wires associated with wakeboarding infrastructure. These impacts will be for the duration of the operational life of the proposed centre. The north lake would be directly affected by habitat loss and disturbance and the south lake being potentially indirectly affected due to its proximity to increased levels of disturbance. The loss of openness resulting from the proposed development will also deter ground nesting species from occupying the surrounding site.

In accordance with section 10 of the Habitat Regulation 2017, local planning authorities have a duty to consider the impact on wild birds.

Mitigation and compensation measures are proposed as part of this application. This includes the installation of various features designed to attract specific bird species of conservation importance. This includes notable species not catered for as part of the consented minerals.

The Nature Conservation Officer has advised that the mitigation and compensation proposed as part of the development would be considerable. However, the effectiveness of the proposed mitigation and compensation is difficult to predict as even very well designed schemes depend upon the habitats provided being found and adopted by the target species.

They have advised that even with the proposed mitigation and compensation in place there would still be a broad loss of nature conservation value across much of the application site. However, if the proposed habitat features were successful in attracting regular/long standing colonies of the target species, they would support interest for birds of recognised 'County' value. Other bird species of similar importance, which currently occur on site, would however be very likely to be lost as a result of the proposed development.

In determining the appeal scheme, the Inspector noted that without any mitigation or ecological enhancements, the development would have a significant adverse and deleterious effect on a number of priority species currently found at the site, and consequently the nature conservation value of the site would be diminished.

Even with mitigation, they noted that there would be residential harm. However they concluded that this residual harm would not be so significant as to warrant refusal, in accordance with then NPPF paragraph 118 (now 175) or conflict with Policy NE11 of the MBLP, or CELPS policy SE3.

The current proposal is significantly reduced in relation to what was previously proposed, with the activity now restricted to only a portion of North Lake. The proposed mitigation and compensation measures are similar to those included within the appeal scheme, although the Kingfisher tunnels are now shown to be omitted.

Given that the proposal is for a reduced scheme, with similar compensation and mitigation proposed, the Inspector's conclusions with regards to the impact on biodiversity are still applicable. While there would still be residual harm, even with the compensation and mitigation in place, this would not be so significant as to conflict with CELPS policy SE 3, CNP policy NE 1 or NPPF paragraphs 170 or 175

In addition the proposed development is not likely to result in an impact that is of significant magnitude to hinder the objectives of section 10 of the Habitat Regulations to further the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom.

#### Bird Management Plan

The consultation response received from Manchester Airport advises that the Bird Management Strategy produced in respect of this application accords with the Bird Strike Avoidance Interests of the airport. This has been submitted but does not include a plan showing the areas of fencing. This will be required by condition to ensure that it does not conflict with the ecological enhancement measures.

### Hedgerows

Hedgerows are a priority habitat and hence a material consideration. The plans show that 20m of hedgerow would be lost as a result of the proposal. 50m of new hedgerow is proposed to compensate this loss. This is considered to be sufficient to compensate for this loss.

### Great Crested Newts

A number of ponds are located within 250m of the proposed development. The appeal scheme included a submitted method statement of 'reasonable avoidance measures'.

An updated Great Crested Newt impact and mitigation strategy has been submitted. This has been reviewed and it is considered that subject to the measures put forward, the development would not adversely affect Great Crested Newts or their habitat.

### Bats

There are a number of trees which have the potential to support roosting bats. As these are outside of the site boundary, roosting bats are unlikely to be directly affected by the proposed development. A condition is required regarding lighting to ensure bats foraging and commuting in the wider area are not adversely affected.

### Badgers

Two minor badger setts have previously been recorded on site. An updated survey has been submitted as part of this planning application. This found no evidence of badger survey. Subject to mitigation measures and a requirement for an additional survey if works do not commence within a year of the survey, the proposal would not adversely affect this protected species.

## **Landscaping**

CELPS policy SE 4 and CNP policy NE2 deal with the Landscape. It advises that all development should conserve the landscape character and quality and should where possible, enhance and effectively manage the historic, natural and man-made landscape features that contribute to local distinctiveness of both rural and urban landscapes.

A landscape and visual appraisal has been submitted as part of the planning application. This has been reviewed the Council's Landscaping Officer. They have raised no objection to the proposal on landscape or visual grounds. Full details of landscaping and subsequent implementation will be required by condition.

The proposal would satisfactorily comply with CELPS policy SE 4 and CNP policy NE 2.

