

## Lancashire County Council

### Development Control Committee

Minutes of the Meeting held on 23, 24, 25 and 29 June 2015 at 10.00 am in Council Chamber, County Hall, Preston

#### Present:

County Councillor Munsif Dad (Chair)

#### County Councillors

T Aldridge	C Henig
M Barron	D Howarth
A Cheetham	M Johnstone
B Dawson	N Penney
K Ellard	A Schofield
M Green	K Sedgewick
P Hayhurst	B Yates

#### 1. Apologies for absence

None received.

#### 2. Appointment of Chair and Deputy Chair

The committee was informed that the County Council had appointed County Councillors M Dad and K Ellard as Chair and Deputy Chair respectively of the committee for the ensuing year.

**Resolved:** That the appointment of County Councillors M Dad and K Ellard as Chair and Deputy Chair of the committee be noted.

#### 3. Constitution, Membership and Terms of Reference of the Committee

**Resolved:** That the Constitution, Membership and Terms of Reference of the Committee be noted.

#### 4. Disclosure of Pecuniary and Non-Pecuniary Interests

County Councillor P Hayhurst declared a non pecuniary interest in agenda items 6, 7, 8 & 9 as a member of Fylde Borough Council, as the county councillor for the area concerned and as a member of Elswick Parish Council and Elswick Community Project which had received grants from the applicant.

#### 5. Minutes of the last meeting held on 20 May 2015

**Resolved:** That the Minutes of the meeting held on the 20 May 2015 be confirmed and signed by the Chair.

### **Announcement**

The Committee was informed that the Authority had received two requests to defer consideration of the applications before the committee until such time as the redacted DEFRA report entitled 'Shale Gas Rural Economy Impacts' was published in full.

The Committee was advised that it was not known what weight, if any, could be attached to the report. It was also not known when the report would be released as it was quite possible that DEFRA could appeal the decision of the Information Commissioner. It would be difficult to know the date to which deferral should be made and the applicant was not obliged to agree to an extension of time for the authority to consider the applications. Therefore, although this was not without risk, it was not recommended that the applications be deferred. It was also pointed out that a great deal of time and resources had been spent in bringing the applications before the committee on two separate occasions. The Committee was therefore recommended to proceed to determine the planning applications.

Following brief debate, it was Moved and Seconded that:

"The committee proceed to determine the planning applications".

On being put to the vote the Motion was Carried, whereupon it was:

**Resolved:** That the Committee proceed to determine the planning applications.

- 6. Fylde Borough: application number. LCC/2014/0096  
Construction and operation of a site for drilling up to four exploration wells, hydraulic fracturing of the wells, testing for hydrocarbons, abandonment of the wells and restoration, including provision of an access road and access onto the highway, security fencing, lighting and other uses ancillary to the exploration activities, including the construction of a pipeline and a connection to the gas grid network and associated infrastructure to land to the north of Preston New Road, Little Plumpton.**

A report was presented on an application, for the construction and operation of a site for drilling up to four exploration wells, hydraulic fracturing of the wells, testing for hydrocarbons, abandonment of the wells and restoration, including provision of an access road and access onto the highway, security fencing, lighting and other uses ancillary to the exploration activities, including the construction of a pipeline and a connection to the gas grid network and associated infrastructure to land to the north of Preston New Road, Little Plumpton.

The Committee had visited the site and the local highway network

The Committee was reminded that consideration of the application had been deferred at the Development Control Committee meeting of 28th January 2015 to enable 'further and other information' submitted by the applicant in respect of noise, air quality and landscape and visual amenity to be considered. The further information was advertised and consulted on. This report assessed the 'further information' and those responses received as part of the consultation process.

The report included the views of the Department of Energy and Climate Change, the Ministry of Defence, Blackpool Borough Council, Fylde Borough Council, Westby-with-Plumpton Parish Council, Medlar with Wesham Parish Council, Kirkham Town Council, Halsall Parish Council, the Health and Safety Executive, Public Health England, the Environment Agency, the Highways Agency, National Air Traffic Services, the Civil Aviation Authority, Blackpool Airport Ltd, National Grid Gas, United Utilities PLC, Police Emergency Planning, Natural England, The Wildlife Trust, The Campaign to Protect Rural England, the Wildlife and Wetlands Trust, the County Council's Developer Support (Highways), Director of Public Health, Emergency Planning, Highways Services (lighting), Specialist Advisory Services (Landscape) (Ecology) and Archaeology and details of representations received from a number of groups and individuals including Friends of the Earth and Preston New Road Action Group. The report also included details of 18,022 letters of representation received, several petitions objecting to the application together with details of 217 letters of representation in support of the proposal.

The Development Management Officer informed the Committee that since the 1 June 2015, further representations had been received from Weeton with Preese Parish Council, the Campaign to Protect Rural England, 13 Fylde Borough Councillors and Cat Smith MP whose letter of objection was supported by 968 residents of Lancaster with 181 others in support. A further 93 letters of representation had been received together with three petitions objecting to the proposals.

The Committee was reminded that it had received presentations on the 23 January and 18 June 2015 from groups objecting to the proposals, and from the applicant in support of the proposal. A summary of the points raised at the presentations on the 23 January together with the advice from the Officer was set out at Appendix 2 to the committee report. The points raised at the presentations held on the 18 June were set out in the Update Sheet at Annex 1 to the Minute Book.

The Officer advised that it was proposed to amend the 'Recommendation' to the committee report and insert an additional condition after condition 4 and renumber subsequent conditions accordingly taking into account the proposed deletion of conditions 26 and 32. Details of the amendment and the additional condition were circulated in the Update Sheet.

The Officer also reported that a further review of the conditions had been undertaken necessitating amendments to Conditions 27, 28 and 29 as reported in a second Update Sheet set out at Annex 2 to the Minute Book. It was noted that all conditions would be renumbered accordingly.

Reference was also made to an addendum to the committee report containing an amendment to pages 63, 64 and 330, an amendment to condition 12 and details of additional background papers.

The Officer presented a PowerPoint presentation which included an aerial view of the site and the nearest residential properties. The Committee was also shown an illustration of the:

- Extent of the surface works
- Maximum extent of the below ground works
- Proposed vehicle routing / access
- Timetable of workings
- Vertical and horizontal wells below ground
- Geological cross section of the underground layers
- Well pad design
- Cross section of well pad design
- Drill layout
- Hydraulic fracturing layout
- Flare stack
- View of what the site could look like from Preston New Road
- Drilling rigs
- Hydraulic fracturing equipment

The Committee was also shown photographs of the proposed vehicle routing / access and a map showing representations received within 5 km of the site.

The Committee heard representations from 43 individuals objecting to the application. They reiterated the concerns raised in the Committee report and at the presentations held on 23 January and 18 June 2015 in relation to unacceptable impacts on air quality, noise, health, visual impact, light pollution, tourism, quality of life, property prices, the environment, local wildlife, climate change, traffic, farming, local businesses and insurance premiums.

They also maintained that;

- The current regulatory framework for the shale gas industry was inadequate;
- There were risks associated with the number of faults in the vicinity of the site;
- The proposal would lead to the industrialisation of the landscape;
- There were risks associated with hydrogeology;
- The operation lacked public support and therefore could not claim any social licence to operate;
- There was no proven need for the application as the UK's energy future was already secure; and
- That the economic benefits of the application had been exaggerated.

The Committee was requested to refuse the application on the grounds that the applications did not comply with policies of the Development plan including Policy

DM2 of the Joint Lancashire Minerals and Waste Local Plan and Policy CS5 of the Lancashire Minerals and Waste Development Framework.

The Committee also heard representations from 23 individuals who spoke in support of the applications. They reiterated the specific benefits they felt the proposal would generate including investment in Lancashire and the creation of jobs in the local economy. It was also felt that the UK needed a secure energy reserve and shale gas would provide a predictable, sustainable source of energy to ensure the country's energy supply, to stabilise prices and replace declining North Sea reserves. It was maintained that regulations enforced by Lancashire County Council and the other regulatory bodies would ensure the process was safe and that safeguards were in place to protect the environment. The committee was requested to approve the application.

### **Minutes 24 June 2015**

During debate, the officers and their advisers responded to questions from the Members in relation to:

- The tone and character of the noise at the site
- Traffic impacts on the A583
- The maintenance of drains and gullies along the A583
- Well design and well integrity
- Ground water monitoring
- The definition of a temporary period
- The impact of the proposals on any nearby septic tanks
- Visual and landscape mitigation measures
- Odour management

In respect of questions raised with regard to the report from the Director of Public Health in relation to the health impacts of Shale Gas extraction, the Head of Service, Planning and Environment advised that, of the 61 recommendations, a number related only to matters subsequent to planning approval, and it would not therefore be possible for all recommendations to be met in advance of permission being granted.

He reminded the Committee of the advice of the Environment Agency in terms of air pollution, and of the council's noise consultants, Jacobs, who were both of the view that public health would not be impacted to any material degree as a result of the proposals.

In response to concerns raised by the Committee, the council's Director of Public Health, Dr Sakthi Karunanithi, recommended an additional condition to any planning permission as follows:

"No development should commence until a scheme and programme for establishing a baseline and on-going monitoring of the health and wellbeing outcomes of the local population and workers had been submitted to the

County Planning Officer and approved in writing by the Director of Public Health".

