

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO PLANNING & DEVELOPMENT COMMITTEE

Agenda Item No. 6

meeting date: THURSDAY, 25 JUNE 2020
 title: NON-DETERMINATION APPEAL IN RELATION TO FULL PLANNING CONSENT FOR THE ERECTION OF 39 DWELLINGS WITH LANDSCAPING, ASSOCIATED WORKS AND ACCESS FROM ADJACENT DEVELOPMENT SITE. LAND AT CHATBURN ROAD CLITHEROE.
 submitted by: NICOLA HOPKINS, DIRECTOR OF ECONOMIC DEVELOPMENT AND PLANNING
 principal author: STEPHEN KILMARTIN, PRINCIPAL PLANNING OFFICER

1 PURPOSE

1.1 To advise and inform Committee in relation to a recently received non-determination appeal and to request support and agreement for the reasons for refusal to be presented to the Planning Inspectorate.

1.2 Relevance to the Council's ambitions and priorities:

- Community Objectives }
 - Corporate Priorities }
- To be a well managed Council providing efficient services based on identified customer need.
- Other Considerations – None.

2 BACKGROUND

2.1 The application (3/2019/0877) was submitted to the Local Authority on the 20 September 2019 and made valid on the 8 October 2019 with the thirteen-week timeframe for determination ending on the 7 January 2020. To allow for the resolving of highways matters and to enable internal discussions regarding the policy implications of the proposal to be resolved extensions of time were sought and agreed that extended the determination period to the 31 March.

2.2 Upon the expiration of the extend determination timeframe applicants can exercise the right to appeal for non-determination. Whilst the authority endeavours to determine applications within the requisite timeframe or agreed extended determination time period, in this case this was not achieved, with the applicant failing to agree to a further extension of time to allow for internal discussions to be finalised and agreed in respect of the stance to be undertaken in relation to the proposed development.

2.3 Members will note that an appeal decision (APP/T2350/W/19/3221189), received prior to the submission of the application (known as the 'Henthorn Decision'), reached conclusions in respect of how the authority should interpret, engage and apply a number of adopted local development plan policies, namely the application of Policies DMG2 and DMH3. The inspector, in reaching their decision, determined that development outside the settlement limits of Clitheroe would not necessarily conflict with the provisions of Policy DMG2 and that, in the case of the Henthorn appeal, such a proposal would constitute expansion of the settlement as allowed by Policy DMG2.

2.4 This Inspector's findings have had significant ramifications for the determination of a number of applications, particularly those that are adjacent but outside the settlement

boundaries of principal and tier 1 settlements. In this respect, the authority considers, if it were to concede that DMG2 allows for such outward expansion, in the absence of any other over-riding material considerations, this would result in significant consequences for the Borough insofar that it would compromise the ability of the authority to appropriately apportion growth to those settlements whereby housing need is evident and would undermine the relevance, to some degree, of the operation and effectiveness of the planned system adopted by the authority.

- 2.5 Internal discussion in relation to as to how Policies DMG2 and DMH3 should be interpreted, engaged and applied were concluded informally prior to the non-determination appeal being received. However, at this stage the applicant had not agreed an extension of time for the determination of the application with the non-determination appeal having been received on the 28 May 2020 with the Inspectorate finding the appeal as valid on the 9 June 2020.
- 2.6 The appellant has requested that the appeal be considered under the written representations' procedure. Having regard to the nature of the application it is the opinion of the authority that such a procedure is considered appropriate.
- 2.7 Members will note that objectors, those that have made representations and statutory consultees will be given the opportunity to give further representations to the Inspectorate, with any material matters raised informing the Inspectors decision.