## **Accessibility, parking and highway safety**

CELPS policy CO 1 deals with Sustainable Travel and Transport. It advises that development will be expected to reduce the need for users to travel and give priority to public transport, walking and cycling. It also states that development should be guided to sustainable and accessible locations or locations that can be made sustainable and accessible;

CNP policy T1 relates to transport. This covers matters such as parking and cycle provision, links to public transport and highway safety.

The scheme has been reviewed by the Council's Highways Officer. They have highlighted the lack of alternatives to private cars for future users of the site. Whilst there is a bus route along Chelford Road, the closest bus stops are at some distance from the application site. The regularity of public transport outside of peak hours further reduces the likelihood of buses being a realistic means of transport.

While there is a train station in Chelford, with more regular services, this is also at some distance from the site. There are limited pavements, linking the site to public transport.

However, given the nature of the use and the space required, it is more than likely that a rural location would be required. The lack of alternatives to the private car is not in itself a reason for refusal. In accordance with CO 1, opportunities should be taken to encourage alternative means of transport; a condition is therefore proposed requiring cycle storage for future users of the site.

Saved MBLP policy DC6 deals with circulation and access. It requires vehicle and pedestrian access to be safe and convenient, with suitable visibility splays, manoeuvring space and access for special needs groups, servicing and emergency vehicles.

The impact of the development on the highway networks has been assessed by the Highways Officer. Whilst they have queried the accuracy of the estimated trip generation figures provided by the applicant, they have accepted that the use would likely take place outside of peak hours. As such even if the estimates vary significantly there would be unlikely to be a severe impact on the highway network.

The Highways Officer has advised that the access and turning areas for the development would be acceptable.

The revised scheme proposed 54 spaces, including four accessible spaces, along with coach parking spaces.

The adopted parking standards set out within CELPS Appendix C do not provide a specific figure for Leisure uses, acknowledging the range of parking needs within the D2 (Leisure) use class. Highways have reviewed the level of parking provision and have raised no objections.

The proposed parking and access arrangements are considered acceptable. The proposed development would not adversely affect highway safety.

### **Public rights of way (PROW)**

There is a public footpath which runs through site. The Council's PROW officer has been consulted. They have advised that the development would have a direct, but insignificant effect on this footpath.

They have advised that conditions are required relating to the submission of a public right of way management scheme, the line of the footpath to be marked out and surveys of the footpath surfaces.

Subject to these conditions, the proposal would have an acceptable relationship with the existing public right of way.

Concerns have been raised that existing public footpaths have been blocked off without following the formal process. As this is separate to the planning application, these allegations have not been considered. The complainant should pass this matter onto the PROW team to investigate further.

The concerns relating to the use affecting the likelihood of people using the public right of way appear unfounded and as such are not considered to be a material planning consideration.

## **HERITAGE**

The application site does not fall within or adjacent to a Conservation Area and there are no listed buildings within the site boundary. However, there are a number of listed buildings within the wider area of the application site.

In accordance with Chapter 16 of the NPPF and CELPS policy SE 7, the local planning authority is required to consider the impact of a development on the setting of heritage assets. Given the single storey nature of the proposal and the distance from the closest heritage assets, it is considered that the proposal would not result in any adverse impact to their setting.

The Council's Heritage Officer has been consulted on the proposal; they have not raised any objections to the proposal, apart from how noise from the development could affect the listed buildings. The issue of noise is considered above. Subject to the conditions proposed above, the proposal would not result in any adverse impact to the setting of the heritage assets.

## **Flood risk and surface water drainage**

CELPS policy SE 13 relates to flooding and water management. All developments should include measures for sustainable water management to reduce flood risk.

The application site lies within flood zone 1, which is at the lowest risk of fluvial or tidal flooding. A surface water drainage strategy has been submitted as part of the application. This has been reviewed by officers from the Council's flood risk team. They have raised no objection to the proposal, subject to conditions requiring compliance with the submitted strategy and a detailed scheme to be submitted.

Subject to these conditions, the proposal would comply with policy SE 13.

## **Local economy/tourism/outdoor sport and recreation**

CELPS policy SC1 relates to leisure and recreation. Point 3 supports proposals for certain facilities, which cannot be located in or adjacent to centres, provided certain criteria are met.

They should be highly accessible and not result in harm to the character, amenity or biodiversity value of the area.

