

# POS Enterprises

**Wigan Metropolitan Borough Council**

**Land at Astley Park Way, Tydesley, Wigan**

**A/23/96226/Major**

**Independent audit of decision making**

**December 2025**

# Wigan Metropolitan Borough Council

## Independent Audit of Planning Application A/23/96226/MAJOR Land at Astley Park Way, Worsley

### Introduction

1. Wigan Council has commissioned the POS Enterprises to undertake an independent audit of the above planning permission which was granted, subject to conditions and the signing of a S106 agreement, at the Council's Planning Committee on the 11<sup>th</sup> June 2024.
2. Following the Committee decision the legal agreement was signed and the decision issued on the 24<sup>th</sup> August 2024. Subsequently a further seven applications have been submitted for the discharge of conditions. Four of these have been approved and three remain outstanding. Construction of the development commenced in 2025 and the buildings are largely completed. Hard surfaced areas for access and parking are also approaching completion and as of 12th December soft landscaped areas were being planted.
3. Following a significant number of complaints from local residents during the construction and exchanges of correspondence with the authority, the Council instigated an independent review.

### The Application

4. The development proposed in the application is warehousing units (Use Class B2/B8) including ancillary integral office space (Use Class Eg) installation of PV panels to each unit, with associated car parking and service yards, internal access roads, diversion of footpaths and associated engineering, infrastructure and landscaping works. Proposals are for buildings totalling nearly 33,000 square metres on a site of 12.71Ha with access from Astley Park Way.

### Terms of Reference

5. The purpose of the audit is to establish whether the process followed in dealing with the planning application properly complied with law, regulations and national guidance. It is not a function of the audit to consider the merits of the application, ie whether the decision to grant planning permission was the correct one in planning terms.
6. The review examines the planning history of the site, all aspects of the processing of the application from submission, reporting, committee consideration, decision and approval of conditions. It includes consideration of whether all statutory requirements were met in registering and publicising the

application and whether there was any inconsistency or ambiguity in the application plans and documentation. Particular focus has been on consultation both pre-application and post submission.

7. The audit took the form of a desk top review of the documentation, a site visit, meeting the Development Management Officers responsible for processing the application and an on-line meeting with representatives of the Astley Warehouse Action Group. The intention was to have an in-person meeting with members of the Action Group but this could not be arranged within the timescale and commitments of those involved.

## Legal Background

8. Local Planning Authorities have a statutory duty to determine planning applications within their area under The Town and Country Planning Act 1990 as amended. There are some exceptions to this but they are not relevant to this case. Section 38(6) of the 1990 Act requires the LPA to determine applications in accordance with the development plan unless material considerations indicate otherwise. This is a legal duty and the fundamental basis for planning decision making. For Wigan the development plan consists of the Saved Policies of the Wigan Replacement Unitary Development Plan 2006 (UDP), The Wigan Local Plan Core Strategy 2013, and Places for Everyone 2024. The position regarding these is set out below.
9. Material considerations are not defined in legislation and there is therefore variation in what may be relevant in any particular application. They must recognise that planning decisions must be in the public interest and therefore purely private interests such as the impact of development on the value of neighbouring property cannot be a material consideration. The LPA can take account of public views where they relate to relevant planning matters but local opposition or support for a proposal is not in itself a ground for refusing or granting permission, unless it is founded upon valid material planning considerations. The actual numbers of objections or supporters for an application is not in itself a material consideration.

## Planning policy

10. The Wigan UDP 2006 identified this site as part of a broader site allocation for employment uses (B1,B2 and B8) (EM1A Site 9). This allocation was taken forward into the Local Core Strategy 2013 including the application site in the Policies Map as part of the Chaddock Lane Primary Employment Area. Policies in the 2024 'Places for Everyone ' Joint Development Plan support the UDP and Core Strategy allocation. There is therefore a firm in principle policy basis for employment based development.

## Previous planning history

11. Outline planning permission was granted in September 2007 for an employment park of up to 31500 sqm of Class B1, B2 and B8 uses.

(A/06/67659) There were two associated approvals related to this application, a variation of condition to allow a revised access arrangement (A/08/72144) and a reserved matters approval for the provision of new access road and associated landscaping (2010). No further works to implement this permission were undertaken.

