



Portfolio Holder Decisions

- 1. Application for Discharge of an Agreement relating to land at Bloomfield Garage, Cockerham Road, Bay Horse, Forton** (Pages 1 - 20)

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Portfolio Holder Report

The portfolio holder will make a decision on this item after seven days have elapsed (including the date of publication).

Report of:	Portfolio Holder	Date of publication
Garry Payne, Chef Executive	Councillor Alan Vincent, Resources Portfolio Holder	4 October 2018

Application for Discharge of an Agreement relating to land at Bloomfield Garage, Cockerham Road, Bay Horse, Forton

1. Purpose of report

- 1.1 To consider a request for the discharge of an Agreement dated 8 July 1988 made under section 52 of the Town and Country Planning Act 1971 and section 33 of the Local Government (Miscellaneous Provisions) Act 1982 relating to land at Bloomfield Garage, Cockerham Road, Bay Horse, Forton attached at Appendix 1 ('Agreement').

2. Outcomes

- 2.1 Discharge would leave the land unrestricted by the terms of the Agreement and would lead to removal of the related entry in the Local Land Charges Register. It would remove a restriction that may deter proposed purchasers and occupiers of the potential new residential development.

3. Recommendation

- 3.1 To authorise the Senior Solicitor to obtain the discharge of the Agreement by way of negotiation and completion of an appropriate deed of discharge with the relevant parties.

4. Background

- 4.1 In 1988 the then owner of the industrial land at Bloomfield Garage, Cockerham Road, Bay Horse, Forton shown edged red on the Agreement ("Land") entered into the Agreement with the council in connection with planning application reference number 02/88/0213 for the 'swapping over of the storage building and workshop, and creation of new access and hardstanding' on the Land. The Agreement requires that (i) no further buildings shall be erected or placed on the Land without the consent in writing of the council first being obtained and (ii) no further areas of hardstanding shall be laid or constructed on the Land without the consent

in writing of the Council being first obtained. It also requires that no building structure or erection shall be constructed erected or placed on the Land except in accordance with the planning application, including its landscaping requirements. The Agreement provides further that these restrictions apply permanently. Planning permission was granted for the development following the completion of the Agreement.

- 4.2** The request to discharge the Agreement has been made by the present owner of the Land who also owns the wider site which is shown edged red on the plan at Appendix 2 and which incorporates the Land. The approximate position of the Land is shown on this plan (and on the subsequent plans) shaded blue.
- 4.3** In August 2000 a planning application reference number 02/00/0656 was submitted in respect of the land shown edged red on the plan at Appendix 3 to allow the alteration/extension to the buildings on the Land to form one self-contained flat. Planning permission was granted subject to a condition that the flat be occupied only by a person employed or last employed at the Bloomfield Garage. This permission has been implemented.
- 4.4** On 19 February 2016 planning permission was granted under reference number 15/01000/FUL for “change of use of existing barn (part residential)” to create one dwelling including associated access and car parking (following demolition of existing workshop) in respect the land shown edged red on the plan at Appendix 4. A condition requires that the barn be occupied only by a person or persons wholly employed in the associated commercial use of Bloomfield Garage and haulage yard and their dependants.
- 4.5** On 15 November 2016 planning permission was granted under reference number 16/000354/OUT on appeal pursuant to an outline planning application for “the erection of four dwellings with access applied for (all other matters reserved)(re-submission of 15/01001/FUL)” on land shown edged red on the plan at Appendix 5.
- 4.6** On 6 December 2017 planning permission reference number 17/00866/FUL was granted for the “change of use of existing barn (part residential) to create one dwelling including associated access and car parking (following demolition of existing workshop” in respect of the land shown edged red on the plan at Appendix 6. This permission is not subject to an occupancy restriction.

5. Key issues and proposals

- 5.1** The key issue is whether the provisions of the Agreement remain necessary and appropriate such that it would be reasonable to continue to retain them in the present circumstances.
- 5.2** The Agreement was entered into at a time when the use of the Land was wholly industrial in nature. A residential use has been introduced into the Land, albeit in connection with the existing use. The present owner has

indicated that it is intended to develop the Land and part of the wider site within his ownership for residential purposes. The Land and part of the wider site now have permissions for residential development in accordance with 16/00354/OUT (in outline) and 17/00866/FUL (full). If implemented, these will change the character of the use to wholly residential.