The criteria relating to character, amenity and biodiversity value are considered elsewhere. However, the proposal would be for an outdoor sports facility and would support the visitor economy. It would therefore comply in principle with this policy.

CNP policy CI 1 is also applicable. This policy relates to new community and amenities. It supports new community facilities in locations appropriate to the character and surrounding area.

## **OTHER MATTERS**

### Air quality

Policy SE12 of the Local Plan states that the Council will seek to ensure all development is located and designed so as not to result in a harmful or cumulative impact upon air quality. This is in accordance with paragraph 181 of the NPPF and the Government's Air Quality Strategy.

To ensure compliance with the above, provision of electric vehicle charging will be required by condition.

### Manchester Airport Safeguarding

The Safeguarding Authority for Manchester Airport has no objections, provided that the scheme proceeds in line with the agreed bird hazard management plan. This can be imposed by condition.

### Contamination

The Contaminated Land team has raised no objection to the proposal, subject to a condition requiring the testing of any soil for contamination prior to importation onto the site.

### Gas pipeline

Cadent Gas have advised that they have an intermediate pressure within the vicinity of the site. The Health and Safety Executive has been consulted. They have not advised against the proposal. An informative will be included, advising the applicant to contact Cadent Gas regarding the scheme.

### Site security and safety

Local residents have raised concerns that the proposal could result in an increased risk to the public, particularly if people trespass onto the site to swim in the lakes.

NPPF Paragraph 95 adds that planning policies and decisions should promote public safety and take into account wider security and defence requirements. However, the site is not a public space. Trespass onto it would be a criminal matter and should be reported to the

police. There is nothing to indicate that the proposal would result in an increase in trespass or people using swimming in the lake unlawfully.

## **Conclusions**

The proposed development would provide appropriate facilities for outdoor sport and recreation. The introduction of buildings would inevitably result in some harm to openness. However, the nature of the use means a countryside location, where restrictive policies apply is highly likely. The built form proposed would also be the minimum necessary to enable the use to take place.

The harm to the openness of the Green Belt would be limited by the limited spread of development and the low height of the structures. A condition requiring the removal of all structures and hardstanding on cessation of use would further limit the harm.

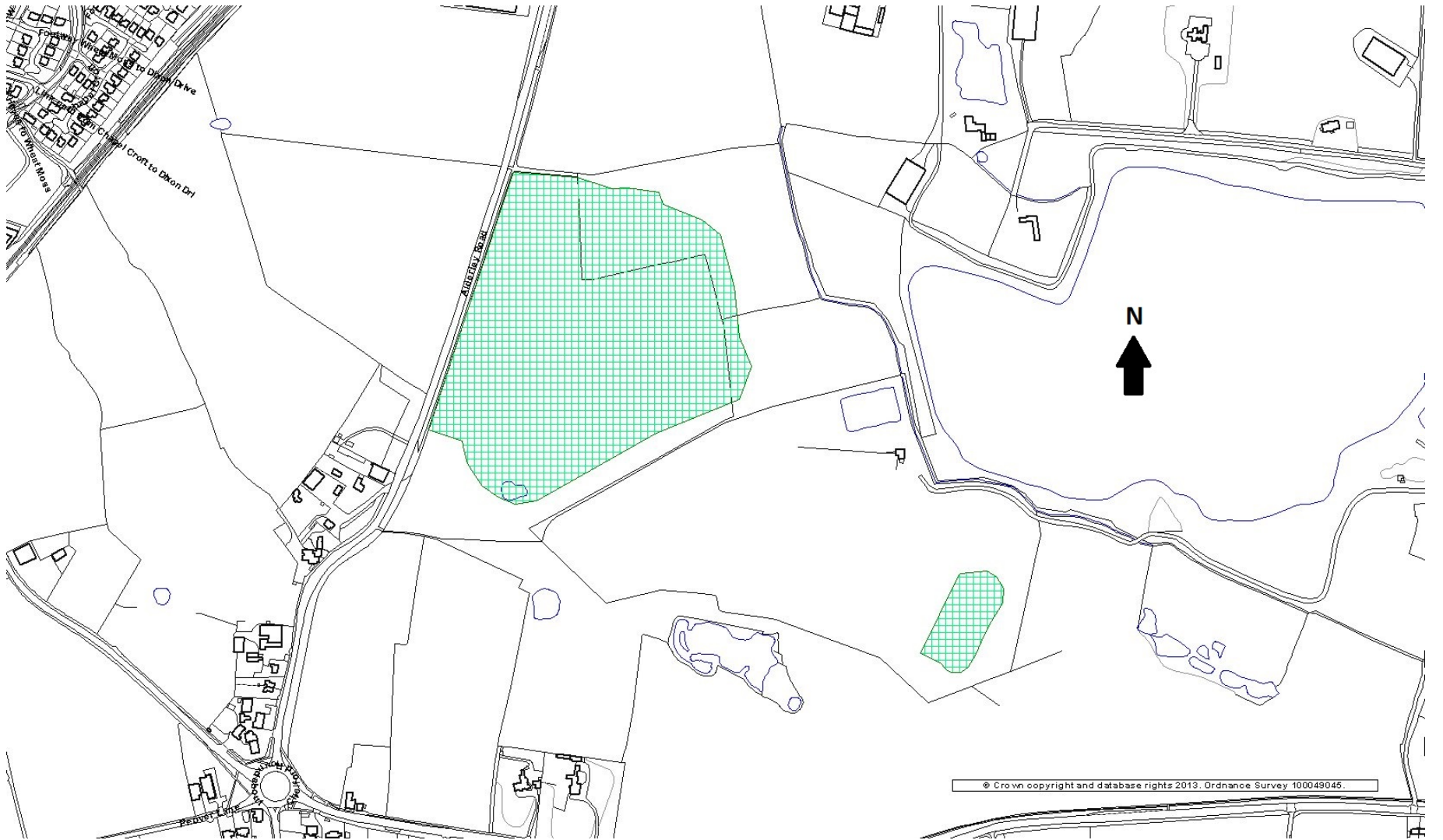
Taking all of the above into account, it is considered on balance that the development would not be inappropriate development within the Green Belt.