12. In 2015 a new outline application was granted for a mixed use development of up to 28,000 sqm of employment floorspace (B1, B2 and B8) together with up to 165 dwellings and land for community use, open space and landscaping. As an outline application the submitted layout plans, elevations and landscaping were illustrative only and do not form a part of the permission. If development were to proceed these issues would be considered with the details submitted as reserved matters applications. In this case all matters were reserved apart from access from Chaddock Lane for the employment uses and access from Garrett Hall Road and Garret Lane for residential development. Outline planning permission was granted in February 2017.
13. Two reserved matters applications for residential development were subsequently approved, for 62 units in 2017 and 103 units in 2019. Both these developments have been completed and occupied. The plans submitted with the application for the employment use were indicative only. The Design and Access statement included indicative layouts for both the residential and employment areas and referred to a maximum height of the employment buildings of 13m in one place (para 10 'amount and scale') while a maximum of 15m was referred to in another place (para 15.0 'employment appearance'). No further applications had been submitted for the employment development, the site of which remained open undeveloped land. The outline permission expired on the 27<sup>th</sup> February 2020 and therefore after that date any new development on the site would require a fresh planning permission.
14. The expiry of the 2017 permission was not a matter that the LPA had any control over. All planning permissions are time limited – outline permissions normally to 3 years and full permissions normally to 5 years. They cannot be implemented beyond their expiry date and a new permission is required to permit any development to proceed. Previous expired permissions do not impose limitations on future applications as each application must be considered on its merits against the planning policies and requirements current at the time. They are very likely to differ from previous expired permissions to reflect both changing planning policies and changes in the commercial market.

### Pre-application

15. According to the applicant's Planning and Heritage Statement extensive pre-application discussions took place with Council planning, highways and footpaths officers over a period of twelve months prior to submission of the application. The applicant reports that there was support from the officers for the site's development for employment use which would be expected given the planning policy position and previous permissions

## Pre-application Publicity and Consultation

16. The Government's National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) both highlight the benefits of pre-application discussion and early engagement. The NPPF (2024) states in para 41 *'Local Planning Authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take-up... They should also, where they think this would be beneficial encourage any applicants ..... to engage with the local community ...'*
17. National Planning Practice Guidance (NPPG) para 012 *' Is pre-application community consultation compulsory? Pre-application engagement with the community is encouraged where it will add value to the process and the outcome .....if pre-application advice is to be meaningful then a proposed development may change prior to submission of a formal planning application. This could resolve issues identified at the pre-application stage and/or it may raise new issues that need to be discussed.'*
18. The Council's Statement of Community Involvement September 2023 also refers to early engagement. *Para 2.4 'Our approach to community involvement in the planning application process is in line with paragraph 39 of the NPPF which advocates early engagement for the benefit of all parties. Para 7.1 The council believes that community engagement on planning applications brings benefit to the process by enabling the community to understand proposals and express views on them or suggest changes which could improve them' Para 7.4 Most development proposals benefit from engagement with the local community early in the process and we encourage applicants to undertake community involvement exercises.'*
19. In this case the applicant's attempts at community engagement are set out in their Planning and Heritage Statement at para 3.2. This states that the applicant has engaged with key stakeholders such as local residents and ward councillors and has carried out a formal community engagement exercise. This involved letters to ward councillors which invited them to a meeting and a letter drop to 200 residential addresses nearest to the site including businesses. The letter invited comments. In the words of the statement *'the consultation was designed to allow the community to view the proposals and share their feedback with the design team'*.
20. Letters were sent by post on the 22<sup>nd</sup> September with a deadline for responding to the applicant by the 9<sup>th</sup> October. The application is recorded by the Council as being received on the 2<sup>nd</sup> October. This indicates that there was no meaningful opportunity for the local community to have any engagement with the development prior to submission and any possibility of developing an understanding of the application and expressing views which could lead to change, as envisaged by the Government and the Council in their public documents, was completely unrealistic. It is not part of the brief for this audit to engage with the applicant and there can be no comment on what their objectives were and how the timescales were determined, but it seems a

reasonable conclusion that the lack of opportunity for the local community to engage at a meaningful stage would have a negative impact on the later controversy. It also follows that the low level of response (13 residents and 1 councillor) and the concerns expressed cannot be considered representative of the local reaction.

21. While the applicant's attempts at community engagement appear wholly unsatisfactory, they do not impact on the Council's statutory duty to determine the planning application as submitted. As the policy and guidance at both national and local level clearly state, early engagement pre-application with the applicant is to be encouraged and recommended but it cannot be required.

