

Application Number 07/2016/1011/VAR

Address Bennetts Bank Farm
Roach Road
Samlesbury
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Lancashire
PR5 0UA

Applicant Mr & Mrs Brown

Agent Miss Emily Robinson

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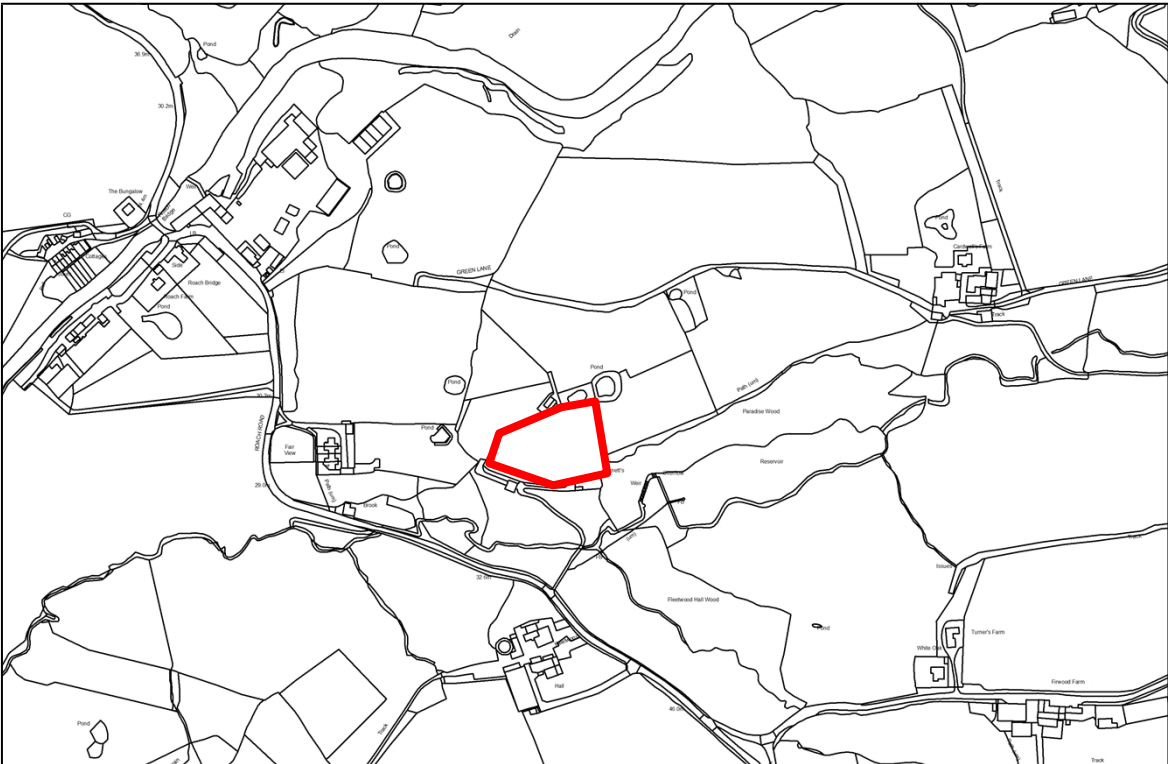
Development Variation of conditions imposed upon planning approval 07/2015/1836/FUL; namely Condition 14 (parking area) and Condition 11 (Natural England Licence) and Condition 17 (Ecology resurvey).

Officer Debbie Roberts

Officer Recommendation **Approval with Conditions**

Date application valid 09.11.2016
Target Determination Date 08.02.2017
Extension of Time 03.02.2017

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1. Introduction

1.1. This application is brought before you as a request to vary conditions imposed upon the original application by Planning Committee.

2. Report Summary

2.1. This application seeks permission to vary three conditions imposed on planning permission 07/2015/1836 by this committee (29.2.16).

2.2. Permission granted was for erection of a private equestrian arena, ménage, landscaping and associated works, and was subject to seventeen conditions - five of which have already been discharged. The remainder are to be discharged post-development.

2.3. Following consultation with the Council's statutory consultees, it is recommended that Conditions 14, 17 and 11 are varied in accordance with the detailed discussion below.