The proposal would result in some harm to biodiversity on the lakes, even with the implementation of the mitigation scheme. However, this harm would not be so significant, as to warrant a refusal on biodiversity grounds.

## **Recommendation: APPROVE subject to the following conditions**

1. Three year time limit
2. Accordance with the approved plans
3. Materials as per application
4. Removal of all structures, supporting infrastructure, decking and hardstanding on cessation of use
5. Lighting strategy for neighbour amenity and ecology
6. Loud speaker limited to emergency use only
7. No external music or speakers, apart from in accordance with condition 6
8. Tree protection plan
9. Submission of updated landscaping plan
10. Implementation of landscaping plan
11. Boundary treatments
12. Updated plan ecological mitigation and compensation measures - detailed design, details of implementation, management and monitoring. Management to continue for the operational life of the development
13. Implementation of agreed ecological mitigation and compensation measures
14. Updated badger survey if development has not commenced by 28 January 2021
15. Safeguarding of birds during nesting season
16. Submission of plan to accompany Bird Management Plan
17. Compliance with Bird Management Plan
18. Removal of PD for means of enclosure
19. Provision of parking and access
20. Provision of electric vehicle charging points
21. Details and provision of cycle storage
22. Details and provision of refuse storage

23. Submission of a public rights of way management scheme
24. Submission of detailed SUDS scheme
25. Compliance with Surface Water Drainage Strategy
26. Testing of soils for contamination



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**APPENDIX 4 - APPEAL DECISION REFERENCE APP/K3605/A/13/2205008 AT APPS  
COURT FARM, HURST ROAD, WALTON ON THAMES, SURREY, KT12 2EG**

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## Appeal Decision

Site visit made on 3 March 2014

**by Peter Rose BA MRTPI DMS MCMI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 24 March 2014**

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**Appeal Ref: APP/K3605/A/13/2205008**

**Apps Court Farm, Hurst Road, Walton on Thames, Surrey KT12 2EG**

- 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 Apps Court Farm Ltd against the decision of Elmbridge Borough Council.
  - The application Ref 2013/2110, dated 22 May 2013, was refused by notice dated 5 September 2013.
  - The development proposed is change of use from agricultural land to D2 leisure (for the purpose of installing six camping pods on 0.5 hectare of land) being part of Apps Court Farm.
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### Decision

1. The appeal is allowed and planning permission is granted for change of use from agricultural land to D2 leisure (for the purpose of installing six camping pods on 0.5 hectare of land) at Apps Court Farm, Hurst Road, Walton on Thames, Surrey KT12 2EG in accordance with the terms of the application, Ref 2013/2110, dated 22 May 2013, and subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans titled: Location Site Plan, Site Plan Revision A, Floor Plan, Front View, Rear View, Side View, and Perspective View.
  - 3) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The details shall include existing trees and hedges to be retained, measures to protect existing planting during construction, and any proposed fencing. Details of soft landscape works shall include planting plans and schedules of plants, noting species, plant sizes, and proposed numbers/densities.
  - 4) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any pod hereby approved or in accordance with a programme to be agreed in writing with the local planning authority.