## Environmental Impact Assessment

22. The Town and Country Planning (Environmental Assessment) Regulations 2017 set out the purpose and requirements for Environmental Impact Assessments (EIA). The regulations set out a procedure for identifying those projects which should be subject to an EIA and for assessing, consulting and coming to a decision on those projects which are likely to have significant environmental effects.
23. The regulations set out when an EIA must or may be required when considering planning applications. Schedule 2 of the regulations includes (10) Infrastructure Projects (a) industrial estate development projects where the area of development exceeds 0.5 ha and (b) Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas where (i) the development includes more than 1 ha of urban development which is not dwellinghouse development. Schedule 2 criteria identify development which may require an EIA but do not in themselves determine that an EIA is necessary. The Astley Park application could fall within either or both para 10 (a) or (b) of these criteria which then requires the LPA to determine whether it meets the test of having significant environmental effects which should require an EIA. This is a matter for the LPA to decide.
24. The Council's validation checklist which is completed for all applications to check all necessary documentation is in place before an application is accepted as valid has a box to be completed to indicate whether or not an EIA is required. In the case of this application this box was not completed. This is unhelpful as it should confirm that the matter was considered on receipt of the application, but it does not in itself give any indication positive or negative. In a later letter to the Astley Warehouse Action Group the Council stated that *'in this case it was considered that the proposal did not constitute EIA development and the council was content to validate the planning application without an environmental statement.'* The Planning and Heritage Statement accompanying the application contained assessments of those factors which would be expected to have been included in an EIA, supplemented and updated where necessary.

25. It should be noted that the 2015 outline application for the site was also not subject to an EIA. At that time the requirements were subject to the 2011 EIA regs later replaced by the 2017 regulations. The relevant factors that would have been included in a formal EIA were all covered in reports accompanying the application. The 2015 application was the subject of a screening opinion submitted by the applicant for the LPA to determine whether an EIA was required and if so what topics it should cover. This was not the case with the 2023 application, when a screening opinion was not required, but having come to the conclusion that an EIA was not necessary in 2015 it was consistent that it would not be a requirement in 2023.

### Processing of the application

26. The planning application was received by the Council on the 2<sup>nd</sup> October 2023. There were a number of minor errors in the application which required rectification by the applicant before it could be accepted as valid. It was validated on the 24<sup>th</sup> October 2023. At this stage the required documents, statements and reports were checked, consultees both internal and external established and neighbour notifications identified. This process followed well established procedures. Each planning application will have differing consultation requirements which need to be reviewed by the authority to enable it to come to a properly informed decision and there was no indication that there were any significant omissions in this case.

### Accuracy of the plans

27. Representations were received about the accuracy of the application plans and in particular that the site plan did not include the housing to the east of the site in Meadowcroft Gardens, Dandelion Green, Elderfield, and Daisyfield. The applicants were using an out of date ordnance survey base for their plans which was unfortunate but did not compromise the application or its processing. The Council was aware of the error and it did not preclude the inclusion of properties in these roads from notification and the houses were included in the cross sections in the application drawings.
28. Concerns have been expressed locally about the accuracy of some of the plans and in particular apparent inconsistencies in the cross sections. This can be explained in that the cross sections shown on the landscaping plans are taken from a different location from the proposal plans. While this may be confusing it is not an error as both are correct.

### Public and Neighbour Notification and Consultation

29. The statutory requirements for publicity for applications for planning permission are set out in the Town and Country Planning (Development Management Procedure)(England) Order 2015. For major applications and applications affecting a public right of way the requirements are set out in para (4) and para (7) . Paragraph 7 requires that the LPA publishes on its website



the address or location of the proposed development, a description of the proposal, the date by which representations should be made (at least 14 days), where the application can be inspected and how representations can be made. Paragraph 4 stipulates that at least one site notice is displayed on or near the land for not less than 21 days, notice is served on any adjoining owner or occupier and a notice is published in a newspaper circulating in the vicinity of the application site.