Further debate was had during which Members raised the concerns as summarised below with regard to:

- The effectiveness of regulatory regime given there was no single overarching regulator;
- The potential impact on public health;
- Whether a six year operation could be regarded as temporary in nature;
- The effect of the proposals on tourism balanced with the minimal employment opportunities associated with the applications;
- The amenity impacts arising from the proposal in relation to the visual, lighting, rural background noise and the potential for the industrialisation of the countryside;
- The reputational damage previously sustained by the applicant in relation to the non-adherence to planning conditions elsewhere and what this might suggest for the future;
- Long term monitoring of wells and the absence of a regulator willing to do so.

It was also questioned why the development could not be located elsewhere, where it would have less impact on the landscape and on the local population.

Following further debate it was Moved and Seconded that:

"The application be refused on the following planning grounds:

1. That it is contrary to the National Planning Policy Framework paragraph 9 on conserving and enhancing the natural environment in that it does not contribute to and enhance the natural environment by protecting and enhancing valued landscapes.
2. That it is contrary to NPPF paragraph 17 in that it fails to protect the intrinsic character and beauty of the countryside.
3. That it is contrary to policy DM2 of the Lancashire Minerals and Waste Local Plan in relation to landscape and visual impact in that it fails to make a positive contribution to the landscape character of the area. Furthermore it will fundamentally and significantly change, for the worse, the character and landscape setting of the area for those who live and work there. In addition, new noise mitigation methods will add to significant adverse visual effects of the proposed development thus increasing the landscape and visual amenity harm. The lighting and air quality pollution generated by the operation will add to the adverse impact of the scheme on the rural landscape.
4. It is contrary to policies SP2 and EM11 of the Fylde Borough Council Local Plan in that it does not fall into any of the five classes of

development that are permitted within it. The application falls outside all permitted developments.

5. The application falls foul of guidance from the Minister for Planning and Housing issued in March 2015 which states that the impact of development on the landscape can be an important, material consideration."

Prior to being put to the vote, officers advised that the Committee must be satisfied that any reasons for refusal must stand up to scrutiny from the Planning Inspectorate if the applicant were to appeal but also advised that reasons 1, 2 and 5 could not be used as the NPPF does not form part of the Development Plan; guidance should not be used for refusal (5) and less weight should be attached to the policies of the Fylde Borough Local Plan.

It was therefore Moved and Seconded that the press and members of the public be excluded from the meeting during consideration of the legal advice to be issued to the committee on the grounds that there would be a likely disclosure of exempt information as defined in paragraph 5, of schedule 12A to the Local Government Act, 1972.

(Paragraph 5 schedule 12a relates to information in respect of which a claim to legal professional privilege could be maintained in legal proceedings applied).

On being put to the vote it was:

**Resolved:** That the press and members of the public be excluded from the meeting during consideration of the legal advice on the grounds that there would be a likely disclosure of exempt information as defined in paragraph 5, of schedule 12A to the Local Government Act, 1972. It was considered that in all the circumstances the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

On return to Part I, and following legal advice provided, the Motion was revised and it was Moved and Seconded that:

"The Committee determine to refuse the planning application before it on the grounds that it is contrary to DM2 of the Lancashire Minerals and Waste Local Plan in relation to landscape and visual impact, in that it fails to make a positive contribution to the landscape character of the area and it will fundamentally and significantly change, for the worse, the landscape setting of the area for those who live or work there."

On being put to the vote the Motion was Lost.

It was further Moved and Seconded, that:

- "i) The legal advice provided to members of the Committee by David Manley QC be made public

- ii) Further legal advice be taken as to whether policy CS5 of the Lancashire Minerals and Waste Development Framework would be a sustainable reason for refusal
- ii) Any further business be deferred until the Committee had received such advice in writing."

On being put to the vote the Motion was Carried. It was therefore:

**Resolved:** That:

- i) The legal advice provided to members of the Committee by David Manley QC be made public.
- ii) Further legal advice be taken as to whether policy CS5 of the Lancashire Minerals and Waste Development Framework would be a sustainable reason for refusal.
- ii) Any further business be deferred until the Committee had received such advice in writing."

The meeting was adjourned until 4.30pm.

On resuming at 4.30pm, the Chairman indicated that the written legal advice had not yet been received and called for further adjournment.

However, following brief debate, it was Moved and Seconded that further consideration of the application be adjourned for a minimum of one month to enable interested parties to properly consider the legal advice to be provided and to consider the DEFRA report entitled 'Shale gas Rural Economy Impacts' if released by DEFRA.

On being put to the vote the Motion was Lost.

It was further Moved and Seconded that further consideration of the application be adjourned until Monday 29 June 2015.

On being put to the vote the Motion was Carried and it was:

**Resolved:** That further consideration of the application be adjourned until 10.00am on Monday 29 June.

### **Minutes 25 June 2015**

The written legal advice received from David Manley QC was circulated to members of the Committee and members of the public present in the Council Chamber (Copy set out at Annex 3 to the Minute Book). In addition two e-mails clarifying matters, particularly in relation to policy CS5, from Mr Manley QC were circulated (Copies set out at Annex 4 and 5 to the Minute Book).



The Clerk confirmed that advice had been given to the Committee by officers and by Queen's Counsel. It was however only advice and the Committee did not have to follow that advice, members were entitled to take their own view and to make a decision, but the Committee needed to be aware of the possible consequences of that action.

The Chair reminded the Committee that they had agreed that consideration of the matter be deferred until Monday 29 June 2015 and therefore called for an end to the debate.

**8. Fylde Borough: application number. LCC/2014/0101  
Construction and operation of a site for drilling up to four exploration wells, hydraulic fracturing of the wells, testing for hydrocarbons, abandonment of the wells and restoration, including provision of an access road and access onto the highway, security fencing, lighting and other uses ancillary to the exploration activities, including the construction of a pipeline and a connection to the gas grid network and associated infrastructure land at Roseacre Wood, Roseacre.**

A report was presented on an application for the construction and operation of a site for drilling up to four exploration wells, hydraulic fracturing of the wells, testing for hydrocarbons, abandonment of the wells and restoration, including provision of an access road and access onto the highway, security fencing, lighting and other uses ancillary to the exploration activities, including the construction of a pipeline and a connection to the gas grid network and associated infrastructure to land at Roseacre Wood, Roseacre.

The Committee had visited the site and local road network.

The Committee was reminded that consideration of the application had been deferred at the Development Control Committee meeting of 28th January 2015 to enable 'further and other information' submitted by the applicant in respect of noise, air quality and landscape and visual amenity to be considered. The further information was advertised and consulted on. This report assessed the 'further information' and those responses received as part of the consultation process.

The report included the views of the Department of Energy and Climate Change, the Ministry of Defence, Preston City Council, Fylde Borough Council, Elswick Parish Council, Great Eccleston Parish Council, Medlar with Wesham Parish Council and Kirkham Town Council, Newton with Clifton Parish Council, Treales, Roseacre and Wharles Parish Council, Woodplumpton Parish Council, Broughton Parish Council, the Health and Safety Executive, Public Health England, the Environment Agency, the Highways Agency, National Air Traffic Services, the Civil Aviation Authority, Blackpool Airport Ltd, National Grid Gas, United Utilities PLC, Police Emergency Planning, Natural England, The Woodland Trust, The Wildlife Trust, The Campaign to Protect Rural England, the Wildlife and Wetlands Trust, the RSPB, the County Council's Developer Support (Highways), Public Rights of Way, Director of Public

Health, Emergency Planning, Highways Services (lighting), Specialist Advisory Services (Landscape) (Ecology) and (Archaeology) and details of representations received from a number of groups and individuals including Friends of the Earth, the Canal and River Trust, Lancaster Canal Trust and Roseacre Awareness Group

The report also included details of 13,443 letters of representation received and several petitions objecting to the application together with 205 letters of representation received and one petition in support of the proposal.

The Development Management Officer reported that further representations had been received from Preston City Council, Weeton with Preese Parish Council, the Campaign to Protect Rural England, 13 Fylde Borough Councillors and Cat Smith MP whose letter of objection was supported by 968 residents of Lancaster with 181 others in support. It was also reported that a further 225 letters of representation and two petitions objecting to the proposals had been received. A summary of the representations was set out in the Update Sheet (copy attached at Annex 1 to the Minute Book).

It was also reported that the Committee had received presentations on the 26 January and 19 June 2015 from groups objecting to the proposals and from the applicant in support of the proposal. A summary of the points raised at the presentations on the 26 January together with the advice from the Officer, was set out at Appendix 2 to the committee report. The points raised at the presentations on the 19 June were set out in the Update Sheet at Annex 1 to the Minute Book.

Reference was also made to an addendum to the committee report which contained an amendment to pages 460 to 464 and page 742 together with details of additional background papers.

The Development Management Officer presented a PowerPoint presentation which included an aerial view of the site and the nearest residential properties. The Committee was also shown an illustration of the:

- Extent of the surface works
- Maximum extent of the below ground works
- Proposed vehicle routing / access
- Timetable of workings
- Vertical and horizontal wells below ground
- Geological cross section of the underground layers
- Well pad design
- Cross section of well pad design
- Drill layout
- Hydraulic fracturing layout
- Flare stack
- View of what the site could look like
- Drilling rigs
- Hydraulic fracturing equipment

In addition the Committee was shown photographs of Roseacre Road and a map showing representations received within 5 km of the site.