### **Application for costs**

2. An application for costs was made by Apps Court Farm Ltd against Elmbridge Borough Council. This application is the subject of a separate Decision.

### **Procedural Matter**

3. I have taken into account the government's Planning Practice Guidance (the PPG), issued on 6 March 2014, in reaching my decision.

### **Main Issues**

4. The main issues are:
  - (a) whether the proposed development would constitute inappropriate development in the Green Belt for the purposes of national planning policy and the development plan;
  - (b) the effect of the development upon the openness of the Green Belt;
  - (c) if inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the scheme.

### **Reasons**

Whether inappropriate development

5. The National Planning Policy Framework (the Framework) identifies a number of purposes for the Green Belt, including safeguarding the countryside from encroachment by inappropriate development. The Framework defines inappropriate development as being harmful to the Green Belt and further defines exceptions which would not be inappropriate. Changes of use are not included within the list of exceptions. Hence, on first assessment, the proposed scheme would therefore appear to be inappropriate development in the Green Belt which paragraph 87 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
6. The Replacement Elmbridge Borough Local Plan (the Local Plan) was adopted in 2000 prior to the Framework, and reflects earlier government policy in respect of the Green Belt. Policy GRB17 states that built development associated with appropriate outdoor sport or recreation use in the Green Belt will be acceptable subject to various criteria, including detailed siting and scale, and subject to retaining the openness of the Green Belt. Policy LER15 of the Local Plan indicates that proposals for camping sites will be supported, provided the site is not conspicuous, and provided that the development includes a high standard of landscaping and there is no adverse impact upon the surrounding area. I further note that the authority also acknowledges that, as the proposed use would be associated with outdoor recreation, it would, in principle, be considered appropriate to the Green Belt.
7. Whilst not reflecting the detailed wording of the Framework, I find Policies GRB17 and LER15 to be broadly consistent with the Framework's recognition of the possible role of the Green Belt in providing opportunities for outdoor sport and recreation. Nevertheless, the detailed wording of the Local Plan is not

consistent with the approach to defining inappropriate development set out in the subsequent Framework and, in that particular regard, I attach only limited weight.

8. However, notwithstanding the appellants' original description of the development as a change of use, significant evidence has since been provided as part of the appeal to suggest the existing use of the site is as a fishery. In particular, evidence has been submitted which shows that the Council granted permission in June 2011 in connection with use of the site as leisure fisheries (Application ref 2011/5021). The Council's report of the application states that the site operated at that time as a fishery for the public and members, and also states that the land use is an established fishery and is an acceptable sport/recreational use within the Green Belt. I further note that the drawing accompanying the current application also refers to a syndicate members' pond and to a public/competition pond, although the status of these references is unclear.
9. I consider that the evidence presented does provide a reasonable basis for me to conclude that the existing use of the site involves outdoor sport and recreation. The Framework advises that provision of appropriate buildings for outdoor sport or recreation is an exception to inappropriate development, so long as development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. I am satisfied that the scheme would not conflict with the purposes for including the site within the Green Belt.
10. Accordingly, having regard to the evidence submitted, I therefore conclude, in line with both national policy and the development plan, that the scheme would not be inappropriate development in the Green Belt, provided the development preserves the openness of the Green Belt.

#### Openness of the Green Belt

11. The camping pods would each measure some 2.83 metres wide, 2.65 metres high and 4.765 metres long. They would be timber structures and located in a radial pattern each separated by some 6 metres.
12. The proposed site is adjacent to woodland on one side. Whilst there would be no significant views of the pods from any public area, the pods would still be visible in various relatively open views across this part of the farm. Nevertheless, each would be a relatively small structure in such views and each would have a fairly low-key informal appearance and be set against the backdrop of the lake and woodland. Further, the bulk of the built form would be significantly diluted by the radial pattern of their arrangement and by their limited number. In these circumstances, I do not consider that the proposed development would significantly add to the built and urbanised character of the host site or appear conspicuous and so lead to a significant reduction in openness.
13. I also note that Policy LER15 does include a possible requirement for appropriate landscaping and the appellants have indicated that further landscaping could be considered to mitigate the visual impact. This would further limit the impact upon openness.