30. The Council's Code of Practice for Publicity for Planning Applications (Jan 2017) sets out the statutory requirements and then goes into more detail about how they are to be exercised locally. In terms of neighbour notification it specifies that owners and occupiers of adjoining properties will be notified and these are defined as having a common boundary with the application site. The code states that the council will only use submitted application documents, ordnance survey sheets and site visit information to identify adjoining properties. The Code also recognises that there will be developments likely to create wider concerns and that where this is the case additional publicity may be appropriate in addition to the statutory requirements. Examples are listed where this might be appropriate including development with the potential to change the character of an area, proposals on a significant scale attracting traffic, noise and disturbance, causing activity and noise during unsocial hours and resulting in a serious reduction or loss of light, overshadowing or privacy. The code confirms that redacted copies of all representations received will be published on the website for committee cases and will be reported to Committee. A summary of these arrangements is also included in the Council's statement of Community Involvement (Sept 2023).
31. According to the Council's records they sent 90 neighbour notification letters to residential properties adjoining the site on the 7<sup>th</sup> November 2023 together with a letter to Garrett Hall Primary School and 8 businesses. Two notices were posted, one on Astley Park Way and the second at the Thistle Croft Estate. A notice was published in the Leigh Journal on 16<sup>th</sup> November 2023.
32. Three issues need to be addressed. Firstly did the notifications meet the statutory requirements. Secondly, did they comply with the Council's Code of Practice, and thirdly whether the decision was prejudiced in any way.
33. On the first point the records indicate that the statutory requirements as required by the Development Management Procedure Order were complied with. Information from local residents suggest that at least one adjoining property was not notified and that the posted notices were not well located. It was also reported that the school did not receive the letter and many of the letters did not reach many of the occupiers. There is no reason to suspect that the Council did not send the letters that are shown on their records. There was one possible omission of a bordering property but that in itself is not sufficient to prejudice the whole process. Clearly many residents did receive the letters and responded and there would be nothing to be achieved by the Council delivering only some of the letters. It is often the case that residents do not appreciate the significance of standard letters or they fail to reach an interested person. The importance of such a letter to the school may again not



have been recognised by whoever saw it. What is clear is that a large number of residents did see the letters and that many more members of the local community were aware of the proposals, either directly as a result of the notification or by word of mouth. The notifications met the minimum statutory requirements.

34. Turning to the Council's Code of Practice compliance rests with whether the development should be considered as likely to create wider concerns, in which case the Council should have considered additional publicity in the form of site notices, press notices or additional individual neighbour notifications. There are several criteria in the code which would lead towards this conclusion; potential change in the character of the area, for example tall buildings, proposals of a significant scale attracting traffic, noise and disturbance and causing activity and noise during unsocial hours.
35. The argument that this would not create wider concerns would rest on the fact that development of this site for employment uses had been considered and accepted previously with the outline planning permissions in 2007 and 2015, and that these wider issues had been addressed at that time. On the other hand there are some significant differences including activity on a 24/7 basis and the additional height and bulk of the buildings. These suggest that a broader consultation including additional properties which have a view of the development would have been appropriate.
36. The question remains as to whether a wider consultation would have had an impact on the responses and consideration of the application. Looking at the location of properties from which representations were received, many of these were not on the council's list of those notified particularly to the east and the north of the site. The occupiers of these properties were clearly aware of the application and took the opportunity to respond accordingly. It is not possible from the redacted representations to establish whether there was any significant difference between the objections made by those notified and those not notified, but intuitively it is unlikely. It is possible that a wider notification could have resulted in a greater number of representations but as stated earlier the sheer numbers of objections is not in itself a planning consideration. Having looked at the content of the representations that were received, they are wide ranging and cover the points that would be expected for an application of this nature, so it is unlikely any new and compelling matters would have been raised and that a different outcome would have resulted.
37. The Officer report states that approximately 70 representations were received. This figure has been disputed by the local Astley Warehouse Action Group which maintains that the figure should be 96. The difference is due to different counting methodology. The Council measures the number according to the number of responses received from households whereas the Action Group counts all representations received. Neither figure is wrong. Many authorities use the household method as it has been the case that multiple, often identical, representations have been received from individual addresses

presumably to boost numbers. As stated earlier the number of representations is of itself not a material consideration.

38. The Committee report summarises the points made in representations in bullet point form. There are 54 points outlined. The report notes that copies of all the representations are available on the Council website. The way the representations are set out has been criticised by local residents for not including more detail of the content which often included in depth analysis and argument. The list includes many points of detail some of which are not planning related, and points of principle. It would not be realistic to deal with each individual response in turn and there would be duplication and repetition. Most of the points raised are dealt with elsewhere in the report. The way the report sets out representations is consistent with the approach in many authorities for this type of application. There could be an attempt to group content around issues and signpost where the points are addressed, but the way these are reported is not considered to compromise the report's validity.