2.4. Please note that as this decision would effectively become the new planning permission, all un-discharged conditions have been carried forward as recommended. These cannot however be altered at this stage.

3. Application Site and Surrounding Area

3.1. The application refers to Bennett's Bank, an isolated complex comprising two detached dwellings and large domestic outbuildings. To the north of the site is an area of pasture land (0.5 hectare) currently in equestrian use; this area houses a temporary stable block accessed from the eastern gardens of Bennetts Bank. A separate private entrance to this land is also in place to the west of the complex which is accessed via long winding driveway off Roach Road. This pasture land is the subject of the planning application.

3.2. Bennetts Bank is well screened, and neither the dwelling nor equestrian buildings are visible from either Green Lane or Roach Road which skirt the site.

3.3. The site and surrounding areas are designated under Policy G1 (Green belt) of the South Ribble Local Plan.

4. Site History

4.1. There are 7 planning applications on the history of this combined site, the most relevant of which are:

☐ 07/2015/1836/FUL - erection of one indoor equestrian arena, one outdoor ménage together with associated landscaping. Approved February 2016

☐ 07/2016/0806/DIS - application to discharge conditions 3(Materials) 5(Collection containment and removal of animal effluent) 6(Scheme of measures) 7(Water drainage scheme) and 10(Construction method statement) of planning permission 07/2015/1836/FUL. Discharged November 2016

5. Proposal

5.1. The applicant requests permission to vary three of the conditions imposed on planning approval 07/2015/1836.

5.2. The original application was accompanied by a series of technical documents; each of which was assessed by the Council's Statutory Consultees. Conditions imposed were in line with their formal responses, and in some cases legal obligation of both this Authority and the Consultant involved.

5.3. The applicant's supporting statement (PWA Planning: Oct 2016) states that the conditions – as detailed below, '*cannot reasonably be achieved*', and as such should be amended as follows:

5.3.1. **Variation 1: Condition 14** (agenda Condition 9) - this condition requires that '*Prior to first use of the arena or ménage hereby approved, the associated parking and vehicle turning areas shall be drained and surfaced. This area shall be retained at all times thereafter and shall not be used for any purpose other than the parking of vehicles. REASON: To ensure the provision and retention of adequate on-site parking in the interests of residential amenity and highway safety as required by Policy F1 and Policy G17 in the South Ribble Local Plan 2012-2026*'

5.3.2. Local Plan Policy F1 (Parking Standards) requires all development proposals to provide car parking and servicing space in accordance with parking standards adopted by the Council. A small hardstanding is currently available towards the entrance to Bennett's Bank, but the road and access way into, and abutting the site proposed as parking and turning space are of unmade, rough ground.

5.3.3. Approved development would be delivered via a phased approach – construction of the ménage first with the outdoor arena to follow in due course. In the short term the ménage would rely upon the existing access point; the additional length of access road, turning and vehicular parking area however would be delivered once the indoor arena is constructed. Whilst there may be personal reasons for the applicant wishing to do so, it is not considered that installation of such space cannot reasonably be achieved.

5.3.4. The applicant requests re-wording of condition 14 to read '*Prior to first use of the arena hereby approved ...*' thereby deferring construction of the parking and vehicle space until such time as both arena and ménage are available for use. The planning system however is not able to force completion of an extant permission, and as such this completion date would be indefinite; effectively removing any obligation to the applicant for provision of parking and vehicle turning space should the development not be completed in its entirety.

5.3.5. The Highways Authority however have not objected on highways safety grounds to this request as the parking space and roadway are some distance from the road, and in planning terms without their objection there appears to be no justification warranting refusal of this amendment. For this reason it is recommended that the variation of condition is approved to read:

'Prior to first use of the arena hereby approved, the associated parking and vehicle turning areas shall be drained and surfaced. This area shall be retained at all times thereafter and shall not be used for any purpose other than the parking of vehicles. REASON: To ensure the provision and retention of adequate on-site parking in the interests of residential amenity and highway safety as required by Policy F1 and Policy G17 in the South Ribble Local Plan 2012-2026'