3 ISSUES

- 3.1 In the case of non-determination appeals, it is important that Planning and Development Committee are given the opportunity to consider the planning merits of the proposal to allow for members to form a view as to whether they are satisfied with the recommendation that will be presented to the Inspectorate in response to the appeal.
- 3.2 In this respect a copy of the officer's report is appended for Members' consideration and information (Appendix A).
- 3.3 On the basis of the merits of the case and having regard to all material considerations and matters raised it is considered that should a formal recommendation have been made, the application would have been recommended for refusal for the following reason:

Planning Application 3/2019/0877

The proposal is considered contrary to Key Statement DS1 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that approval would lead to the creation of new residential dwellings in the defined open countryside, located outside of a defined settlement boundary, without sufficient justification insofar that it has not been adequately demonstrated that the proposal is for that of local needs housing that meets a current identified and evidenced outstanding need. It is further considered that the proposal fails to meet the requirements Key Statement DS1 insofar there are no identified regeneration benefits associated with the proposal.

4 RECOMMENDED THAT COMMITTEE

- 4.1 Advise that they would have been minded to agree with the officer recommendation and refuse the application for the reasons above.

4.2 Advise that they would agree to the written representations procedure as being the most appropriate procedure for the appeal and that the Planning Inspectorate should be informed as such.

STEPHEN KILMARTIN
PRINCIPAL PLANNING OFFICER

NICOLA HOPKINS
DIRECTOR OF ECONOMIC
DEVELOPMENT AND PLANNING

BACKGROUND PAPERS

Application Reference Number: 3/2019/0877

For further information please ask for Stephen Kilmartin, extension 4555.

RECOMMENDATION FOR PLANNING AND DEVELOPMENT COMMITTEE

REFUSAL

DATE: June 2020

REF: SK

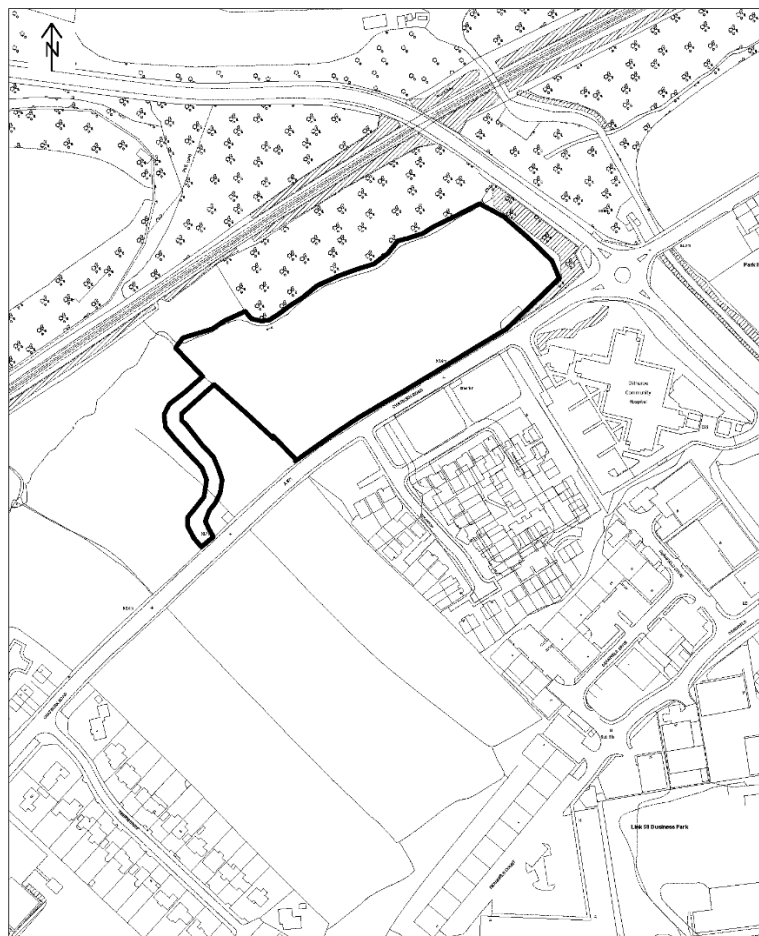
CHECKED BY:

APPLICATION REF: 3/2019/0877

GRID REF: SD 375365 443101

DEVELOPMENT DESCRIPTION:

ERECTION OF 39 DWELLINGS WITH LANDSCAPING, ASSOCIATED WORKS AND ACCESS FROM ADJACENT DEVELOPMENT SITE



3/2019/0877 Land at the junction of Chatburn Road and Pimlico Link Road
Clitheroe BB7 2EQ

Scale 1:2500

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CONSULTEE RESPONSES/ REPRESENTATIONS MADE:

CLITHEROE TOWN COUNCIL:

Clitheroe Town Council have offered the following observations:

If RVBC intend to recommend this application for approval the Town Council would like to see safety measures such as yellow lines to reduce parking on roads and a pelican crossing introduced. There should also be the provision of a regular bus service from the development.

ENVIRONMENT DIRECTORATE (COUNTY SURVEYOR):

The Highways Development Control section have raised no objection to the proposal following pro-active discussions in regards to the proposal that have resulted in a number of concerns having been mitigated through revisions to the internal highways arrangement.

UNITED UTILITIES

No objections subject to the imposition of conditions relating to foul and surface water drainage.

LLFA

No objections subject to the imposition of conditions relating to surface water drainage.

ENVIRONMENT AGENCY

The Environment agency have raised no objections to the proposal and further state the submitted Flood Risk Assessment demonstrates that the proposal will not exacerbate flood risk elsewhere.

LCC EDUCATION

Based upon the latest assessment, taking into account all approved applications, LCC will be seeking a contribution for 4 secondary school places and 11 primary school places.

Calculated at the current rates, this would result in a claim of:

Primary Places:

$(£12,257 \times 0.97) \times \text{BCIS All-in Tender Price } (324 / 240) \text{ (Q1-2018/Q4-2008)}$

= £16,050.54 per place

£16,050.54 x 11 places = £176,555.94

Secondary Places:

$(£18,469 \times 0.97) \times \text{BCIS All-in Tender Price } (324 / 240) \text{ (Q1-2018/Q4-2008)}$

= £24,185.16 per place

£24,185.16 x 4 places = £96,740.64

This assessment represents the current position on 15th October 2019.

LCC reserve the right to reassess the education requirements taking into account the latest information available.

ADDITIONAL REPRESENTATIONS:

Three letters of representation have been received including representations from Clitheroe Civic Society in respect of the application objecting on the following grounds:

- Increase in traffic
- Increase in pollution resultant from the development
- Insufficient public services infrastructure within Clitheroe
- No housing need
- Loss of habitat and Greenfield land
- Lack of public amenity areas
- Increased flood risk
- Detrimental impact upon the character of the area

1. Site Description and Surrounding Area

- 1.1 The application relates to greenfield land located to the east of a current designated housing site also being located outside but adjacent the currently defined settlement boundary for Clitheroe. The site is approximately 1.8 hectares in size being bounded by significant tree-planting/woodland to the north with hedgerow and tree planting also being present to the north-eastern extents of the site and south-east.
- 1.2 The site is bounded to the south-east by Chatburn Road with the Pimlico Link Road roundabout being located within close proximity to the north-east. The site directly adjoins, at its south-western extents, a committed housing site which is currently under construction.
- 1.3 The surrounding area is predominantly residential in character save that for the Clitheroe Hospital complex which is located to the south-east of the development site on the opposing side of Chatburn Road.