### Statutory and non-statutory Consultations

39. The following organisations and officers were consulted and responded.

Comments received were set out in the Committee report

- Environment Agency
  - Lead Local Flood Authority
  - Environmental Protection Officer
  - Public Rights of Way Officer
  - Highways Policy Officer
  - Transport for Greater Manchester
  - Salford City Council
  - Greater Manchester Ecology Unit
  - United Utilities
  - Coal Authority
  - Urban/Landscape Design Officer
  - Cadent Gas
40. This represents a comprehensive list as would be expected for an application of this type and scale in this location. Major applications of this scale require a number of studies and assessments at the application stage on matters such as highways and traffic impact, heritage, landscape and ecology, flood risk and drainage etc. The consultation with statutory bodies and in house and external professionals is mainly to examine the many studies submitted using their expertise, for them to add any relevant information and advice and advise the planning authority accordingly. These may result in requests for schemes to be amended or for further detailed work which can be dealt with through condition. At the planning application stage, in order to grant permission, the Planning Authority must be confident that matters raised by consultees are not so significant that they cannot be accommodated through amendment or condition. This process will often involve discussion and negotiation between the LPA, the applicant and consultees, but the planner's role is to coordinate all the various aspects that need to be taken into

consideration and reached a balanced decision. It is rarely the planners' role to contradict or override consultee's expert advice. In this case there were 33 conditions attached to the permission of which 14 related directly to the consultation responses relating to drainage and flooding, construction management, land contamination, ecology, investigative works regarding coal workings, landscape management and maintenance. The conditions agreed were satisfactory to meet the Consultee responses.

## Committee Report

41. The application was reported to the Planning Committee at its meeting of 11<sup>th</sup> June 2024. The report was drafted by the case officer and reviewed by the Development Manager and Assistant Director prior to finalisation. This is accepted practice. The agenda was published 5 working days prior to the Committee as required. The report was comprehensive and well structured, setting out in a logical way the details of the proposal, the planning background, consultation and representations and the assessment of the relevant planning considerations. The officer conclusions and recommendation to grant subject to conditions and a s106 agreement are clearly set out.
42. The report establishes the arguments as to why the principle of development is consistent with the development plan. The dimensions of each of the 4 proposed warehouse units are set out in the report including their heights. It describes the landscaping proposed and that this is intended to mitigate the acknowledged significant change to the character of the area brought about by the scale of the buildings which will be seen from adjoining residential areas. Attention is drawn to the bunding intended to mitigate the impact.
43. The report goes on to describe the location of each of the 4 proposed units in relation to the residential development and the bunding, landscaping and planting. The officer view on the impact states that *'the officers accept that the proposed development will impact the existing level of amenity experienced by local residents, especially those will live immediately adjacent to this PEA site. It must be accepted that views of these units cannot be completely mitigated for local residents, they will be seen despite the proposed landscaping scheme..... Officers are satisfied that the level of harm to amenity is, on balance, acceptable.'*
44. The report draws attention to residents' concerns about overshadowing and overbearing impact and the loss of existing green space. In the section of conclusions of amenity issues the report confirms that officers understand the concerns raised by local residents: *'Officers are fully aware of the full extent of housing that surrounds the site and that some of these houses are relatively new additions to the area. These factors have been fully considered in this assessment.... However weight must be given to the allocation of the site and the need.... to develop allocated employment sites ... This is a finely balanced issue but given the level of mitigation ... officers are satisfied that subject to the conditions the proposed development will not have an impact on the amenities of local residents to an unacceptable degree...'*

45. In this section of the report the officers draw members attention to their acknowledgement of the adverse impact on the local residents and the measures to mitigate that impact and the considerations that members should take into account in coming to their decision. Commenting on the officers' conclusion on the balance of arguments and their recommendation is not within the terms of reference for this report.
46. The report also deals with transport accessibility and parking issues, trees, landscaping ecology and biodiversity and the technical matters of flooding, drainage and ground conditions. It outlines the relevant considerations in the light of consultee responses and what conditions are required to ensure these matters are properly dealt with at a later stage. A S106 agreement would also be required relating to a highway contribution of £15,000 for local improvements and biodiversity enhancements of £199,332 to meet statutory government 10% net gain enhancement requirements.