5.3.6. **Variation 2: Condition 17** (agenda Condition 12) states that '*The construction phase of the proposed development is likely to cause harm to Great Crested Newts as identified in the extended phase 1 habitat survey and baseline ecological assessment (Cameron S Crook: November 2015), and shall not in any circumstance commence unless the local planning authority has been provided with either:*

a) *A license issued by Natural England pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations 2010 authorising the specified activity/development go ahead; or*

b) *A statement in writing from the relevant licensing body to the effect that it does not consider that the specified development will require a licence.*

REASON: To protect habitats of wildlife, in accordance with Policy 22 in the Central Lancashire Core Strategy'

Background Information

5.3.6 ODPM Circular 06/2005 (Biodiversity & Geological Conservation) states that *'the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat (Para 98)*. For this reason, the initial development application was accompanied by Phase 1 Ecological Survey (Cameron S Crook: Rev 1:2/23.11.2015). It should be noted that as the Ménage does not constitute substantial construction, there is some doubt as to whether an ecology survey would be required for this part of the scheme.

5.3.7 Para 3.33 of the survey concluded that *'all ponds on site have at least marginal potential for use by great crested newts (GCN's), those with the greatest potential being P1, P2 and P5'*. Para 3.35 of the same document confirmed that these 3 ponds supported small populations of GCN's. The three ponds are outside of the development site, but within such proximity as to warrant survey in accordance with the Great Crested Newt Mitigation Guidelines (English Nature 2001).

5.3.7 The survey was assessed by the Council's consultant ecologist who stated that *'low populations of GCN's are identified in three ponds in close proximity to the development site. Whilst the habitats are of low ecological value... and therefore will not represent a detrimental long term impact, there is a risk that GCN could be harmed during construction, therefore a European Protected Species Licence will be required from Natural England. I am confident that an EPS licence can be obtained for the development and that permission can be granted'*. The wording of the above condition was at the suggestion of the ecologist.

5.3.7 In order to assess an application for planning permission, the Local Planning Authority must, amongst other things determine the likelihood of the development activity being granted a Natural England licence; such a licence permits an action which is otherwise unlawful i.e. removal, relocation or destruction of GCN's and their habitats. In addition, Section 30 of the Natural England 'European Protected Species and the Planning Process' Guidance Note states that *'Generally before Natural England will issue a licence for a development proposal it expects the planning position to be fully resolved, and requires all necessary consents to be obtained'... Even in exceptional circumstances where a licence is issued prior to grant of planning permission or its equivalent, no works can be undertaken under licence until the planning permission or its equivalent have been granted and copies supplied to Natural England'*

Justification

5.3.8 The applicant argues that National Planning Policy Guidance makes it clear that Local Planning Authorities should not seek to control matters by condition that are subject to specific controls under separate legislation, and that conditions should be relevant in planning terms. As such, they feel that this condition does not meet the tests of planning necessity. Their supporting statement also notes that *'we are not aware if Natural England provides a statement which confirms a licence is not required, and it is the responsibility of the qualified acting consultant to determine if works affect Great Crested Newts and to advise accordingly upon licence requirements'*.

5.3.9 The applicant's statement is correct in that Paragraph 206 of the NPPF does say that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Despite the conditions inception in alternative legislation however, in order for this Authority to fulfil its statutory duty the condition is considered *'necessary, relevant, enforceable, precise and reasonable'* for the following reasons:

- ☐ The protection of European Protected Species holds significant weight as a material planning consideration (see para 5.3.6 above).
- ☐ Natural England will not issue a licence before planning permission has been granted, and in order to obtain that permission the applicant is obliged to provide ecological information to the Local Authority for professional assessment. This has taken place and proves without

question that GCN populations do exist within the vicinity of the site, and could be affected by the approved development

- ☐ Both the applicant and this Authority are obliged by law to protect GCN populations – the most appropriate way to do so in this case as agreed by professional ecologists is via licence.
- ☐ Regardless of whether Natural England provide confirmation that a licence is not required, part (a) of the condition requires the applicant to apply prior to commencement on site. Confirmation of the same to the Council is required both to discharge this Council of its obligation, and to protect the applicant from potential enforcement should there be any doubt in the future.