The Committee heard representations from 28 individuals objecting to the application. They reiterated the concerns raised in the Committee report and at the presentations held on 26 January and 19 June 2015 in relation to unacceptable impacts on air quality, noise, health and wellbeing, the community, visual impact, light pollution, odours, tourism, quality of life, property prices, the environment, local wildlife, climate change, traffic, farming and impact on the rural economy and jobs.

It was also felt that the proposal would lead to the industrialisation of the landscape and to the potential for fracking chemicals and previously latent chemicals and radioactive waste to find their way to the air, land and water.

During the presentations it was pointed out that that it may be years before the risks associated with the development were recognised and that if the Committee were to approve the application, it would set a precedent for further expansion in the future and give the green light to fracking right across the country.

The Committee was requested to refuse the application on the grounds that the application conflicted with the policies of the Development Plan and in particular Policy DM2 of Joint Lancashire Minerals and Waste Local Plan and Policy CS5 of the Lancashire Minerals and Waste Development Framework.

The Committee also heard representations from 15 individuals who spoke in support of the applications. They reiterated the specific benefits they felt the proposal would generate including investment in Lancashire and the creation of jobs in the local economy. It was also felt that the UK needed a secure energy reserve and shale gas would provide a predictable, sustainable source of energy to ensure the country's energy supply, to stabilise prices and replace declining North Sea reserves. It was maintained that regulations enforced by Lancashire County Council and the other regulatory bodies would ensure the process was safe and that safeguards were in place to protect the environment. The committee was requested to approve the application.

In response to questions raised by the Members, the Officer advised that an additional condition proposed by the Campaign to Protect Rural England, requiring the analysis of monitoring results following the first stage of hydraulic fracturing was not necessary and was provided for by the permit issued by the Environment Agency.

The Committee discussed at length the proposed HGV traffic route; the impact on the rural highway network and the safety implications of such following which it was Moved and Seconded that the application be refused in accordance with the Officer recommendation.

Prior to being put to the vote, it was Moved and Seconded that the application should also be refused on the grounds that the proposal would impact on the visual amenity of local residents and was therefore contrary to the policies of the development plan. However, following on advice from the Clerk to the Committee in response to questions that each individual reason for refusal would need to be able to be justified at any appeal, this addition was withdrawn and it was:

**Resolved:** That after first taking into consideration the environmental information and further information, as defined in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 submitted in connection with the application, planning permission be **refused** for the following reason:

The proposed development would be contrary to Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan – Site Allocation and Development Management Policies in that it would generate an increase in traffic, particularly HGV movements, that would result in an unacceptable impact on the rural highway network and on existing road users, particularly vulnerable road users and a reduction in overall highway safety that would be severe.

9. **Fylde Borough: application number. LCC/2014/0102**  
**Application for monitoring works in a 4 km radius of the proposed Roseacre Wood exploration site comprising: the construction, operation and restoration of two seismic monitoring arrays comprising of 80 buried seismic monitoring stations and 8 surface seismic monitoring stations. The seismic monitoring stations will comprise underground installation of seismicity sensors; enclosed equipment and fenced enclosures. The surface array will also comprise monitoring cabinets. The application is also for the drilling of three boreholes, each installed with 2 monitoring wells, to monitor groundwater and ground gas, including fencing at the perimeter of the Roseacre wood exploration site. Monitoring works in a 4km radius of the proposed Roseacre Wood site, off Roseacre Road and Inskip Road, Roseacre and Wharles, Preston.**

A report was presented on an application for the installation of monitoring works in a 4 km radius of the proposed Roseacre Wood exploration site comprising: the construction, operation and restoration of two seismic monitoring arrays comprising of 80 buried seismic monitoring stations and 10 surface seismic monitoring stations. The seismic monitoring stations would comprise underground installation of seismicity sensors; enclosed equipment and fenced enclosures. The surface array would also include the siting of monitoring cabinets. The application was also for the drilling of three boreholes, each installed with 2 monitoring wells, to monitor groundwater and ground gas, including fencing at the perimeter of the Roseacre Wood site off Roseacre Road and Inskip Road, Roseacre and Wharles, Preston.

The application was associated with application LCC/2014/0101 reported above. The applications were supported by a planning statement and an Environmental Statement that assessed the potential impacts of the proposals on the application site and surroundings; a description of the proposed development; scheme alternatives; air quality, archaeology and cultural heritage, greenhouse gas emissions; community and socio economics; ecology; hydrogeology and ground gas; induced seismicity; land use; landscape and visual amenity; lighting; noise; resources and waste; transport; water resources and public health.

The report included the views of the Department of Energy and Climate Change, the Ministry of Defence (Safeguarding), Fylde Borough Council, Great Eccleston Parish Council, Newton-with Clifton Parish Council, , Newton with Clifton Parish Council, Woodplumpton Parish Council, Kirkham Town Council Medlar with Wesham Parish Council, Treales, Roseacre and Wharles Parish Council, the Health and Safety Executive, Public Health England, the Environment Agency, the Highways Agency, National Air Traffic Services, the Civil Aviation Authority, Blackpool Airport Ltd, National Grid Gas, United Utilities PLC, Police Emergency Planning, Natural England, The Campaign to Protect Rural England, the RSPB, the Wildlife and Wetlands Trust, the County Council's: Developer Support (Highways), Public Rights of Way, Director of Public Health, Emergency Planning, Highways Services (lighting), Specialist Advisory Services (Landscape) (Ecology) and (Archaeology) and details of representations received from a number of groups and individuals including Friends of the Earth and Roseacre Awareness Group. In addition the report included details of 190 letters of representation received objecting to the proposals together with 6 letters in support of the proposals.

The Development Management Officer, reported that the views of Preston City Council and additional views from Treales, Roseacre & Wharles Parish Council, had been received, details of which were set out in the update sheet at Annex A to the Minute Book.

It was also reported that since the 1 June 2015 and up to 12.00am Friday 19 June a further 195 representations objecting to the proposal had been received. The reasons for objecting reflected those already summarised in the report.

The Committee was advised that an addendum had been circulated reporting that an additional condition should be inserted after condition 2 on page 808 of the agenda and a correction to the condition numbering.

It was reported that as part of presentations received prior to the Committee meeting on 26 January and 19 June 2015, objections were raised to the proposed array(s) and which had already been raised in objections summarised in the report.

The Officer presented a PowerPoint presentation showing the proposed location of the surface and buried seismometer arrays, an illustration of traffic light monitoring equipment and a photograph showing typical buried array points.

The Committee heard representations from individuals objecting to the application. They reiterated the concerns raised in the Committee report, at the presentations held on 26 January and 19 June 2015 and in the update sheet maintaining that the proposal would establish the principle of development for industrial shale gas activities in designated countryside permanently; that there would be cumulative impact on the countryside; they could be constructed with the benefit of permitted development; and that the applicant had advised that they were able to monitor seismic activity without such development through the installation of shallow buried seismic sensors.

In response to questions raised by the Committee, the officer advised that notwithstanding the application was integrally linked to the application for exploration

and appraisal of shale gas at Roseacre Wood, it must still be considered on its own merits. The seismic monitoring stations could not be used for other uses without planning permission. The size of each development at 20m x 20m was not large and in any event only temporary during the construction period. Following which the stations would be very small localised individual features measuring 2m x 2m x 1.2 m high wooden fence enclosure. The officer reiterated that the proposals were in accordance with planning policy.

On being put to the vote it was:

**Resolved:** That after first taking into consideration the environmental information and further information, as defined in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, planning permission be **granted** subject to the conditions set in the report and the addendum to the Committee.

### **Minutes - 29 June 2015.**

Apologies were received on behalf of County Councillor D Howarth.

The Committee, officers and members of the public stood in silent tribute to the victims of the terrorist shootings in Tunisia.

### **Agenda Item 6 – Preston New Road (Continued)**

In addition to the written advice from David Manley QC, individual members of the Committee had over the weekend, also received representations from counsel acting for the objectors sent to them personally from barristers acting on behalf of Friends of the Earth and the Preston New Road Action Group (copies attached at Annex 6 & 7 to the Minute Book). A short adjournment took place to ensure all Members had received and read the circulated advice.

The Clerk explained that at least one member had asked if the representations could be taken into account and it was the Clerk's view that it was appropriate that members did so and in fact it would be unrealistic to expect them not to do so. The advice should however be considered in the context of the response provided by officers.

The Clerk outlined the statutory test as set out in section 38(6) of the Planning and Compulsory Purchase Act 2004 and emphasised that members were acting in a quasi-judicial capacity and therefore must make a decision on the evidence presented to them and that the decision must be based on objective evidence. It was clear from the advice issued by Mr Manley QC that whilst a refusal not backed by substantial evidence could not be described as unlawful it could be described as unreasonable in planning terms. It was his view that a refusal based on DM2 would not be reasonable and would likely result in a successful appeal with the potential for an award of costs against the Council.

The Clerk advised that the apparent conflict with the different legal opinions which had been circulated, was that Counsel, acting for the objectors, took a contrary view

to Mr Manley QC but they accepted that the decision, whether to approve or refuse, must be backed by evidence.

The Committee was advised that the context was also important and the advice provided by Mr Manley QC related only to a proposed reason for refusal being contrary to DM2, and, specifically in relation to grounds relating to landscape and visual amenity. The opinions subsequently presented on behalf of objectors appeared to cover a broader range of considerations which were not part of the motion before the Committee.

Notwithstanding the commentaries circulated on behalf of objectors, in which no issue of substance was taken, whilst it was clearly a matter for the Committee to determine, the advice from officers remained unchanged, that based on the evidence presented to the Committee there were no substantive planning reasons which justified the Committee reaching a decision to refuse the application.