### Consideration at Committee

47. The format at Committee is for the application to be presented by the case officer, assisted where necessary by the Assistant Director. Presentation is through slides shown on screen. Following the presentation there is provision for a speaker to speak against the proposal and a speaker in support, each limited to 4 minutes. Members of the Committee can then ask questions of officers and debate the application. 14 members of Committee were present.
48. The presentation began with an update for members which corrected some typographical errors in the report relating to the dimensions of the proposed buildings. The members were made aware of the accurate dimensions which reflected those on the application plans. The presentation had a number of contextual slides including current photographs of the site and location.
49. Slides of the application plans were displayed and explained to the Committee which included the layout, siting and dimensions of the proposed buildings. Three cross sections across the proposals were shown illustrating the relationship of the proposed buildings and landscaping to Garrett Hall School and the existing housing in Tanhouse Lane and Norton Hook. These slides clearly showed the distances and the relative heights of the proposed warehousing and existing housing, the bunds and potential heights of planting on the bunds.
50. Further slides outlined the representations received and the planning assessment with the conclusion and recommendation.
51. A speaker spoke against the development followed by a representative from the applicant, in accordance with the Council's procedures. There was no broadcasting or recording of the Committee meeting as this was not the Council's practice. Only Council meetings are broadcast. Contemporaneous notes show that 7 members of the Committee spoke during consideration of the application. Following the debate the decision was made to grant the application, with 12 in favour, 1 against and 1 abstention.
52. Following the Committee's decision the S106 agreement was drafted and agreed between the parties and the decision was issued on 14<sup>th</sup> August 2024.

## Member Site Visits

53. The protocol for member site visits is set out in the Planning Committee Code (para 11). The arrangements for member site visits differ widely between authorities. There is no statutory requirement or government advice on the matter. Some authorities visit all of the sites to be considered at every committee, others have no organised visits and some leave it to the members' or officers' discretion. This is the case at Wigan where an officer, ward member or committee member can request a site visit. The request will then be assessed against the criteria in the protocol. In this instance no request was made.

## Member Training

54. It is recommended by Government that members of Planning Committees are trained. Wigan has mandated that all members should be trained before attending and voting at Committee and this is carefully monitored. There are also refresher courses. All members present on the 11<sup>th</sup> June had attended the required training. Having reviewed the details of the training it is comprehensive and regularly updated and supplemented with role playing exercises based on actual planning cases. The training provided would comply with current good practice standards.

## Post- Committee issues

55. Judicial Review: Planning decisions can be challenged through the civil courts on the basis that such decisions were unlawful. Under Part 5 of the Civil Court Procedure Rules such a challenge must be submitted within 3 months of the decision, which was issued on the 14<sup>th</sup> August 2024. No challenge was submitted. There are no other legal procedures available to challenge the planning permission. The developer is therefore legally entitled to implement the permission as granted, subject to the conditions attached.

56. Following the Committee decision and the issuing of the planning permission the applicant had a number of steps to take prior to being able to start on site, primarily satisfying the many conditions attached to the permission.

Conditions take effect in different ways:

- Pre-commencement: These must be complied with before any development can commence
- Post demolition but prior to construction
- Some conditions are a hybrid of the first 2 bullet points above. Conditions requiring details to be submitted and agreed will usually have a clause requiring implementation as approved
- Pre-occupation: to be complied with before the use of the development (or a specific part of it) commences
- Enduring: Conditions that will have a permanent effect

## Pre-commencement conditions:

- Measures to protect retained trees and hedges are approved (condition 3)

- Measures to protect residential property from noise (acoustic fencing) are approved and implemented (condition 4)
- Submission and approval of remediation strategy regarding contamination (condition 5)
- site investigation of risk from coal mining activity submitted and remediation works in place (conditions 6 and 7)
- Submission and approval of a Construction Environmental Management Plan (condition 15)
- Submission and approval of a sustainable surface water drainage scheme and foul water drainage scheme (condition 19)