- 5.3** The indicative layout plan to planning permission 16/00354/OUT at Appendix 7 shows one of the proposed four residential units largely sited within the Land. If this permission were to be implemented it is likely that, however the site is eventually configured, a residential unit will be constructed wholly or partly within the Land. The future owners of such a dwelling would be subject to the restrictions in the Agreement, although the Inspector in considering the application 16/00354/OUT on appeal did not require the Agreement and has imposed all the conditions that he considered necessary and reasonable to control the approved development.
- 5.4** Similarly the council has imposed appropriate conditions on planning permissions 15/01000/FUL and 17/00866/FUL. In none of these decisions has any further control such as provided for in the Agreement been considered necessary. The officer view is that the sets of conditions on the existing permissions and the controls under the planning legislation are sufficient and appropriate. It is considered that continuation of the Agreement is not required should the existing permissions, or any combination of them be implemented.
- 5.5** Even if the Land continues to operate as at present and none of the permissions affecting the Land and/or the wider site are implemented, the officer view remains that there is no benefit in maintaining the Agreement. The Land remains subject to the general planning legislation and to any applicable conditions imposed on the implemented permissions. Furthermore any future planning applications would be considered on their own merits in accordance with the public interest and appropriate statutory provisions. Appropriate conditions would be imposed and obligations obtained as necessary and relevant to the individual applications. Consideration has been given to the scope of permitted development rights in the assessments in this Report
- 5.6** In all the circumstances therefore, the view is that the discharge of the Agreement would be acceptable in planning terms and that the retention of the Agreement no longer serves a planning purpose. Further, it is considered that there is no other purpose for which it would be necessary or proportionate to retain its provisions.
- 5.7** This request has been considered with reference to the qualified rights pursuant to Article 8 and Article 1 of the First Protocol of the European Convention on Human Rights. Public and private interests have been balanced and it is considered that there is no impact that would substantiate refusing this request. Due regard has been taken of the equality duty as contained within the Equality Act 2010 and the likely

impact on crime and disorder has also been considered. No relevant issues have been identified to affect discharge of the Agreement.

- 5.8** It is recommended that the Senior Solicitor is authorised to discharge the Agreement by way of an appropriate deed of discharge with the relevant parties.

6. Delegated functions

- 6.1** The discharge of agreements entered into under s52 of the former Town & Country Planning Act 1971 is not one of the functions listed for decision by Council, committee or officer under the Local Government (Functions & Responsibilities) Regulations 2000. Section 9D of the Local Government Act 2000 provides that functions not listed in those Regulations should be taken by the Executive.

- 6.2** The matters referred to in this report are considered under the following Executive function delegated to the Resources Portfolio Holder (as set out in Part 3 of the Council’s Constitution): determinations relating to the release or modification of covenants affecting land of which the Council has the benefit where the Head of Building Control does not have delegated power to deal with such requests.

Financial and legal implications	
Finance	There will be costs incurred for staff time. These charges should be recovered from the applicant on a cost recovery basis and in line with any existing fees and charges applicable.
Legal	Section 52 of the Town and Country Planning Act 1971 provided that a ‘local planning authority may enter into an agreement with any person interested in land in their area for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be prescribed by the agreement’. Although section 52 has been repealed, the power to vary or discharge agreements entered into under this power can be undertaken pursuant to the express, general power of competence under s1 Localism Act 2011. An appropriate deed of discharge will be required.

Other risks/implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	x
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	x
climate change	x
data protection	x

report author	telephone no.	email	date
David Thow	01253 887287	david.thow@wyre.gov.uk	18/09/2018

List of background papers:		
name of document	date	where available for inspection
None		

List of appendices

- Appendix 1: The Agreement
- Appendix 2: Land ownership plan
- Appendix 3: Site plan to 02/00/0656
- Appendix 4; Site plan to 15/01000/FUL
- Appendix 5: Site plan to 16/000354/OUT (granted on appeal)
- Appendix 6: Site plan to 17/00866/FUL
- Appendix 7: Indicative layout to 16/000354/OUT

dems/ph/cr/18/0009dt2

DATED

6th July

1988

THE WYRE BOROUGH COUNCIL

and

MR. EDWARD CAPSTICK

A G R E E M E N T

under Section 52 of the Town and Country
Planning Act, 1971 relating to land at
Bloomfield Garage, Cockerham Road, Bay Horse,
Forton.