2. Proposed Development for which consent is sought

- 2.1 The submitted details seek full consent for the erection of 39 dwellings with landscaping, associated works and vehicular access from an adjacent development site. It is proposed that primary vehicular and pedestrian access will be provided via an adjacent committed housing site to the south-west. A secondary pedestrian access is also proposed to the north-eastern extents of the site which directly interfaces with Chatburn Road.
- 2.2 The submitted details propose that the housing development will consist of a mixture of detached, semi-detached, terrace and bungalow type dwellings. No formal or informal usable public open space is proposed within the site save that for a small landscape buffer to the southern extents of the site. However, in this respect it is noted that residents will have use of an area of open space that will be brought forward as part of the adjacent committed housing site.
- 2.3 Following negotiation the applicant has now provided a policy compliant level of affordable housing and housing provision for those aged 55 and over.

3. **Relevant Planning History**

Members will note that the site to which the application relates does not benefit from any recent planning history relevant to the determination of the application. However, it should be noted that access to the site is facilitated through an existing committed housing site that is currently under construction pursuant to consent 3/2017/0653.

4. **Relevant Policies**

Ribble Valley Core Strategy

Key Statement DS1 – Development Strategy
Key Statement DS2 – Presumption in Favour of Sustainable Development
Key Statement DMI2 – Transport Considerations
Key Statement EN3 – Sustainable Development and Climate Change
Key Statement EN4 – Biodiversity and Geodiversity
Key Statement H1 – Housing Provision
Key Statement H2 – Housing Balance
Key Statement H3 – Affordable Housing

Policy DMG1 – General Considerations
Policy DMG2 – Strategic Considerations
Policy DMG3 – Transport and Mobility
Policy DME2 – Landscape and Townscape Protection
Policy DME3 – Site and Species Protection and Conservation
Policy DME6 – Water Management

National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)

5. **Assessment of Proposed Development**

5.1 **Principle of Development:**

5.1.1 The application site lies within the defined open countryside being located outside but adjacent defined settlement boundary of Clitheroe, as such and given the application seeks consent for new residential development, Policies DMH3 and DMG2 are fully engaged. Both policies seek to restrict residential development within the defined countryside to that which meets a number of criteria, one of which being that which satisfies an identified local need.

5.1.2 In this respect, when assessing the locational aspects of the development, Policy DMG2 states that within the tier 2 villages and outside the defined settlement areas development must meet at least one of the following considerations:

1. The development should be essential to the local economy or social well being of the area.
2. The development is needed for the purposes of forestry or agriculture
3. The development is for local needs housing which meets an identified need and is secured as such.
4. The development is for small scale tourism or recreational developments appropriate to a rural area.

5. The development is for small-scale uses appropriate to a rural area where a local need or benefit can be demonstrated.
- 5.1.3 In this respect the applicant has not provided any supporting information as to how the application seeks to meet an identified or evidence outstanding need nor does the Local Authority consider or have evidence that there is a clear identified need for housing that must be met in this location.
- 5.1.4 Whilst the authority recognises there is a borough-wide need for affordable housing and the benefits associated with the delivery of such housing, in this case, the development of open-market residential development within this location (in the absence of identified or evidenced need) would be considered to be indirect conflict with Policies DMH3 and DMG2.
- 5.1.5 The adopted Core Strategy states that local needs housing is *'the housing developed to meet the needs of existing and concealed households living within the parish and surrounding parishes which is evidenced by the Housing Needs Survey for the parish, the Housing Waiting List and the Strategic Housing Market Assessment.'* with the supporting text to Key Statement H2 reaffirming that *'the most recent SHMA and Housing Needs Survey and waiting list evidence would always be used in determining if the proposed development meets the identified need'*.
- 5.1.6 Key Statement H2 itself also reiterates this approach stating that *'planning permission will only be granted for residential development providing it can be demonstrated that it delivers a suitable mix of housing that accords with the projected future household requirements and local need across the Ribble Valley as a whole as evidenced by the Strategic Housing Market Assessment'*.
- 5.1.7 In ensuring that a suitable proportion of housing within the borough meets local needs, the adopted Core Strategy states that information contained in the LDF evidence base assists in ensuring that this is made possible. The Strategic Housing Market Assessment (SHMA) is considered the most appropriate way of doing this as it incorporates information from the Housing Needs Surveys and combines this information with future population and household projections. Linking this information with the SHLAA assists in highlighting where the housing to meet local needs is required to be located.
- 5.1.8 In this respect it is clear that the adopted development plan places a full emphasis on the currently held evidence base being used to determine whether an outstanding housing need still exists. Based on the latest published monitoring position (HLAS March 2020) the authority is of the opinion that it has granted sufficient consents, for new residential dwellings, to take account of the needs and projections as reflected within the evidence base.
- 5.1.9 As such, and in the absence of the applicant providing evidence to suggest otherwise, the Local Planning Authority considers that the proposal cannot be supported given there is no evidenced need to meet the exception criterion contained within DMG2 or DMH3 and as such it cannot be argued that there exists any impetus to grant further consents for residential dwellings, outside the defined settlement boundary, in this location.