### Pre-construction conditions

- Post demolition but prior to construction up to date investigation of ground gas risk assessment and subsequent remediation measures submitted and approved (condition 5)
- Approval of measures to control giant hogweed (condition 23)
- Avoidance measures for mammals and amphibians (condition 24)
- Protection of breeding birds (condition 25)
- Protection of great crested newts (condition 26)
- Adherence to ecological assessment (condition 27)
- Adherence to Bat report (condition 28)
- Biodiversity management and maintenance plan to be submitted and approved and implemented (condition 29)
- Details of soft landscaping to be submitted and approved including schedules of plants and trees. Any loss of plants and trees to be replaced. (condition 30)
- Full details of protection of retained public rights of way during construction to be submitted and approved (condition 31)
- Details of all surfacing and parking and pedestrian links to be submitted and approved (condition 32)

### Pre-occupation Conditions

- Works in remediation strategy to be completed and approved (condition 5.4)
- All works to make site stable and safe from coal mining risks completed (condition 7)
- Electric vehicle infrastructure strategy and implementation plan submitted and approved (condition 9)
- Cycle parking provision scheme submitted and approved (condition 10)
- Parking spaces provided and drainage and run-off provisions implemented (condition 11)
- Training and Employment Management Plan submitted and approved (condition 13)
- Sustainable drainage and management and maintenance plan for lifetime of development submitted and agreed (condition 19)

- Siting and appearance refuse and recycling storage submitted and agreed (condition 21)

## Enduring Conditions

- Development to be carried out in accordance with approved plans (condition 2)
- Development to be constructed in accordance with security specifications set out in crime impact statement (condition 12)
- Development to be carried out in accordance with submitted energy statement (condition 16)
- Development to meet BREAM 'very good' standard (condition 17)
- Development to be carried out in accordance with material details as approved (condition 18)
- No materials to be stored on site outside the approved buildings (condition 33)
- Development shall adhere to approved external lighting statement for the lifetime of the development (condition 22)

57. From a desktop appraisal it appears that approval of conditions has been given where required to permit development to proceed through the submission of condition discharge applications. There is an undetermined application for the discharge of Condition 19 (drainage and levels) submitted 26<sup>th</sup> November 2025. There have been previous applications in November 2024 and March 2025 submitted to discharge these conditions which allowed development to proceed and the current application is therefore an amended provision. This is not unusual in large construction projects of this type to accommodate minor variations arising as work proceeds.

58. Ensuring compliance with conditions will depend on the nature of the condition. For example, for pre-commencement conditions it should be straightforward to determine whether they have been complied with. This should also be the case with conditions relating to pre-occupation. Many conditions can only be tested when the development is complete. This latter is particularly relevant in determining whether development has been constructed in accordance with the approved plans. Compliance with conditions which restrict the operation of the development can only be assessed once the development is in use. At the time of this report the development is not completed and not operational. Clearly certain matters will be apparent at the present time such as the location of buildings, their height and materials which can be checked.

## Enforcement

59. The Local Planning Authority has enforcement powers where there is a breach of planning control. That breach must have already occurred; it cannot be assumed that it may happen in the future. The authority has to have evidence that a development has not been built in accordance with approved plans or conditions. It can issue an enforcement notice which must specify the



breach and what is required to remedy it. An enforcement notice can be appealed, and this can be a lengthy drawn-out process. It also can issue a Breach of Condition Notice (BCN) where the breach relates to a specific condition. BCNs cannot be appealed. There is provision in urgent cases to issue a Stop Notice where an enforcement notice has already been served but not complied with or a temporary stop notice, but the authority must be convinced that a breach has occurred and that it is of sufficient harm that the breach should be stopped immediately. Stop Notices can be appealed and if found unsound damages are payable. It is a fundamental requirement that a breach of planning control has already occurred or is occurring and there is compelling evidence of the fact.

60. The Astley Warehouse Action Group requested the Council to issue an Emergency Stop Notice in respect of noise and landscape mitigation measures. Legally and procedurally this would not be appropriate. Many aspects of the development have not been completed to such a stage that there could be evidence of non-compliance with the approved plans and conditions, and mitigation measures cannot be tested until the development is finished and operational. Breaches must be tested against the permission as shown in the Council's decision notice and accompanying plans. Potential future breaches are not grounds for enforcement.
61. Bund heights: This is an issue which has been raised locally. The heights must be tested against the approved plans. Restrictions which may or may not be imposed by Cadent on height and location relative to their gas mains are not within the terms of reference of this report. Cadent were a consultee to the application and responded that they had no comments, which indicates that they had no concerns about the height of the bunds proposed over their infrastructure, and the authority acted accordingly. If there are legal restrictions on these they should be raised with Cadent through legal process, not through planning.
62. A number of other authorities and regimes other than the local planning authority will have responsibility for ensuring the development complies with their statutory requirements. These include Building Control, Highways, Environmental Health and the Fire Authority. While the Council as local planning authority has a role in ensuring that their standards and requirements are taken into account in processing the planning application, monitoring and enforcement of the completed development remains with the appropriate responsible statutory authority.