J. HARRISON, ESQ. LL.B.,
Principal Legal Officer,
Wyre Borough Council,
Civic Centre,
Poulton-le-Fylde,
FY6 7PU.

BRAW & SORE LTD.,
SHAWAY HOUSE,
LONDON, S.E.26.

This

AGREEMENT is made the *Eightth* day
of *July* One thousand nine hundred and eighty eight
BETWEEN THE WYRE BOROUGH COUNCIL (hereinafter called 'the
Council') of the one part and EDWARD CAPSTICK of 11 Pine Grove
Garstang near Preston Lancashire (hereinafter called 'the Owner')
of the other part _____

WHEREAS:

- (1) The Council is the local planning authority for the purpose of the Town and Country Planning Act 1971 (the 1971 Act) for the area within which the property described in the First Schedule hereto is situated (the said property) _____
- (2) The Owner is seised of the said property for an estate in fee simple absolute in possession free from all incumbrances _____
- (3) The Owner has applied to the Council for planning permission for the development of the said property in the manner and for the uses set out in the Second Schedule hereto _____
- (4) The Council having duly complied with all duties imposed on it by or under the 1971 Act has agreed to grant permission (the permission) for such development subject to such conditions as are specified in the permission and subject to the execution and exchange for the permission of this Agreement _____
- (5) The Owner has agreed to enter into this Agreement in exchange for the permission _____

NOW THIS DEED WITNESSETH as follows:-

1. THIS Agreement is made in pursuance of Section 52 of the Town and Country Planning Act 1971 and section 33 of the Local Government (Miscellaneous Provisions) Act 1982 _____

2. THE Owner for himself and his successors in title hereby covenants with the Council with intent to bind the said property and every part thereof into whosoever hands the same may come and to the intent that this covenant may be enforced by the Council against persons deriving title under the Owner pursuant to section 52 of the 1971 Act as if the Council were possessed of adjacent land and this covenant had been expressed to be made for the benefit of such land (but so that no person shall be liable for any breach of this covenant occurring after he shall have parted with all interest in the said property or the part thereof in respect of which such breach occurs) that the said property shall be permanently subject to the restrictions specified in the Third Schedule hereto and that no building structure or erection shall be constructed erected or placed on the said property except as specified in the Second Schedule hereto

3.(1) ~~NOTWITHSTANDING~~ anything hereinbefore contained the foregoing covenant shall not prohibit or restrict or require anything to be done before the date on which the development specified in the planning permission shall be taken to be begun within the meaning of section 41 or 42 and section 43 of the 1971 Act.

(2) IF the planning permission shall expire before the development has been begun as aforesaid or is revoked or otherwise withdrawn or without the consent of the Owner or his successors in title modified by any statutory procedure this Agreement shall thereupon cease to have effect

4. THE expressions 'the Council' and 'the Owner' shall include their respective successors in title and assigns and this agreement shall operate so as to bind each and every part of the said property into whosoever hands the same may come and shall enure for the benefit of the local planning authority provided

always that no persons shall be liable for any breach occurring after he or they shall have parted with their interest in the land _____

IN WITNESS whereof the Council has caused its Common Seal to be hereunto affixed and the Owner has set their hand and seal this day and year hereinbefore mentioned _____

FIRST SCHEDULE

Land at Bloomfield Garage Cockerham Road Bay Horse near Lancaster shown on the plan attached hereto and thereon edged red _____

SECOND SCHEDULE

Exchange of uses of workshop and storage buildings the construction of additional hardstanding and the provision of landscaping in accordance with planning application No. 02/88/0213 dated 5th February 1988. _____

THIRD SCHEDULE

1. No further buildings shall be erected or placed on the said land without the consent in writing of the Council being first obtained. _____
2. No further areas of hardstanding shall be laid or constructed on the said land without the consent in writing of the Council being first obtained. _____