- 5.1.10 Members will be aware of a recent appeal (APP/T2350/W/19/3223816) at land off Henthorn Road Clitheroe (Henthorn Decision). Particularly in relation to the Local Planning Authority's interpretation an application of Policies DMG2 and DMH3 whereby it was concluded that DMG2 allows for the outward expansion of residential development, outside of a defined settlement boundary subject to such expansion being well related to the main built up area of the settlement.
- 5.1.11 Specifically, Policy DMG2 allows for '*consolidation*' which is defined as development which '*adjoins the main built up area*' of a settlement, with the policy also allowing for '*expansion*' which allows for the '*limited growth of a settlement*'. The authority is mindful of the Henthorn Decision but maintains that DMG2 should be interpreted in its truest sense.
- 5.1.12 The Inspector, in determining the 'Henthorn Decision', found that there was internal conflict within Policy DMG2 in that the policy firstly relates to development 'in' the principal settlements, which is then contradicted by the policy's support of consolidation or expansion which allows for development outside of the current defined settlement limits. The authority considers that the Inspector and appellant (at that time) wrongfully interpreted the policy in this respect. Policy DMG2 is two-fold in its approach to guiding development. The primary part of the policy DMG2(1) is engaged where development proposals are located 'in' principal and tier 1 settlements with the second part of the policy being engaged when a proposed development is located 'outside' the defined settlement areas or within tier 2 villages.
- 5.1.13 The policy is clear in this respect insofar that it contains explicit triggers as to when the former or latter criterion are applied and the triggers are purely locational and clearly based on a proposals relationship to defined settlement boundaries and whether, in this case, such a proposal is 'in' or 'outside' a defined settlement.
- 5.1.14 The adopted Core Strategy defines expansion as '*limited growth of a settlement generally it should be development which is in scale and keeping with the existing urban area*'. The Inspector and appellant, in this respect, considered (at the time of the Henthorn appeal) that the 'growth of a settlement' cannot be undertaken within a defined settlement boundary and therefore the policy must clearly allow for development outside of defined settlement limits.
- 5.1.15 The assumption that the growth of a settlement cannot be undertaken within a defined settlement boundary is erroneous. The physical 'growth' of a settlement can be undertaken within a defined settlement boundary, particularly where such a settlement boundary encompasses or includes land that is yet to be developed, such as a greenfield site.
- 5.1.16 In this respect, should a proposal come forward on such land (Principle and Tier 1 settlements), it would both constitute 'expansion' of development (assuming the proposal benefitted such a relationship with existing built form), represent the growth of a settlement and be considered as being 'inside' the defined settlement boundary and a such would align with the exception criterion of DMG(1).