The committee was advised that if they disagreed with that advice then according to Mr Manley QC, the Council would lose any legal challenge and there would be a high risk of a costs penalty being imposed. However, whilst it was important that the Committee was aware of the consequences of any unreasonable refusal of planning permission, the Clerk emphasised that the threat of a costs application was not a land use planning impact and/or a material consideration for the purposes of section 38(6).

Following further debate, it was Moved and Seconded that the application be refused for the following reasons:

1. "The development would cause an unacceptable adverse impact on the landscape, arising from the drilling equipment, noise mitigation equipment, storage plant, flare stacks and other associated development. The combined effect would result in an adverse urbanising effect on the open and rural character of the landscape and visual amenity of local residents contrary to policy DM2 Lancashire Minerals and Waste Local Plan and Policy EP11 of the Fylde Local Plan.
2. The development would cause unacceptable noise impacts resulting in a detrimental impact on the amenity of local residents which could not be adequately controlled by condition contrary to Policy DM2 of the Lancashire Minerals and Waste Local Plan and Policy EP27 of the Fylde Local Plan".

On being put to the vote the Motion was Carried whereupon it was:

**Resolved:** That the application be refused for the following reasons:

1. The development would cause an unacceptable adverse impact on the landscape, arising from the drilling equipment, noise mitigation equipment, storage plant, flare stacks and other associated development. The combined effect would result in an adverse

urbanising effect on the open and rural character of the landscape and visual amenity of local residents contrary to policy DM2 Lancashire Minerals and Waste Local Plan and Policy EP11 of the Fylde Local Plan.

2. The development would cause unacceptable noise impact resulting in a detrimental impact on the amenity of local residents which could not be adequately controlled by condition contrary to Policy DM2 of the Lancashire Minerals and Waste Local Plan and Policy EP27 of the Fylde Local Plan.

## **Agenda Item 7**

7. **Fylde Borough: application number. LCC/2014/0097  
Application for monitoring works in a 4 km radius of the proposed Preston New Road exploration site comprising: the construction, operation and restoration of two seismic monitoring arrays comprising of 80 buried seismic monitoring stations and 10 surface seismic monitoring stations. The seismic monitoring stations will comprise underground installation of seismicity sensors; enclosed equipment and fenced enclosures. The surface array will also comprise monitoring cabinets. The application is also for the drilling of three boreholes, each installed with 2 monitoring wells, to monitor groundwater and ground gas, including fencing at the perimeter of the Preston New Road exploration site near Little Plumpton**

A report was presented on an application for the installation of monitoring works in a 4 km radius of the proposed Preston New Road exploration site comprising: the construction, operation and restoration of two seismic monitoring arrays comprising of 80 buried seismic monitoring stations and 10 surface seismic monitoring stations. The seismic monitoring stations would comprise underground installation of seismicity sensors; enclosed equipment and fenced enclosures. The surface array would also include the siting of monitoring cabinets. The application was also for the drilling of three boreholes, each installed with 2 monitoring wells, to monitor groundwater and ground gas, including fencing at the perimeter of the Preston New Road exploration site near Little Plumpton.

The application was associated with application LCC/2014/0096 reported above. The applications were supported by a planning statement and an Environmental Statement that assessed the potential impacts of the proposals on the application site and surroundings; a description of the proposed development; scheme alternatives; air quality, archaeology and cultural heritage, greenhouse gas emissions; community and socio economics; ecology; hydrogeology and ground gas; induced seismicity; land use; landscape and visual amenity; lighting; noise; resources and waste; transport; water resources and public health.

The report included the views of the Department of Energy and Climate Change, the Ministry of Defence (Safeguarding), Blackpool Borough Council, Fylde Borough Council, Westby-with- Plumptons Parish Council, Kirkham Town Council, Medlar-



with-Wesham Parish Council, the Health & Safety Executive, Public Health England (PHE), the Environment Agency, the Highways Agency, National Air Traffic Services Civil Aviation Authority, Blackpool Airport Ltd, National Grid Gas, United Utilities PLC, Police Emergency Planning, Natural England, the Campaign to Protect Rural England, Community Association for the Protection of Wrea Green, the RSPB: Friends of the Earth, the County Council's Developer Support (Highways), Public rights of way, Emergency Planning, Specialist Advisory Services: Landscape, Ecology and Archaeology and the County Council's Director of Public Health. In addition the report included details of 125 letters of representation received, 7 in support of the proposal and 118 objecting to the proposal.

The Development Management Officer reported that as part of presentations received on 23 January and 18 June 2015, objections were raised to the proposed array(s) and which had already been raised in objections summarised in the report.

Since the 1 June 2015 and up to 12.00am Friday 19 June a further 121 representations objecting to the proposal had been received. The reasons for objecting reflected those already reported in summary in the report.

The Officer also reported that an addendum to the report had been circulated reporting an additional condition to be inserted after condition 2 and a correction to the condition numbering on page 395.

The Committee had heard representations on the 23 June from individuals objecting to the application. They reiterated the concerns raised in the Committee report and at the presentations in relation to the loss of agricultural land; that the roads were unsuitable for HGVs and that the proposal was contrary to policies of the development plan. It was also maintained that the proposal would establish the principle of development for industrial shale gas activities in designated countryside permanently and that there would be cumulative impact on the countryside.

Following brief debate, it was Moved and Seconded that the application be refused.

On being put to the vote the Motion was Carried.

The meeting was adjourned to enable the Committee members to consider the grounds for refusal. Following which the meeting reconvened and it was Moved and Seconded that:

The application be **refused** for the following reason:

'The proposal is contrary to Policy EP11 of the Fylde Local Plan in that the cumulative effects of the proposal would lead to an industrialisation of the countryside and adversely affect the landscape character of the area.'

On being put to the vote the Motion was Carried. It was therefore:

**Resolved:** The application be **refused** for the following reason:

The proposal is contrary to Policy EP11 of the Fylde Local Plan in that the cumulative effects of the proposal would lead to an industrialisation of the countryside and adversely affect the landscape character of the area.

**10. Urgent Business**

There were no items of urgent business.

**11. Date of Next Meeting**

The next meeting of the Committee will be held on Thursday 16 July 2015.

I Young  
Director of Governance, Finance  
and Public Services

County Hall  
Preston

**DEVELOPMENT CONTROL COMMITTEE – 23 JUNE 2015  
UPDATE SHEET**

**Item 3 Application LCC/2014/0096 – Preston New Road**

**Representations received from 1 June 2015 up to 12.00am Friday 19 June:**

**Weeton with Preese Parish Council:** Oppose the application on the grounds of safety, rural nature of area, visual impacts and noise pollution.

**Campaign to Protect Rural England:** Would withdraw their objection subject to the imposition of a condition requiring the analysis of monitoring results following the first stage of hydraulic fracturing and which should be restricted to the injection of no more than 400m<sup>3</sup> of fluid and a condition requiring an agreement to be in place between the applicant and the MOD to facilitate HGV access to the site at all times thus ensuring HGV's do not pass through Whales.

**13 Fylde Borough Councillors:** have made additional comments requesting that the committee gives regard to:

- The cumulative impact of the proposed noise mitigation proposals of both sites should they go into production, and the effect on visual amenity.
- The impact of the proposed noise mitigation proposals on the tourism economy and that it is not in conformity with the Vision Statement for Fylde Local Plan 2023 consultation document.

**Cat Smith MP Lancaster** – objects to the proposal and her letter is supported by 968 residents of County Palatine, Lancaster with 181 others in support.

**Representations:** Since the 1 June 2015 and up to 12.00am Friday 19 June a further 93 representations objecting to the proposal have been received. The reasons for objecting reflect those already reported in summary in the report.

The following petitions have been received objecting to all proposals:

- Friends of the Earth, updated petition. Call to oppose the proposal for large scale fracking. 37939 names, of which 843 listed are names and addresses with no signatures and 37096 listed are names and postcodes with no addresses or signatures.
- Avaar. Call to ensure planning permission is denied for proposed fracking sites. 53850 names (some incomplete) and Country of origin listed. No addresses or signatures.

Concerned residents /Preston New Rd - 1,349 signatories.

Presentations were received prior to the committee meeting on 25 January and on 18 June 2015 from the following groups objecting to the proposals and from the applicant in support of the proposal. The points raised from the presentations in January have been summarised in Appendix 2 to the report. The presentations made on Friday 19 June are summarised as follows:

### **Preston New Road Action Group**

- The proposal would affect local residents particularly the most vulnerable young and old in close proximity to the site at Foxwood Chase – 230m and beyond.
- There are 1100 residents in Westby with Plumpton, 4332 within 2 miles of the proposal and 196,000 within 5 miles.
- There should be buffer zones around sites as there are in Australia.
- High levels of social deprivation in the Blackpool area that would be adversely affected.
- Impact on air quality would be detrimental to school children in a school classed as outstanding 1 mile north and downwind of the site and would be at risk from the fallout from the flare stack.
- There would be multiple impacts on air quality, noise, health, visual impact from the additional noise attenuation measures, light pollution and tourism. The reduced noise levels would still have an unacceptable impact.
- Contrary to NPPF to avoid impacts on noise, health and life and cumulative impacts from a number of proposed sites.
- Unacceptable use of chemicals.
- The site and monitoring array would lead to the loss of best and most versatile agricultural land.
- Has had a severe detrimental impact on house prices.
- If industry of this nature is not good enough for the south, equally not for the north.