5.3.10 Following assessment of the applicants suggested alternative wording, and having regard to comments made by the Councils ecologist, the following compromise for Condition 17 is proposed. Wording has been agreed to with the applicant and if acceptable to members a variation of Condition 17 can be recommended for approval. Suggested wording is:

‘Works to the indoor arena, new access road and turning area shall not commence until a European Protected Species licence pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations 2010 authorising the specified activity/development to go ahead has been obtained. Work shall be carried out strictly in accordance with the EPS licence. A copy of the licence and accompanying documents shall be supplied to the Local Planning Authority prior to commencement of works on site and following confirmation of receipt in writing from the Local Planning Authority. Development which is not subject to the EPS licence should be undertaken in line with the precautionary measures detailed in Extended Phase 1 Habitat Survey (Cameron S Crook: No 2015) (suggested wording added by Officer).

REASON: To protect habitats of wildlife, in accordance with Policy 22 of the Central Lancashire Core Strategy’

5.3.11 **Variation 3: Condition 11** (agenda Condition 6) states that *‘Should the development not have commenced within 12 months of the date of this permission, a re-survey to establish the ecological value of the site shall be undertaken by a suitably qualified person or organisation. In the event of the survey confirming the presence of bats, barn owls or other protected species, details of measures, including timing, for the protection or relocation of the species shall be submitted to and agreed in writing by the Local Planning Authority and the agreed measures implemented.*

REASON: To ensure the protection of schedule species protected by the Wildlife and Countryside Act 1981 and so as to ensure work is carried out in accordance with Policy 22 in the Central Lancashire Core Strategy and Policy G16 in the South Ribble Local Plan 2012-2026’.

5.3.12 Although this condition has been one in use for many years, this request is not considered unreasonable; particularly as the more onerous Natural England EPS licences are valid for a continuous period of two years.

5.3.13 With the ecologists confirmation of the same in mind, removal of the condition – as initially requested - cannot be recommended. An alternative wording however can be proposed to replace *‘Should the development not have commenced within 12 months of the date of this permission’* with *‘Should the development not have commenced within two years of the date of this permission’*. If such a change is acceptable to members then it is recommended that variation of the condition is approved.

6. Summary of Supporting Documents

6.1. The application and scaled drawings are accompanied by Supporting Statement (PWA Planning: Oct 2016)

7. Representations

7.1. Summary of Publicity

7.1.1. A site notice has been posted and 19 neighbouring properties have been consulted.

7.2. Letters of objection or support

7.2.1. None received

8. Summary of Statutory Consultee Responses

8.1. The Councils' **Ecology Consultant** accepts that the wording of both imposed and suggested condition 17 should be amended, and that subject to approval of the EPS licence prior to commencement, part 2 of the condition can be removed. Part one of the condition however *'was based upon a British standard condition D6.2 (page 75) (BS 42020:2013 – Biodiversity – Code of practice for planning and development'* and guidance on what works would cause a potential offence should be obtained from the clients own ecologist. Alternative wording for the condition has however been agreed (as above). With regards to condition 11, the ecologist is happy to accept a delayed resurvey of 2 years.

8.2. Lancashire County Council Highways has no objection to the proposal

8.3. **CPRE (Campaign to Protect Rural England)** – at the time of writing this report CPRE had not responded. Late representation will be reported at committee

8.4. South Ribble's **Arborist** has no objections

9. Material Considerations

9.1. Relevant Policy Position

9.1.1. Site Allocation: Policy G1 (Green Belt) – The site is allocated as Green Belt in the Local Plan, with its presumption against inappropriate development unless very special circumstances except. The principle of development however has already been established, and as such this policy allocation in this case is largely irrelevant.

9.1.2. Local Plan Policy F1 (Parking Standards) - All development proposals will normally be required to provide car parking and servicing space in accordance with the parking standards adopted by the Council.

9.1.3. Core Strategy Policy 22 and Local Plan Policy G16 (Biodiversity and Nature Conservation) both state that the Boroughs biodiversity and ecological network will be protected, conserved and enhanced, including protection, safeguarding and enhancement of European, locally and nationally important species and their habitats. Policies note that ecological assessment should be undertaken by, and mitigation proposed by appropriately qualified professional ecologists.