- 5.1.17 In respect of the above, it is clear that the policy is supportive of the growth of settlements, but that such growth must be undertaken inside the defined settlement boundaries. An example of this would be Housing Allocation Land (HAL) allocated through the Housing and Economic Development DPD (HED DPD). Whereby defined settlement boundaries are revised to take account of Housing Allocation Land but these HAL sites would not necessary be considered to constitute 'development' that formed part of that settlement. However DMG(1) would be permissive of 'expansion' of existing 'development' into these sites given they are 'in' a defined settlement boundary and would also be representative of the general 'growth' of a settlement.
- 5.1.18 Whilst the authority accepts that historically a number of housing proposals may have been granted consent that were located outside of the defined settlement limits such decision may have been taken at a time when the Local Planning Authority could not robustly demonstrate a 5 year Housing Land Supply or whereby such supply was marginal and therefore there was a clear impetus to boost supply.
- 5.1.19 Notwithstanding the 'Henthorn Decision', a number of previous Inspectors decisions have also identified conflict with DMG2 where residential development is proposed outside defined settlement boundaries. For ease of reference for Members these are summarised below:

5.1.20 APP/T2350/W/17/3186969 - LPA Ref: 3/2016/1082:

The Inspector concluded, at Higher Road Longridge, that proposed housing adjacent but outside the defined settlement boundary was *'not in accordance with key Statement DS1 and Policies DMG2 and DMH3 of the CS insofar as they are relevant to the location and supply of housing and the protection of the open countryside'*.

5.1.21 APP/T2350/W/17/3174924 – LPA Ref: 3/2016/1196:

The Inspector stated that *'when development occurs outside settlement boundaries, as defined by the retained proposals map of the former local plan, it is deemed to be in the open countryside and policies DMG2 and DMH3 of the CS apply'* concluding that the proposed residential development *'would be in the open countryside and that the full weight of locational policies applies. The proposal would therefore be contrary to policies DMG2 and DMH3 of the CS and would not be in accordance with the development plan'*.

5.1.22 APP/T2350/W/17/3185445 – LPA Ref: 3/2016/1192:

The inspector stated that (Para.9) *'the appeal site is situated outside of the defined settlement boundary adjacent to the village of Read and it is common ground that it is within the 'countryside'. Policy DMG2 also includes that within the open countryside, development will be required to be in keeping with the character of the landscape and acknowledge the special qualities of the area. Whilst the policy makes provision for development proposals in Tier 1 settlements that should consolidate, expand or round-off development so that it is closely related to the main built up areas, the appeal site in this case is not in the defined settlement boundary.'* The Inspector further concludes (Para.14) *'that the appeal site is*

situated in the countryside and not within the settlement of Read and Simonstone as defined by the settlement boundary. Consequently, the appeal scheme conflicts with CS Policies DMG2 and DMH3.'

5.1.23 APP/T2350/W/19/3235162 – LPA Ref: 3/2018/0507:

The Inspector concurred with the Local Authorities application of DMG2 stating that Policy DMG2 *'relates to development outside of the defined settlement areas and requires that development must meet at least one of the listed considerations, including "that the development is for local needs housing which meets an identified need and is secured as such".'*

Further stating that the 'proposal would introduce build development into the open countryside outside of the defined settlement boundaries and is therefore contrary to Key Statements DS1, DS2 and Policies DMG2 and DMH3 of the CS which set out the Council's approach to the location of development'

5.1.24 APP/T2350/W/18/3202044 – LPA Ref: 3/2017/0857:

The Inspector found that (Para.6) *'The consolidation, expansion or rounding off of development referred to in policy DMG2 applies only to development in the settlements referred to (my italics) and I disagree with the appellant that the wording in Key Statement DS1 'towards' could reasonably mean 'outside'*

5.1.25 As such, when taking account of the above and in the absence of any evidence being submitted by the applicant in respect of the proposal meeting identified local housing need, it is considered that the proposal is in direct conflict with Policies DMG2 and DMH3 of the adopted Development Plan

5.2 Impact upon Residential Amenity:

5.2.1 Given the proposal seeks full consent, consideration must be given to the potential for the development to have an undue or detrimental impact upon nearby or adjoining residential amenity, consideration must also be given to the level amenities that will be enjoyed by potential occupiers of the development should consent be granted.