### **Little Plumpton Awareness Group**

- Maintain there will need to be 3500 wells in 10-15 years to make it viable with up to 120 – 200 well pads accommodating 40 to 60 wells per pad all with flaring which would be visually intrusive and affect air quality.
- 33,000 wells will be required to meet the targets assured to the government by the industry.
- Current regulations are designed for off shore, not on shore and are inadequate.
- HSE rely on remote monitoring results carried out by the applicant.
- EA permitting is not stringent enough.
- The escape of methane from failed wells will be damaging in the long term.
- Accepted BGS may monitor - but no details as yet.
- Only one recommendation of the Royal Society has been implemented.
- Risks could be mitigated.
- Unacceptable risks associated with hydrogeology and should be refused.
- Applicants risk assessment not fit for purpose.

- UK geology is heavily faulted provided pathways for the migration of contamination.
- The assessment of noise by the applicant and the County Council is inadequate particularly in respect of tonal and impulsive noise at night and the wrong standards have been used and which will be subject to challenge if planning permission is granted.

### **Defend Lytham**

- Unacceptable impacts on health, economy, rural Fylde and at odds with the policies of the Fylde Local Plan, particularly EM27 and DM2 of the Lancashire Minerals and Waste Local Plan.
- Over use of natural water supplies and no clear disposal route for waste water.
- Unacceptable levels of noise and vibration and unacceptable visual impact for 4 years as part of main site operation.

### **Frack Free Fylde**

- Shale gas costs 30% more to produce than conventional gas plus long term unknown costs making it an economic burden for the future.
- Unknown impacts on the agricultural industry if ground is contaminated.
- Would cause damage to roads and health shouldered by the tax payer.
- No need to rely on gas if commitment to climate change and a greener energy supply.
- Need for a social licence – the applicant hasn't got one.
- A Human Rights Impact Assessment should be carried out.
- The Environment Agency's assessment of geology is wrong and will lead to cross contamination of geology by the migration of fracking fluid.
- Any contamination would have a significant impact on agriculture and business for which there would be no compensation.
- There is a lack of regulation in the industry.

### **Residents Action on Fylde Fracking**

- Proposals would significantly affect health.
- LCC public health assessment is limited.
- There are gaps in the regulations and diminishing resources to administer them.
- UK government is relaxing regulations contrary to other countries.
- Reliance on hydrocarbons will not contribute to reducing global warming or climate change.
- Reject the industry until a full assessment of the industry as a whole has been carried out.
- Public health is a material consideration
- Medac oppose the proposal in view of the impacts on human health, the environment and climate change.
- A ban should be imposed in the same way as an authority has in Wales.

## **Friends of the Earth**

- Supported what had been said.
- Contrary to policy in that it would have an adverse effect on ecology and the economy and benefits would be outweighed by the impacts.
- NE has provided insufficient advice – need to undertake a HRA.
- No long term benefits.
- Local survey demonstrates that 63% of people want a ban on fracking.
- A precautionary approach should be adopted.
- The recommendation to object on noise is supported.
- Vehicles would arrive in convoy and the officer's assessment is not strong enough.
- There is no identified waste water treatment centre and conservative estimates of quantities of flow back water.
- The underground activities and risk of well failure are not adequately assessed.
- Will increase greenhouse gasses and is not a transitional fuel to be used to address climate change.
- Beconsall and Grange Road have not been considered in assessment of cumulative impact.
- There are regulatory failings.
- There is potential for pollution and hazards that might lead to impacts on health with greater impacts if there is an increase in the number of wells.
- Shale gas is not a transition fuel, is unsustainable and for which there is no need.
- Contrary to policy. Conditions are not lawful and do not sufficiently address impacts

## **Cuadrilla**

- Noted that the conclusions of the officer's assessment do not find the principle of exploration and appraisal unacceptable.
- The previous localised issue in respect of noise has been addressed and they support the recommendation and all the requirements of the conditions.
- Noise has been reduced to a level below national guidance and WHO standards, particularly at night, and which would be constantly monitored.
- The rig has been reduced in height to reduce visual impact and the attenuative fencing would not cause any greater impact.
- The development if approved would be delivered in a safe environmentally responsible way.
- There would be over 250 monitoring and reporting parameters at all stages of the operation overseen by the regulatory bodies to ensure the risks of pollution are minimised.
- BGS in conjunction with 5 universities has already started and would continue undertaking independent monitoring.
- Have sought to address local concerns as part of the proposal and on-going consultation and liaison.

## **Advice**

An addendum has been circulated reporting corrections to the report, changes to condition 12 and the lists the background papers referred to in the report.

CPRE representation: The EA permit contains conditions such that hydraulic fracturing can only be carried out within the target formations. The applicant is required to carry out fracturing in a controlled manner by applying a stepped approach. The permit takes account of the possibility of fracture fluid indirectly discharging into the Millstone Grit so this would not constitute a breach, but it is expected this will be controlled and mitigated should it occur. In any event, the EA permit states the impact of any indirect discharge into the Millstone Grit would be insignificant due to the chemical similarity of the fluids. The condition is unnecessary and therefore fails to meet the tests. Similarly the proposed condition regarding an agreement with the MOD fails to meet the tests but could be achieved in a different form of wording had it been proposed to grant planning permission. It should therefore be concluded that CPRE's objection to the proposal continues.

The issues raised in the additional representations and presentations are addressed in the report.

The applicant has confirmed a willingness to enter into a section 106 agreement for the purposes of conditions 26 and 32 to address the need for details of an independent monitor for noise and air quality and dust to be appointed. This would obviate the need for the conditions to be retained.

The following additional condition is proposed and to be inserted after condition 4 and subsequent conditions to be renumbered accordingly taking into account the proposed deletion of conditions 26 and 32:

No development shall commence until a scheme and programme for the following has been submitted to the County Planning Authority and approved in writing:

- a) The removal of the drill rig and all associated plant and equipment on completion of drilling and hydraulic fracturing operations in accordance with the requirements of condition 2 to this permission.
- b) The removal of the hydraulic fracturing equipment on completion of the hydraulic fracturing operations in accordance with the requirements of condition 2 to this permission.
- c) The removal of the noise attenuative measures including all noise attenuative fencing and barriers on completion of the removal of the drill rig and hydraulic fracturing operation in accordance with the requirements of condition 2 to this permission.
- d) Details of the plant and equipment and boundary treatment to be retained on the site for the purposes of extended flow testing if extended flow testing is to be carried out.
- e) Provision for the removal of all plant and equipment on completion of the final 90 day flow testing phase in the event the flow test is unsuccessful and the long term appraisal phase is not to be carried out.

- f) In the event the extended flow test is not to be carried, notwithstanding the provisions of condition 1, a time schedule for the removal of all plant and equipment and restoration of the site in accordance with the conditions to this permission.

The approved scheme and programme shall be carried out in full.

*Reason: For the avoidance of doubt and to enable the County Planning Authority to control the development and to minimise its impact on the amenities of the local area and to conform with Policies CS1 and CS5 of the JLMWDFCS DPD and Policies NPPF 1 and DM2 of the JLMWLP.*

**Recommendation** – amend as follows:

That after first taking into consideration the environmental information and further information, as defined in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 submitted in connection with the application, subject to the applicant entering into a legal agreement to appoint an independent body to monitor noise and dust, planning permission be granted subject to conditions controlling time limits, working programme, restriction on permitted development rights, highway matters, soil management, hours of working, safeguarding of water courses, control of noise, dust, lighting, security, ecology, archaeology, landscaping, restoration and aftercare.

#### **Item 4 Application LCC/2014/0097 – Preston New Road**

**Representations:** As part of presentations received prior to the committee meeting on 25 January and 18 June 2015, objections were raised to the proposed array(s) and which have already been raised in objections summarised in the report.

Since the 1 June 2015 and up to 12.00am Friday 19 June a further 121 representations objecting to the proposal have been received. The reasons for objecting reflect those already reported in summary in the report.

#### **Advice**

An addendum has been circulated reporting an additional condition to be inserted after condition 2.

Page 397 – condition numbering is wrong. Re-number.

#### **Item 5 Application LCC/2014/0101 – Roseacre Wood**

**Representations received from 1 June 2015 up to 12.00am Friday 19 June:**

**Preston City Council:** Object on the basis that the proposed development includes alternative routing proposals for HGV construction traffic, one of which involves inbound traffic to the development site using a route from the A6 via Broughton Crossroads and the B5269 through the parish of Woodplumpton. This route is likely to have potentially severe adverse effects on the operation of the highway network in terms of traffic disruption and highway safety and would not



improve the high levels of air pollution in the Broughton Air Quality Management Area.

**Weeton with Preese Parish Council:** Oppose the application on the grounds of safety, rural nature of area, visual impacts and noise pollution.

**Campaign to Protect Rural England:** Would withdraw their objection subject to the imposition of a condition requiring the analysis of monitoring results following the first stage of hydraulic fracturing and which should be restricted to the injection of no more than 400m<sup>3</sup> of fluid and a condition requiring an agreement to be in place between the applicant and the MOD to facilitate HGV access to the site at all times thus ensuring HGV's do not pass through Whales.