10. CONCLUSION

10.1. This application seeks permission to vary three conditions imposed on planning permission 07/2015/1836 by this committee (29.2.16) for erection of a private equestrian arena, ménage, landscaping and associated works. Although amendments proposed by the applicant were not in the whole considered acceptable, alternative wording has been suggested, and following consultation with the Council's statutory consultees, it is recommended that Conditions 14, 17 and 11 are varied in accordance with the detailed discussion below.

10.2. That the request to vary condition 14 from *'Prior to first use of the arena or ménage'* to *'Prior to first use of the arena'* (removing *'or ménage'*) should be **approved**

10.3. That the request to vary condition 17 from (a) to (b) as below is **approved**

(a) *'The construction phase of the proposed development is likely to cause harm to Great Crested Newts as identified in the extended phase 1 habitat survey and baseline ecological assessment (Cameron S Crook: November 2015), and shall not in any circumstance commence unless the local planning authority has been provided with either:*

a) A license issued by Natural England pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations 2010 authorising the specified activity/development go ahead; or

b) A statement in writing from the relevant licensing body to the effect that it does not consider that the specified development will require a licence.

REASON: To protect habitats of wildlife, in accordance with Policy 22 in the Central Lancashire Core Strategy'

(b) *'Works to the indoor arena, new access road and turning area shall not commence until a European Protected Species licence pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations 2010 authorising the specified activity/development to go ahead has been obtained. Work shall be carried out strictly in accordance with the EPS licence. A copy of the licence and accompanying documents shall be supplied to the Local Planning Authority prior to commencement of works on site and following confirmation of receipt in writing from the Local Planning Authority. Development which is not subject to the EPS licence should be undertaken in line with the precautionary measures detailed in Extended Phase 1 Habitat Survey (Cameron S Crook: No 2015) (suggested wording added by Officer).*

REASON: To protect habitats of wildlife, in accordance with Policy 22 of the Central Lancashire Core Strategy'

11.3 That the request to vary condition 11 (ecology re-survey) with a change of wording from *'Should the development not have commenced within 12 months of the date of this permission'* to *'Should the development not have commenced within two years of the date of this permission'*, should be **approved**.

In summary, the cumulative decision to be recommended is **variation approved**

RECOMMENDATION:

Approval with Conditions.

RECOMMENDED CONDITIONS:

1. The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this permission.
REASON: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990.
2. The development hereby permitted shall be carried out in accordance with the submitted approved plans:
Tree protection plan 2298/102 (TPM Landscape: October 15)
Sections plan 2747/004 Rev C (PGB)
Location and proposed block plan 2747/003 Rev E (PGB)
Proposed Elevations 2747/006 (PGB)
Proposed site plan and sections 2747/005 (PBG)
Planning statement (PWA Planning: 14-073)
Landscape & visual assessment (TPM Landscape: Dec 2015)
Habitat survey (CS Crook: 1.2: Nov 2015)
REASON: For the avoidance of doubt and to ensure a satisfactory standard of development in accordance with Policy G17 in the South Ribble Local Plan 2012-2026 and Policy 17 in the Central Lancashire Core Strategy