5.2.2 In respect the proposed development maintains a sensitive relationship (in respect of interface distances) with the development to the west with adequate spatial offset distances being maintained so as not to raise any undue concerns in respect of direct and unsympathetic overlooking of habitable rooms or private amenity space.

5.2.3 It is further considered that the proposed layout of the development is arranged in such a manner that it is unlikely that the level of residential amenity experienced by future occupiers would be significantly or measurably compromised.

5.2.4 As such it is not considered that the proposed development will have any undue impact upon existing residential amenity by virtue of direct -overlooking, loss of light or an overbearing impact.

5.3 Matters of Design/Visual Amenity:

- 5.3.1 The submitted details proposed that the housing will adopt a largely linear arrangement running from the south-west of the site to the north-eastern extents of the site with a central perimeter block of housing defining the overall layout of the development.
- 5.3.2 a small cluster of dwelling are also proposed and the north-eastern extents of the site with the proposed dwellings at the south-western extents of the site benefitting from a rear to rear interface with the adjacent housing that is currently under construction.
- 5.3.3 The proposed housing types adopt an elevational language that is similar to that which was granted approval on the adjacent committed housing site. As such it is not considered that the proposed housing will result in any measurable detrimental impact upon the character or visual amenities of the area when taking account of the external appearance and pattern of development of inherent to adjacent and nearby built-form.

5.4 Highway Safety and Accessibility:

- 5.4.1 LCC Highways have raised no objections in respect of the proposed development subject to the imposition of conditions requiring the need to submit a Construction Method Statement, the need to submit details in respect of the future maintenance and management of the internal highway. Should consent be granted there will also be a requirement to submit details in relation to a cycle-link, the construction of the site access and details of off-site highways improvements.

5.5 Landscape/Ecology:

- 5.5.1 The application has been accompanied by an Ecological Appraisal which concludes that plant species assemblages across the core development area are all common in the local area and as such are considered to be of low ecological value. Low numbers of common bat species were recorded foraging over the site with no roosting being evident on site or within the vicinity of the site.
- 5.5.2 The report recognises that birds are likely to utilise the tree line and woodland along the site boundaries for nesting and as such vegetation clearance should be undertaken outside of the nesting period between March and September.
- 5.5.3 Himalayan Balsam has been identified on site with the report recommending that appropriate measures be taken so as to avoid the movement of soil over and from the site. The report concludes that there will be no adverse impacts upon protected species or species of conservation concern and as such measures to mitigate such impacts are not required.

6. Observations/Consideration of Matters Raised/Conclusion

- 6.1 Taking account of the above matters and all material considerations, the authority considers that it has not been demonstrated that the proposal is for that of local needs

housing that meets a current identified and evidenced outstanding need as required by Policy DMG2 and DMH3 of the Adopted Core Strategy.

- 6.2 Members will note that this report seeks the endorsement of the committee to pursue the refusal of the application following the receipt of an appeal for non-determination. In this respect no decision will be made on the application, however any recommendation made will endorse and ratify the stance to be adopted by the authority in defending the aforementioned non-determination appeal.
- 6.3 It is for the above reasons and having regard to all material considerations and matters raised, that should the authority have proceeded to the determination stage of application, that it would have recommended refusal on the basis of the conflicts with the development plan as outlined above. As such the proposal would have been refused on the following grounds:

RECOMMENDATION: That the application be REFUSED for the following reason(s):

1. The proposal is considered contrary to Key Statement DS1 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that approval would lead to the creation of new residential dwellings in the defined open countryside, located outside of a defined settlement boundary, without sufficient justification insofar that it has not been adequately demonstrated that the proposal is for that of local needs housing that meets a current identified and evidenced outstanding need. It is further considered that the proposal fails to meet the requirements Key Statement DS1 insofar there are no identified regeneration benefits associated with the proposal.