13 Fylde Borough Councillors have made additional comments requesting that committee gives regard to:

- The cumulative impact of the proposed noise mitigation proposals of both sites should they go into production, and the effect on visual amenity.
- The impact of the proposed noise mitigation proposals on the tourism economy and that it is not in conformity with the Vision Statement for Fylde Local Plan 2023 consultation document.
- A thorough assessment of the implications of development has not been completed for the route via Clifton to the strategic road network
- This route cannot, therefore be included in the traffic management plan
- The Elswick route has previously been precluded from consideration by Lancashire County Council
- The Broughton route via the B5269 is the only preferred route for which a through Traffic Assessment has been completed, and is therefore the only preferred route that can be included in the traffic management plan

**Cat Smith MP Lancaster** – objects to the proposal and her letter is supported by 968 residents of County Palatine, Lancaster with 181 others in support.

**Representations:** Since the 1 June 2015 and up to 12.00am Friday 19 June a further 225 representations objecting to the proposal have been received. The reasons for objecting reflect those already summarised in the report. It is not known whether the additional representations received have been made in respect of Regulation 22 additional further information that was submitted by the applicant and advertised in March 2015, and if so whether they are from individuals that have previously made representations, or whether they are additional representations over and above those already received. It is not therefore possible to provide a conclusive figure of representations received.

The following petitions objecting to all proposals were received on Monday 15 June:

- Friends of the Earth: updated petition. Call to oppose the proposal for large scale fracking. 37939 names, of which 843 listed are names and addresses with no signatures and 37096 listed are names and postcodes with no addresses or signatures.

- Aavaar: Call to ensure planning permission is denied for proposed fracking sites. 53850 names (some incomplete) and Country of origin listed. No addresses or signatures

Presentations were received prior to the committee meeting on 25 January and on 19 June 2015 the following groups objecting to the proposals and from the applicant in support of the proposal. The points raised from the presentations in January have been summarised in Appendix 2 to the report. The presentations made on Friday 19 June are summarised as follows:

### **Ribble Estuary Against Fracking**

- No long term financial benefit to be gained by the proposal.
- The economic case has not been demonstrated.
- Peer reviewed studies show impacts on health.
- The vision of the applicant to develop the industry is not shared by residents.
- Medac – an independent body, maintains the industry will bring irreparable damage to public health, the environment and climate change by continued reliance on hydro carbons.
- Major hazard to air, water pollution, increase in traffic, use of volatile compounds, management of NORM, carcinogenic.
- Impacts cannot easily be quantified.
- Reliance on poor regulatory process and ethical behaviour of and self-monitoring by the industry is unacceptable.
- Will take years to see the true impacts of the industry at which time it will be too late.
- It is not an appropriate transition fuel and will displace investment in renewable energy.

### **Residents of Roseacre**

- Estimates of waste water arising is a significant underestimate. The underestimate will have significant impacts.
- Noise impacts and traffic impacts will be substantial particularly in Broughton.
- Traffic impacts are underestimated and both routes are unacceptable but particularly Broughton route.
- An independent noise expert appointed by residents in Roseacre are of the view that the assessments by the applicant and the county council's consultants are fundamentally flawed and noise has the potential to cause a much higher impact than predicted.

### **Friends of the Earth**

- Shale gas is not needed for energy security.
- By the time shale gas comes on stream it will replace renewable energy not coal.
- There are regulatory failings that have not been addressed.
- There is no need for the monitoring array and sets an unacceptable precedent for future development.

- 63% of residents in Lancashire do not want fracking. 90,000 name petition and over 30,000 objections.
- The impacts should be considered together rather than separately. Cumulative impacts of future development should be considered.
- Uncertainty how flow back water is to be managed.
- Risk of well failure and pollution to surface and ground water.
- Landscape impacts are significant and should be a reason for refusal.
- The noise exceedances over background are big.
- The traffic impacts are large on a substandard highway network that would adversely affect all other highway users.
- Shale gas is not a bridging fuel, and would be needed on a very large scale to have any effect on UK energy demand. This would have repeated local impacts.
- The application should be refused for additional reasons as contrary to Policy DM2

### **Roseacre Awareness Group**

- The application does not comply with national policies and the policies of the development plan.
- The location is unsuitable.
- The land is grade 2 agricultural and the applicant's assessment is wrong.
- The impacts on the rural economy would be unacceptable.
- Whilst it is the working of minerals, they do not have to be worked from this location.
- The community is strong and vibrant, with good social amenity.
- Wildlife, landscape and agriculture will be damaged.
- The proposal is not temporary.
- Local roads are unsuitable for HGVs.
- Noise and light pollution will affect health.
- Scientific studies prove health risks.
- Too much water is used

### **RAFF**

- LPA's must uphold human rights
- Social harm should be used as a reason for refusal.
- The officer report does not adequately address human impacts.
- Conclusions on air quality are unacceptable.
- There could be scaled up operations intensifying the impacts which have not been considered.
- An independent Health Risk Assessment before the applications are determined.
- PM 2.5 levels would be unacceptable. High levels have caused 540 deaths in Lancashire.
- Nitrogen dioxide levels would be unacceptable – the cause of 7000 deaths in the UK.
- Light levels would be unacceptable and harmful. Residents would be profoundly affected.

- Water pressure is already an issue. Use of mains water would exacerbate the problem.
- Flow back water could be in greater quantities than predicted – up to 75% with inherent traffic impacts.

### **Treales, Roseacre & Wharles PC**

- The proposals are in the wrong location. Shale gas development can be located in less sensitive areas using horizontal drilling.
- 184 monitoring boreholes will create an enduring principle of development. They can be constructed with the benefit of permitted development and are not associated with mineral development.
- Light, noise, air and dust pollution will be significant.
- Roads unsuitable for HGVs.
- Waste methane should be used
- Safety recommendations of HIA, RS, PHE not implemented.
- Contrary to the policies of the development plan.
- Lancashire does not have sufficient resources to monitor the operations.

### **Inskip and Woodplumpton Parish Councils**

- The road network is inadequate to accommodate the number and nature of HGV's between Broughton and Inskip.

### **Cuadrilla**

- Most of the issues raised in the presentations by objectors are addressed by the Environment Agency in the 'minded to' permit issued for Roseacre Wood. The EA consider the risks to be low.
- The LCC planning officer's report does not support most of the issues raised by objectors in the presentations.
- Further noise mitigation is proposed (beyond that in the Committee report) to reduce night time noise levels to 37dB at the nearest property.
- Inbound traffic will conduct a left turn manoeuvre at Broughton from the A6 onto the B5269. Outbound traffic will be via Dagger Road.
- A maximum of 25 vehicles inbound utilising the inbound route via Broughton and the same 25 vehicles outbound utilising Dagger Road during a peak period of no more than 6-7 weeks throughout the 6 year duration of this application.
- A request was made to the Committee for a deferral of the determination of the application to allow for public consultation and further assessment of the new information.

### **Advice**

An addendum has been circulated reporting corrections to the report and the lists the background papers referred to in the report.

CPRE representation: The EA permit contains conditions such that hydraulic fracturing can only be carried out within the target formations. The applicant is required to carry out fracturing in a controlled manner by applying a stepped approach. The permit takes account of the possibility of fracture fluid indirectly discharging into the Millstone Grit so this would not constitute a breach, but it is expected this will be controlled and mitigated should it occur. In any event, the EA permit states the impact of any indirect discharge into the Millstone Grit would be insignificant due to the chemical similarity of the fluids. The condition is unnecessary and therefore fails to meet the tests. Similarly the proposed condition regarding an agreement with the MOD fails to meet the tests but could be achieved in a different form of wording had it been proposed to grant planning permission. It should therefore be concluded that CPRE's objection to the proposal continues.

The issues raised in the additional representations and presentations are addressed in the report

### **Item 6 Application LCC/2014/0102 – Roseacre Wood**

**Preston City Council:** No objection. On balance, it is considered that the benefits of allowing the monitoring stations outweigh the temporary impacts and so it is recommended that LCC be advised that, in the event that planning permission is granted for the exploratory drilling, this council raises no objection to this particular proposal subject to the works being carried out in full compliance with the terms of the submission, the sites being restored once they are no longer required for monitoring purpose and a condition to secure the protection of any trees near to the proposed works.

**Treales Roseacre & Wharles Parish Council:** Has submitted additional comments maintaining the monitoring works are contrary to Policy SP2 of the Fylde Local Plan in that they would create unacceptable impacts of industrialisation of the countryside. The applicant has advised that they are able to monitor seismic activity without such developments through the installation of shallow buried seismic sensors.

Conditions would need 'policing' by the community. Baseline surveys can be done without the proposed array. Conditions are generic and do not apply to each of the sites. The development should be phased. The application is premature. Protected species have not been properly considered.

**Representations:** Since the 1 June 2015 and up to 12.00am Friday 19 June a further 195 representations objecting to the proposal have been received. The reasons for objecting reflect those already summarised in the report.

### **Advice**

An addendum has been circulated reporting an additional condition to be inserted after condition 2.

Page 811 – condition numbering is wrong. Re-number.

As part of presentations received prior to the committee meeting on 25 January and 18 June 2015, objections were raised to the proposed array(s) and which have already been raised in objections summarised in the report.



**DEVELOPMENT CONTROL COMMITTEE – 23 JUNE 2015  
UPDATE SHEET 2**

**Item 3 Application LCC/2014/0096 – Preston New Road**

**Advice**

**Recommendation - Conditions 27 – 29 relating to noise**

The applicant has confirmed a willingness to enter into a section 106 agreement for the purposes of conditions 26 and 32 to address the need for details of an independent monitor for noise and air quality and dust to be appointed. This would obviate the need for the conditions to be retained.