14. I therefore conclude that the proposed pods would not result in a harmful reduction in openness of the Green Belt. Accordingly, the development would not be contrary to Policies GRB17 and LER15 of the Local Plan or contrary to the Framework in that respect.

### **Other Matters**

15. No other harm has been identified as arising from the development.

16. Regard has been given to the various previous appeal decisions and other planning decisions quoted, but these are not of such significance, either individually or collectively, that they would outweigh the considerations that have led to my conclusions on the main issues.

### **Conditions**

17. I have considered the conditions suggested by the Council having regard to the advice of the PPG, and have in some cases amended suggested wording to reflect that advice and in the interests of precision and enforceability.

18. For the avoidance of doubt and in the interests of proper planning, a condition is imposed to ensure the development is undertaken in accordance with the relevant drawings.

19. Conditions are imposed to ensure that a satisfactory scheme of landscaping accompanies the development and that this is implemented in accordance with the details as approved. The landscaping could also include detailed planting such as may be considered necessary by the Council to meet the terms of Policy LER15 and that remains as a detailed matter for further assessment by the main parties.

### **Conclusion**

20. I therefore find that the proposed development would not be harmful to the openness of the Green Belt and would thereby not be inappropriate development in the Green Belt. It is therefore not necessary for me to consider whether the very special circumstances exist necessary to justify the scheme.

21. For these reasons, and having regard to all other matters raised, I conclude the appeal should be allowed.

*Peter Rose*

INSPECTOR

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## Costs Decision

Site visit made on 3 March 2014

**by Peter Rose BA MRTPI DMS MCM**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 24 March 2014**

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### **Costs application in relation to Appeal Ref: APP/K3605/A/13/2205008 Apps Court Farm, Hurst Road, Walton on Thames, Surrey KT12 2EG**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Apps Court Farm Ltd for a full award of costs against Elmbridge Borough Council.
  - The appeal was against the refusal of planning permission for change of use from agricultural land to D2 leisure (for the purpose of installing six camping pods on 0.5 hectare of land) being part of Apps Court Farm.
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### **Decision**

1. The application for costs was made and responded to on the basis of Circular 03/2009, which has been superseded by the Planning Practice Guidance (the PPG). However, having regard to the submissions put to me, I am satisfied that no party's interests will be prejudiced by my judging the application and response against the PPG.
2. The application for an award of costs is refused.

### **Reasons**

3. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
4. The applicant maintains that the Council acted unreasonably in refusing planning permission as the Council's assessment of the proposal was flawed. In particular, the applicant suggests the Council's decision was not based upon an accurate appreciation of the site or of the purposes for including land in the Green Belt. The applicant rejects the authority's assertion that the appeal site is conspicuous and maintains that the Council has failed to recognise that the site is well hidden from external views and from the public domain.
5. The Council's response is that it has acknowledged that the principle of the proposed use is appropriate, but subject to detailed criteria as set out in its Local Plan, including preserving the openness of the Green Belt. The Council's assessment of those criteria was that the development would be located on a conspicuous site where the development would be harmful to the openness of the Green Belt and evidence has been provided to that effect.
6. The PPG identifies as a possible basis for an award of costs against a local planning authority circumstances in which a Council has failed to produce

evidence to substantiate a reason for refusal, or where it relies upon vague, generalised or inaccurate assertions about a proposal's impact, unsupported by any objective analysis. The PPG further advises that where a local authority has exercised its duty to determine an application in a reasonable manner, it should not be liable for an award of costs.

7. Whilst I consider that the impact upon the openness of the Green Belt would not be harmful, assessment of that impact is significantly subjective and not readily defined by clear standards or other objective measures. The conclusion reached reflects an exercise of judgement regarding visual impact and associated matters. The pods would be visible from some surrounding views, and the Council's conclusion was explained within its evidence and justified with reference to the appropriate policy framework. Whilst disagreeing with the Council's overall assessment of the impact upon openness, I consider the general arguments advanced by the authority regarding that impact were not unreasonable or otherwise flawed in principle.
8. In conclusion, I therefore find that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense, as indicated in the PPG, has not been demonstrated and, accordingly, the application is refused.

*Peter Rose*

INSPECTOR