THE COMMON SEAL of THE WYRE
BOROUGH COUNCIL was hereunto
affixed in the presence of:-

P. Bawler

Assistant Secretary



SIGNED SEALED and DELIVERED by
the said EDWARD CAPSTICK in
the presence of:

Edward Capstick



Robert B Nesbitt

12 Pine Grove

Greentown

Retired Farmer

SECTION 52 AGREEMENT

Swapping Over of Storage Building and Workshop, and Creation of New Access and Hardstanding

Bloomfield Garage, Cockerham Road, Forton

Application No. 02/88/0213

Key:



Application Site

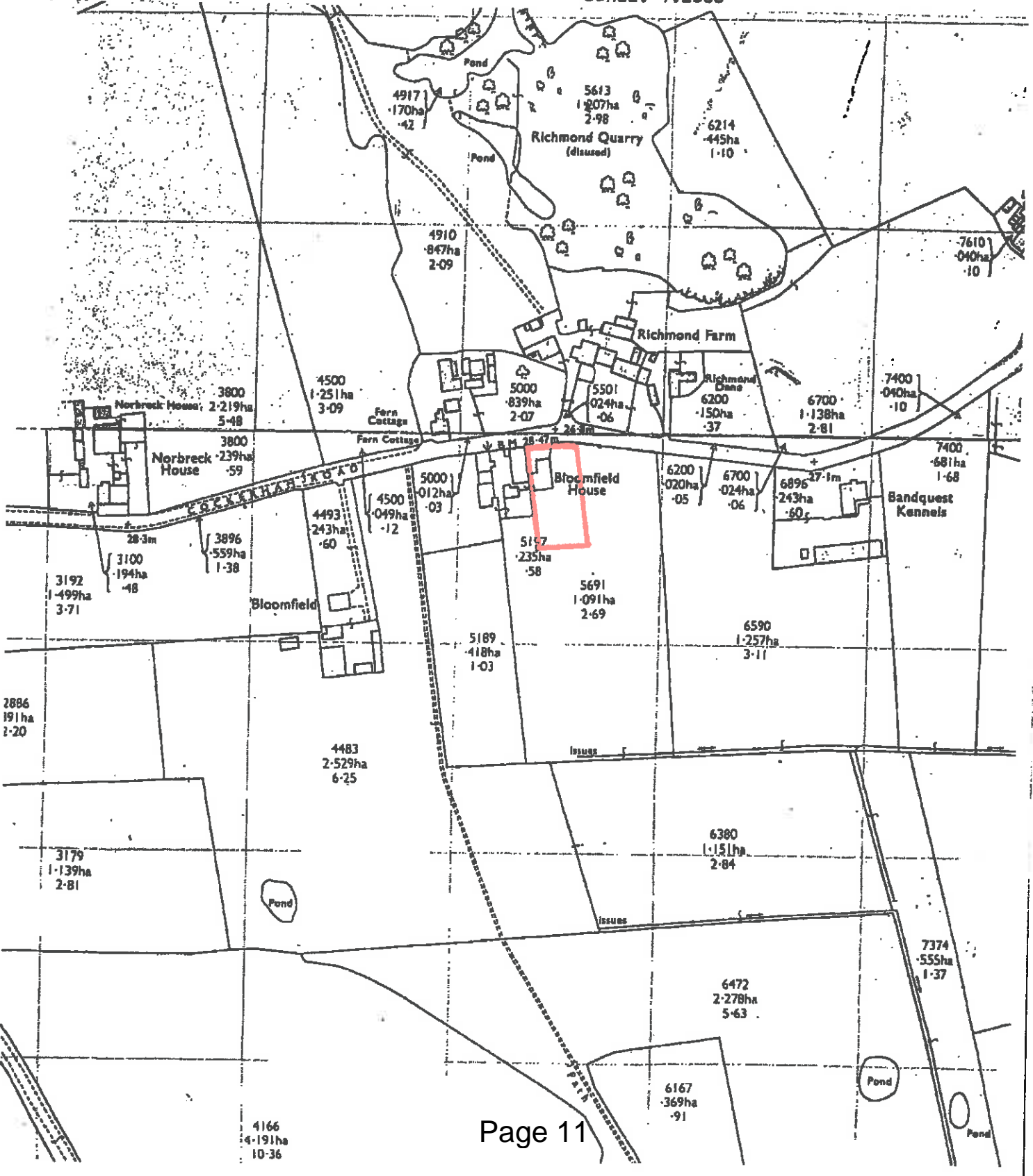
[Signature]
ASSISTANT SECRETARY



I K SMITH BA, MSc, DipEP, MBIM, ARICS, FRTPI
PLANNING OFFICER

DATE: April 1988

SCALE: 1:2500



Town and Country Planning Act 1971

PLANNING PERMISSION

Name and Address of Applicant
E CAPSTICK ESQ
11 PINE GROVE
GARSTANG

Name and Address of Agent
E CAPSTICK ESQ
11 PINE GROVE
GARSTANG
PRESTON LANCs

Part 1 - Particulars of Application

Date of Application: 11/02/88

Application No. 02/88/0213

Description of Development:

SWAPPING OVER OF STORAGE BUILDING AND WORKSHOP, AND
CREATION OF NEW ACCESS AND HARDSTANDING

Location of Development:

BLOOMFIELD GARAGE, COCKERHAM ROAD, FORTON

Part 2 - Particulars of Decision:

The Wyre Borough Council hereby give notice in pursuance of the provisions of the Town and Country Planning Act 1971 that PERMISSION HAS BEEN GRANTED for the carrying out of the development referred to in Part 1 hereof in accordance with the application and plans submitted.

This permission is granted SUBJECT to the condition that the development must be begun not later than the expiration of five years beginning with the date of this permission. This condition is required to be imposed pursuant to section 41 of the Town and Country Planning Act 1971.

This permission is also granted SUBJECT TO THE FOLLOWING CONDITIONS:

- 01 Landscaping and screening shall be provided and retained in accordance with a scheme and programme which shall be submitted to, and approved by, the Local Planning Authority before any of the buildings hereby approved are first occupied. The Scheme and programme shall thereafter be varied only in accordance with proposals submitted to and approved by the Local Planning Authority and such variations shall be deemed to be incorporated in the approved scheme and programme. Any trees removed, dying, being severely damaged or becoming seriously diseased within 2 years of planting shall be replaced by trees of similar size and species to those originally required to be planted.
- 02 Before the development is brought into use provision shall be made within the site for the parking and turning of all vehicles using and calling at the site to the satisfaction of the Local Planning Authority.
- 03 Before the development is brought into use the parking and servicing area shall be properly marked and laid out, drained, surfaced, sealed and thereafter retained to the satisfaction of the Local Planning Authority.
- 04 Before the development is brought into use, landscaping and screen planting shall be provided and retained along the NORTHERN boundary of the site in accordance with a scheme to be agreed with the Local Planning Authority.
- 05 The building at the front of the site shall only be used for storage purposes within Class B8 of the Town and Country Planning Uses Classes Order 1987.

THE REASONS FOR THE CONDITIONS are as follows:

- 01 To safeguard the visual amenities of the locality.
 - 02 To enable vehicles to stand clear of the highway on a satisfactory parking area.
 - 03 To enable vehicles to stand clear of the highway on a satisfactory parking area.
 - 04 To safeguard the visual amenities of the locality.
 - 05 The use of the premises for any other purpose could prove injurious to the character of the area and would require further consideration by the Local Planning Authority.
- ATTENTION IS DRAWN TO THE FOLLOWING:
- 01 The applicants attention is drawn to the Section 52 Agreement recently signed with regard to this site.