A further review of the conditions have been undertaken necessitating amendments. Conditions 27, 28 and 29 be amended as follows. All conditions to be renumbered accordingly:

27. Prior to the commencement of development details of the monitoring methodology and equipment to be used, and which shall be of a type that can transmit live monitoring of noise live direct to the County Planning Authority and can record audio and video, the locations at which the equipment is to be installed, details of how and on what the equipment is to be attached including the height and details of any structure to be used, shall be first submitted to the County Planning Authority for approval in writing. The methodology shall provide for the monitoring of noise to be carried out at a point to the rear edge of the pavement of the public highway (Preston New Road) to the front of Staining Wood Cottages and at a point in between the site entrance to Preston New Road and the site itself; at the boundary to the curtilage of Plumpton Hall Farm (The Gables) closest to the site, and at a point between Plumpton Hall Farm (The Gables) and the site. The approved monitoring methodology and equipment shall be employed and the monitoring process shall be made available to the County Planning Authority to view live on line at all times throughout all phases of the development commencing from the construction of the access road and the site.

The monitoring shall thereafter be carried out in accordance with the approved methodology continuously on a 24 hour cycle from the date of commencement of development of the access and the site and thereafter throughout all development, operational and restoration phases of the site. The results of the monitoring shall include LA90, LAeq and LAm<sub>ax</sub> noise levels, the prevailing weather conditions, details and calibration of equipment used for measurements and comments on other sources of noise which affect noise climate and including continuous audio and video recording to identify noise sources and correlate data from the noise monitoring.

If the results indicate that the noise levels exceed those set out in conditions 27 and 28 the mitigation shall be implemented within 48 hours.

*Reason: To safeguard the amenity of local residents and adjacent properties/landowners and land users and to conform with Policy DM2 of the JLMWLP.*

28. During the hours of 0700 to 21.00 hours the specific noise level shall not exceed 55dB Laeq(1 hour) (free field), when measured from the rear edge of the pavement of the public highway (Preston New Road) to the front of Staining Wood Cottages and at the boundary to the curtilage of Plumpton Hall Farm (The Gables) at a point closest to the noise source in a position to be first agreed with the County Planning Authority.

The noise from the site shall be free from prominent tones and impulses at Staining Wood Cottages and Plumpton Hall Farm (The Gables). Prominent characteristics shall be evaluated according to Joint Nordic Method 2 set out in ISO 1996 -2 (BS4142 2014). A prominent tone or impulse shall be:

- a) A distinguishable, discrete, continuous note (whine, hiss, screech, hum etc) greater than  $\Delta L_{ta}$  of 4 or more as defined in Joint Nordic Method 2 set out in ISO 1996 -2 (BS4142 2014).
- b) Distinct impulse noise (bangs, clicks, clatters or thumps) of greater than  $P$  (*Predicted Prominence*) of 6 as defined in Nordtest Method NT ACOU 112 (BS4142 2014).

*Reason: To safeguard the amenity of local residents and to conform with Policy DM2 of the JLMWLP.*

29. During the hours of 2100 to 0700 hours the specific noise level shall not exceed 39 dB Laeq(1 hour) (free field), when measured from the rear edge of the pavement of the public highway (Preston New Road) to the front of Staining Wood Cottages and the boundary to the curtilage of Plumpton Hall Farm (The Gables) at a point closest to the noise source in a position to be first agreed with the County Planning Authority.

The noise from the site shall be free from prominent tones and impulses at Staining Wood Cottages the boundary to the curtilage of Plumpton Hall Farm (The Gables). A prominent tone or impulse shall be:

- a) A distinguishable, discrete, continuous note (whine, hiss, screech, hum etc) greater than  $\Delta L_{ta}$  of 4 or more as defined in Joint Nordic Method 2 set out in ISO 1996 -2 (BS4142 2014).
- b) Distinct impulse noise (bangs, clicks, clatters or thumps) of greater than  $P$  (*Predicted Prominence*) of 6 as defined in Nordtest Method NT ACOU 112 (BS4142 2014).
- c) A free-field  $L_{Amax}$  noise limit value of 57 dB at the defined monitoring locations, necessitating continuous monitoring of  $L_{Amax}$ , as well as  $L_{Aeq}$  and  $L_{A90}$  noise levels (as already defined within Condition 27).

*Reason: To safeguard the amenity of local residents and adjacent properties/landowners and land users and to conform with Policy DM2 of the JLMWLP.*







**RE: PRESTON NEW ROAD - SHALE GAS APPLICATION**

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**ADVICE NOTE**

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1. I have been asked as a matter of utmost urgency to reduce into writing advice given over the telephone earlier today.
  
2. It is my understanding that earlier today a Councillor proposed refusal of the scheme as being contrary to Policy DM2 of the LMWDF CS. DM2 is a general policy which is broadly supportive of minerals activity so long as a range of potential impacts can be kept to acceptable levels. I am unclear as to exactly which impacts the Councillor envisaged as being unacceptable although it was indicated that landscape/visual and amenity impacts appeared to be the concerns.
  
3. In the instant case the reality is that LCC's own Specialist Advisory Service has not objected to the proposal and categorises landscape impacts as moderate and without significant effects upon the Coastal Plain Landscape Character Type or

in planning terms. If a refusal based on DM2 (or any other generalised policy) were to be issued, it is highly likely that the Applicant will appeal. In the absence of clear evidence to gainsay the views of the various consultees (noted above) and the Case Officer, there is a high risk that a costs penalty will be imposed upon the Council. There is a further point. If a DM2 refusal is issued, the Case Officer cannot give evidence at any appeal, ie his position would be impossible. Moreover, I anticipate that it would be difficult, if not impossible, to find a reputable independent planning consultant to defend LCC's position. The reality, therefore, is that a Member or Members will have to give evidence.

I so advise.

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Embassy House  
60 Church Street  
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DX 13023 BIRMINGHAM

**DAVID MANLEY QC**

24<sup>th</sup> June 2015

**RE: PRESTON NEW ROAD -  
SHALE GAS APPLICATION**

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**ADVICE NOTE**

---

**IN THE MATTER OF A SHALE GAS PLANNING APPLICATION AT PRESTON  
NEW ROAD**

**ADVICE**

1. I am instructed to advise Friends of the Earth in respect of a planning application for shale gas exploration wells and hydraulic fracturing on land north of Preston New Road, Little Plumpton.
2. The application was considered by Lancashire County Council's Development Control Committee on 23<sup>rd</sup> and 24<sup>th</sup> June 2015 and following discussion adjourned to a further meeting on 29<sup>th</sup> June 2015.
3. The County Council has published an advice note from Mr David Manley QC dated 24<sup>th</sup> June 2015 on the ability of members to disagree with officer advice in this case.
4. It might be helpful to make a few observations on the context. Parliament has given the duty to determine planning applications to local planning authorities, almost all of which are councils consisting of elected councillors. Those councils establish their own decision making arrangements which are broadly speaking that the most important or contentious applications are decided by elected politicians. Similarly the most important appeals are recovered and determined by Ministers and the rest decided by appointed inspectors. This is a perhaps unnecessary reminder that planning decisions are taken by politicians rather than experts or lawyers and that the balancing of benefits and harm is ultimately a political decision. Whether a particular impact is acceptable has a large measure of political judgment to it.
5. Any decision-maker, whether politician, officer or Inspector must have regard to the circumstances and policies and consider the comments made, including advice received from experts from their own authority, other public bodies, the applicant and third parties. It is open to the committee to disagree with any particular advice that they are given. Members must of course have a basis in evidence and exercise a reasonable planning judgment in doing so.

6. I note that there is no suggestion that it would be unlawful for the committee to refuse the application. The question raised is whether it might be unreasonable to do so. It is apparent though that there are substantial matters in the officer advice which point against the scheme and there are matters on which members may disagree with the advice which they have been given.
7. County Council officer advice to be weighed against the scheme includes:
- (i) The proposal does not accord with policies SP2 and EP11 of the Fylde Borough Local Plan;
  - (ii) The proposal, even with drilling rig height reduced to 35 metres, would have a moderate (and implicitly adverse) landscape and visual impact which would still be significant in planning terms;
  - (iii) Even without tonal or impulsive noises, there will be an increase in noise levels;
  - (iv) Predicted sky-glow is said to marginally exceed permitted standards.
8. The committee will also need to consider the other views expressed including the objection of the district planning authority and expert evidence assembled by objectors, including the noise evidence of MAS. Members may find those views persuasive. In particular there is a need to consider noise impacts in the round, in that drilling involves a continuous 24/7 industrial noise which at times will be well above other noise levels. MAS identify the need to reduce noise to a minimum and ways in which the maximum noise levels proposed do not provide sufficient protection. Were local residents to have their sleep disturbed harm to health would result.
9. Members will want to consider whether there is compliance with policy DM2, which supports mineral development if it is shown that 'all material, social, economic or environmental impacts that would cause demonstrable harm can be eliminated or reduced to acceptable levels'. Officer advice is that demonstrable harm will result from the proposal, as set out in paragraph 7 above. The committee will therefore want to decide whether the harm from the scheme has been 'reduced to acceptable levels'. It would be reasonable for members to conclude that the harm identified in the report would not be at acceptable levels. Similarly if members were to disagree with their officers and find that there would be greater harm that would also allow them to conclude that the harm would not be acceptable and there would be a breach of DM2.