3. Notwithstanding the provision of the Town and Country Planning (Use Classes) Order 1987 (as amended) Paragraph 3(1) or any provision equivalent to this in any statutory instrument revoking and re-enacting this Order, the use of the arena and ménage shall be restricted to domestic use by the occupants of Bennett's Bank Farm and Bennett's Bank Barn unless the prior consent of the Local Planning Authority is obtained. Commercial livery, commercial use of the land and buildings, equestrian events or other such use is prohibited.
REASON: So that the Local Planning Authority can retain control over the impact of the development on residential amenity and/or highway safety in accordance with Policy G17 in the South Ribble Local Plan 2012-2026
4. All trees to be retained on or adjacent to the site that will be influenced by the development (construction or demolition) as identified in Para 4.6 of BS5837 2012, shall be protected for the duration of the development, including the erection of protective fencing in accordance with BS 5837 2012 - Trees in Relation to Design, Demolition and Construction - Recommendations. No trees other than those detailed for removal in the approved Tree Survey shall be pruned, cut down, uprooted, topped, lopped or wilfully damaged or destroyed including the cutting of roots without the previous written consent of the Local Planning Authority. Any tree subject to these actions or that are removed without such consent or are dying or are being significantly damaged or becoming seriously diseased during that period shall be replaced with trees of such size and species as will be agreed with the Local Planning Authority.
REASON: To prevent damage to trees during construction works in accordance with Policy G13 in the South Ribble Local Plan 2012-2026
5. All construction shall be undertaken in accordance with the methods prescribed by approved plan 2298/102: TPM Landscape (October 2015) unless otherwise approved in writing with the Local Planning Authority.
REASON: To prevent damage to trees during construction works in accordance with Policy G13 in the South Ribble Local Plan 2012-2026
6. Should the development not have commenced within 2 years of the date of this permission, a re-survey to establish the ecological value of the site shall be undertaken by a suitably qualified person or organisation. In the event of the survey confirming the presence of bats, barn owls or other protected species, details of measures, including timing, for the protection or relocation of the species shall be submitted to and agreed in writing by the Local Planning Authority and the agreed measures implemented.
REASON: To ensure the protection of schedule species protected by the Wildlife and Countryside Act 1981 and so as to ensure work is carried out in accordance with Policy 22 in the Central Lancashire Core Strategy and Policy G16 in the South Ribble Local Plan 2012-2026.
7. No tree felling, clearance works, demolition work or other works that may affect nesting birds shall take place between March and August inclusive, unless the absence of nesting birds has been confirmed by surveys or inspections.
REASON: To protect habitats of wildlife, in accordance with Policy 22 in the Central Lancashire Core Strategy
8. No external lighting other than one domestic style security light shall be erected without the prior written approval of the Local Planning Authority.
REASON: To safeguard the amenity and character of the area and to safeguard the living conditions of nearby residents and to accord with Policy 17 in the Central Lancashire Core Strategy
9. Prior to first use of the arena hereby approved, the associated parking and vehicle turning areas shall be drained and surfaced. This area shall be retained at all times thereafter and shall not be used for any purpose other than the parking of vehicles.
REASON: To ensure the provision and retention of adequate on-site parking in the interests of residential amenity and highway safety as required by Policy F1 and Policy G17 in the South Ribble Local Plan 2012-2026

10. Within 3 months of first use of the stable block/arena hereby approved, the temporary stable currently on site shall be removed from the site
 REASON: To retain control over the development in the interests of the open character of the land as required by Policy 19 in the Central Lancashire Core Strategy and Policy G1 in the South Ribble Local Plan 2012-2026
11. The approved landscaping scheme as approved drawing 2298/102 (TPM Landscape: October 2015) shall be implemented in the first planting season following completion of the development or first occupation/use, whichever is the soonest, and shall be maintained thereafter for a period of not less than 5 years to the satisfaction of the Local Planning Authority, in compliance with BS 5837 2012 - Trees in Relation to Design, Demolition and Construction - Recommendations. This maintenance shall include the watering, weeding, mulching and adjustment and removal of stakes and support systems, and shall include the replacement of any tree which is removed, becomes seriously damaged, seriously diseased or dies by the same species. The replacement tree or shrub must be of similar size to that originally planted.
 REASON: In the interests of the amenity of the area in accordance with Policy 17 in the Central Lancashire Core Strategy, Policy G13 and Policy G17 in the South Ribble Local Plan 2012-2026
12. Works to the indoor arena, new access road and turning area shall not commence until a European Protected Species licence pursuant to Regulation 53 of the Conservation of Habitats and Species Regulations 2010 authorising the specified activity/development to go ahead has been obtained. Work shall be carried out strictly in accordance with the EPS licence. A copy of the licence and accompanying documents shall be supplied to the Local Planning Authority prior to commencement of works on site and following confirmation of receipt in writing from the Local Planning Authority. Development which is not subject to the EPS licence should be undertaken in line with the precautionary measures detailed in Extended Phase 1 Habitat Survey (Cameron S Crook: No 2015) (suggested wording added by Officer).
 REASON: To protect habitats of wildlife, in accordance with Policy 22 of the Central Lancashire Core Strategy

RELEVANT POLICY

NPPF National Planning Policy Framework

Central Lancashire Core Strategy Policy

22 Biodiversity and Geodiversity

South Ribble Local Plan Policy

F1 Car Parking

G1 Green Belt

G16 Biodiversity and Nature Conservation