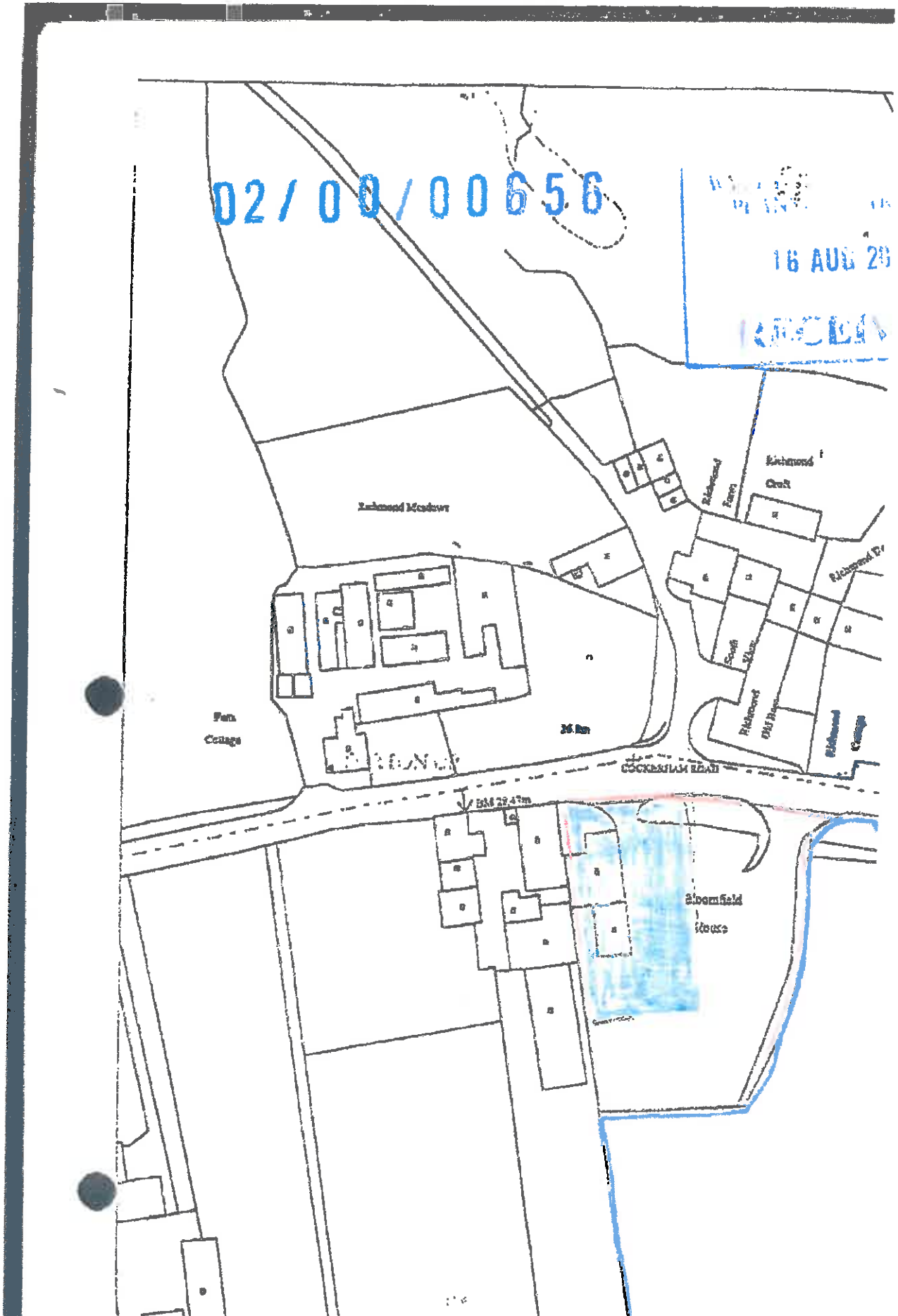
Date: 02/08/88
Wyre Civic Centre
Breck Road
POULTON-LE-FYLDE
Lancs FY6 7PU



A. K. Smith BA, MSc, DipEP, MBIM, ARICS, FRPI
Planning Officer
02/88/0213

PLEASE REFER TO THE ACCOMPANYING STATUTORY PROVISIONS AND NOTES WHICH FORM PART OF THIS NOTICE.