A breach of DM2 would suggest that the proposal is not sustainable development in breach of policy NPPF1 and national policy itself.

10. The committee would have to consider whether there is compliance with the development plan as a whole and whether there are material considerations outweighing the plan. Compliance with the plan as a whole is not a matter of adding up policies for and against but looking at the importance of policies in a particular case. For example, a proposal which has unacceptable economic, social or environmental impacts contrary to DM2 is liable to be seen as contrary to the development plan.
11. A finding that the application is not in accord with the development plan and so should be refused is one which is open to the committee on the material which it has. Such a view would be a reasonable one to take and capable of being defended on appeal. Similarly it would not be 'irresponsible conduct' for the committee to decide to refuse the application.
12. If any matters arise out of this advice, please do not hesitate to contact me in Chambers.

39 Essex Chambers  
39 Essex Street  
London, WC2R 3AT

Richard Harwood QC

26<sup>th</sup> June 2015





**LAND AT PRESTON NEW ROAD, LANCASHIRE**

**ADVICE**

1. I am asked to advise the Preston New Road Action Group in relation to advice that Lancashire County Council have received from David Manley QC dated 24 June 2015 and made available to the public via its website.
2. Whilst I agree with the advice as far as it goes, I am of the view it does not reflect the full picture of evidence before the Committee, or the full extent of members' duties and powers.
3. The legal duty on the members is set out at s.38(6) Planning and Compulsory Purchase Act 2004 which is to determine the application in accordance with the policies of the development plan unless material considerations indicate otherwise. In other words, applications which do not comply with the development plan should be refused unless other planning considerations of sufficient weight outweigh that presumption.
4. The development plan for this application comprises the Lancashire Waste and Minerals Plan and the Fylde Local Plan.
5. Whether an application does or does not comply with the development plan or, if it does not, whether material considerations outweigh that conflict is a matter of planning judgment for elected members. In particular, members are entitled to depart from their officer's advice provided there is a rational and discernable basis for doing so: R v Newbury DC ex parte Blackwell [1998] JPL 680 per Potts J at pp. 681-692.

6. Recently the Court of Appeal has endorsed that approach in R(Cherkley Campaign Ltd) v Mole Valley District Council [2014] EWCA Civ. 567 where Richards LJ held at [49] that:

"The members were of course not bound by the opinions of experts or officers. In any event, however, in the light of passages drawn to our attention by Mr Findlay and Mr Katkowski I do not accept that the expert evidence and officers' advice all pointed in the one direction. There was certainly a body of evidence that the development would be harmful to the landscape, but there was also evidence the other way and it was recognised in the officers' advice that there was a balance to be struck."

7. Importantly the weight to attach to a material consideration is also a matter for the decision taker: Tesco Stores v. Secretary of State for Environment [1995] 1 W.L.R. 759 per Lord Hoffmann at p.780:

"The law has always made a clear distinction between the question of whether something is a material consideration and the weight which it should be given. The former is a question of law and the latter is a question of planning judgment, which is entirely a matter for the planning authority. Provided that the planning authority has regard to all material considerations, it is at liberty (provided that it does not lapse into *Wednesbury* irrationality) to give them whatever weight the planning authority thinks fit or no weight at all. The fact that the law regards something as a material consideration therefore involves no view about the part, if any, which it should play in the decision-making process."

8. Members have before them an Environmental Statement compiled by the Applicant and the benefit of an officer's report. Within those documents both the Applicant and the Council's own expert officers identify demonstrable harm that will arise from the scheme. That is particularly the case in terms of landscape impact and visual amenity. The officer accepts that such harm to the landscape "could be seen" as a breach of policy EP11 Fylde Local Plan but that temporary and reversible effects of the harm outweigh the breach. Such a judgment is however for the Committee. The Committee may conclude that the harm which the Applicant themselves has identified to the landscape

(and with which the Council's officers agree) is a breach of both EP11 FLP and also DM2 LWMP, and that such harm is not outweighed by the temporary nature of the scheme.

9. The Committee also has before it a report compiled by my client's expert noise consultants, MAS Environmental, together with their oral submissions to the Committee on 18 June. That advice firmly concludes there will be an unacceptable noise impact and, importantly, that the proposed conditions are not appropriate to mitigate that harm in breach of DM2 LWMP.
10. It is for the Committee to take this evidence and their officer's advice and come to a view as to whether the proposal complies with the development plan and, if it does not, whether material considerations outweigh that breach.
11. I understand that a motion was proposed and seconded to refuse planning permission on the basis the application conflicted with policy DM2 of the Lancashire Waste and Minerals Plan because of harm caused by landscape impact/visual amenity and noise.
12. Should the Council refuse planning permission the applicant is entitled to appeal to the Secretary of State. The usual rule is that in that process, irrespective of the outcome, each party bears their own costs irrespective of the outcome of the appeal. The exception to that rule is where a planning authority act "unreasonably". An example of which would be where a planning authority do not substantiate their reasons for refusal at appeal or only provide vague and unclear reasons for refusal, which fail to identify the planning harm.
13. In my view that either or both of the following reasons would be wholly defensible at appeal on the evidence before the Committee:

*"01. The development would cause an unacceptable adverse impact on the landscape, arising from the drilling equipment, noise mitigation equipment, storage plant, flare stacks and other associated development. The combined effect would result in an adverse urbanising effect on the open and rural character of the landscape and visual amenity of local residents contrary to policies DM2 Lancashire Waste and Minerals Plan and Policy EP11 Fylde Local Plan"*

*"02. The development would cause an unacceptable noise impact resulting in a detrimental impact on the amenity of local residents which could not be adequately controlled by condition contrary to policies DM2 Lancashire Waste and Minerals Plan and Policy EP27 Fylde Local Plan".*

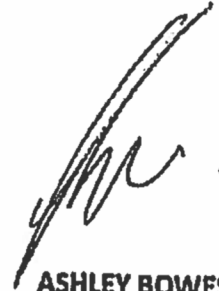
14. Whilst I agree with Mr Manley that the planning officer who provided the advice to the Committee that the application should be approved might be in conflict with their obligations under the RTPI Code to then support refusal at appeal, it would not preclude another planning officer supporting the Council's case or, as is very common, an independent planning consultant called by the planning authority at appeal to substantiate its reasons for refusal.

15. I am instructed that my client, the Preston New Road Action Group would also seek Rule 6 status in that appeal and support the Council in the above two reasons for refusal with its own noise consultant and planning consultant.

### Conclusion

16. Elected members of a planning committee are entitled to come to a different view to their officers provided there is a rational and discernable basis for doing so. In particular they are entitled to place greater or less weight on material considerations than that of their officers, for example they may place greater weight on the landscape harm and less weight on the temporary effects of that harm than their officers. In my view a refusal based on landscape and noise impact would be rational in that it is supported by

evidence before the Committee, and the harm could be adequately identified in a reason for refusal such as to be discernable. Provided the eventual reasons are supported by evidence at appeal, there is no serious risk of costs even if the appeal is allowed.

A handwritten signature in black ink, appearing to read 'Ashley Bowes', written in a cursive style.

**ASHLEY BOWES**  
**GUILDFORD CHAMBERS**

**26 June 2015**

**From:** Sales, Laura  
**Sent:** 24 June 2015 20:14  
**To:** Johnstone, Marcus (Cllr)  
**Subject:** Fw: URGENT ADVICE FOR LANCASHIRE COUNTY COUNCIL

Marcus,

Jill overlooked forwarding this email to you before you left work.

There is one further email which I will forward.

Regards,

Laura

**From:** Hayes, Kerian  
**Sent:** Wednesday, June 24, 2015 06:14 PM  
**To:** Sales, Laura  
**Subject:** FW: URGENT ADVICE FOR LANCASHIRE COUNTY COUNCIL

**Kerian Hayes**

Solicitor (Environment & Resources)  
Legal and Democratic Services  
Lancashire County Council  
DX 710928,  
Preston, County Hall  
Telephone 01772 53 1414

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**From:** David Manley QC [<mailto:DManley@kingschambers.com>]  
**Sent:** 24 June 2015 17:50  
**To:** Hayes, Kerian  
**Subject:** RE: URGENT ADVICE FOR LANCASHIRE COUNTY COUNCIL

Kerian,

I am happy to confirm that the reference to other general policies in my earlier advice note includes CS5. I have not expressly said that a refusal would be irresponsible but plainly if an adverse costs award were to be made, which is likely then a finding of unreasonable behaviour ie the basis for a costs award is tantamount to a finding of irresponsible conduct.

David

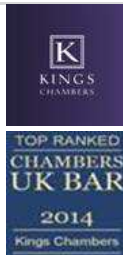




**From:** David Manley QC  
**Sent:** 24 June 2015 18:05  
**To:** Anderson, Jill  
**Subject:** RE: Telephone Conversation

**ANNEX 7**

Jill,  
Your recollection is correct  
David



David Manley QC  
Head of Planning Section

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**From:** Anderson, Jill  
**Sent:** 24 June 2015 18:03  
**To:** David Manley QC  
**Subject:** Telephone Conversation

Hello David,

In our telephone conversation I recall you made reference to a possible referral to the Ombudsman as the decision could be seen as irresponsible and Laura recalls that the decision potentially being so unreasonable as to amount to a breach of the code of conduct.

Is that your recollection to David or did I make an error in my notes and in our recollection?

Thank you for your note to Kerry which I have seen.

Jill Anderson  
Senior Solicitor  
Legal and Democratic Services

Lancashire County Council