Appendix 3

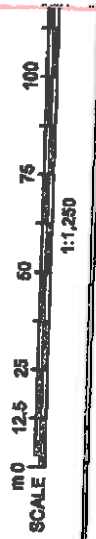


Appendix 5

LOCATION PLAN

BLOOMFIELD GARAGE, COCKERHAM ROAD, BAY HORSE, LANCASTER, LA2 0H

REFUSED



GA ASSOCIATES

01525 82814
01525 82815
01525 82816

MR CAPSTICK

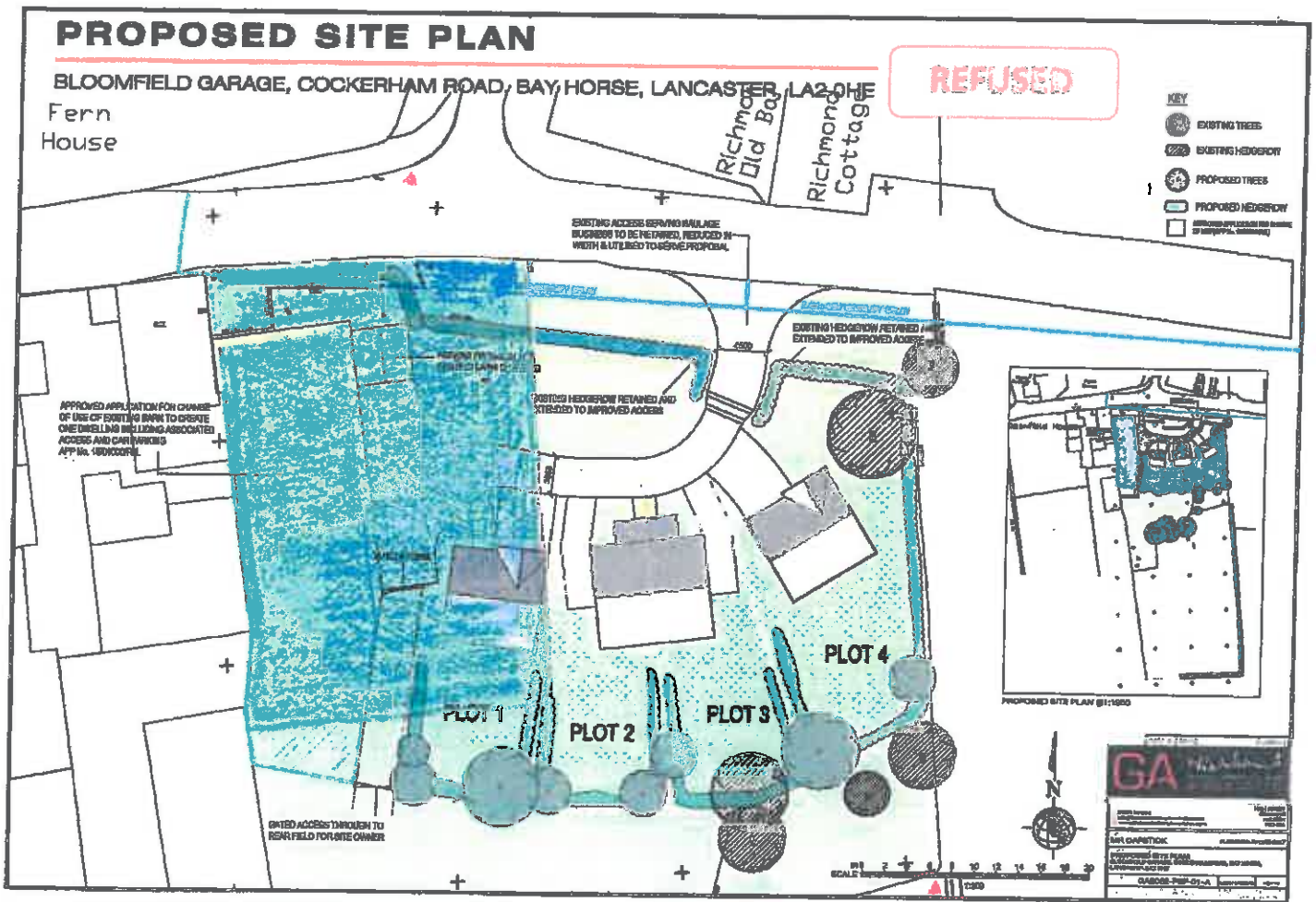
PLANNING PURPOSES ONLY

LOCATION PLAN:
BLOOMFIELD GARAGE, COCKERHAM ROAD, BAY HORSE,
LANCASTER, LA2 0H

GA2062-LP-01



Appendix 7



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