### Non-material amendments

63. Non-material amendments under S96a of the Town and Country Planning Act allow minor changes to be approved without the need for new planning applications/permissions. There have been 3 such amendments agreed for this development, to provide additional trailer parking and fencing, to amend building elevations and lighting, and for minor changes to the building boundary of unit 2. Whether to accept changes as minor amendments is at the discretion of the planning authority, but changes such as these for a

scheme of this type are not unusual. The lighting changes effectively reduced the light spillage from the scheme.

## Conclusions

64. This development has proved extremely controversial locally particularly when the full extent of the buildings permitted has become apparent during construction. This has resulted in local residents and politicians re-examining the planning processes leading up to building development.
65. The brief for this report was not to review the planning decision to grant permission. Once the permission was granted and the time limit for judicial review had passed the options for unravelling the decision were very limited and unrealistic. The brief was therefore to audit the decision-making process to consider whether all statutory requirements had been met, whether the consultation processes were consistent with national and local procedures and whether the resulting permission was sound.
66. The overall conclusion must be that the planning permission as granted was consistent with national and local legislation and procedures. This is not to either support or criticize the planning merits of the decision. That was a matter for the planning authority. What is important is that the decision makers at officer and member level took the decision in full knowledge of the relevant factors which were necessary to come to a reasonable and balanced view based on the planning merits.
67. As regards the procedures there are a number of issues which, while not prejudicing the decision, could have improved the process. At pre-application stage for major applications such as this it is good practice as recommended by Government and by the development industry to engage in early and meaningful consultation. This did not happen in this case, where developer pre-application consultation with local residents was wholly inadequate. While this is primarily the responsibility of the applicant the Council also has a role in encouraging such processes. This can result in better applications which take on board local views and improved awareness among all parties. Later antagonism between local residents, the Council and the developer could have been avoided or at least reduced. It may have identified where there may have been scope to amend the scheme before submission of the application. It could also have led to a greater awareness of what could and could not be taken into account in determining the application, such as the impact on property values. The Planning Advisory Service (PAS) has comprehensive guidance on Pre-application engagement.
68. The Council's consultation could also have been more inclusive. The neighbour notification met with the basic requirements of the Code of Practice for Publicity for Planning Applications but did not consider that this development was likely to 'create wider concern' which could have led to wider publicity. Unsurprisingly the local reaction soon created a more widespread awareness of the proposals, and many objections were received

from residents not originally notified. A broader consultation would have been unlikely to raise any new or different planning considerations but could have prevented one element of local criticism.

69. The Committee report was comprehensive and drew members attention to the relevant planning considerations in particular the relationship between the new buildings and surrounding residential properties, the mitigation measures which were proposed and the balanced decision which the Committee needed to take. The relationship was further demonstrated in the Committee visual presentation. There can be little doubt that the Committee members' attention had been drawn to the situation. All Members of the Committee had been properly trained in their role and responsibilities.
70. Once building had started there was strong local reaction. The two main thrusts of this were 'How did this happen?' and 'what can be done now?'. This report primarily addresses the first point but there has been misunderstanding of the importance of the planning permission in law and the potential for planning enforcement. Planning enforcement can only address matters inconsistent with the permission and the attached drawings. Many of these matters can only be addressed when the development is completed or nearing completion (there will be some matters included in conditions which are required during construction which can also be planning enforcement matters). The prime example is the bunding and landscaping which are identified and specified on the planning drawings. To enforce against these they must be measured and assessed on completion. If issues come to light during construction there may be scope for discussion and changes to address them but it is the compliance with the application as approved which is fundamental.
71. There have been problems such as flooding which have arisen which should be addressed with the contractor and where necessary drainage authorities on site. They are not necessarily planning matters unless they affect the approved plans or need approved plans to be amended.
72. It may be that ongoing issues could best be addressed by regular meetings with the contractor, developer, local residents and enforcement officers but this is not a matter for this report.

On behalf of POS Enterprises I would like to thank the Wigan planning service officers and members of the Astley Warehouses Action Group who cooperated in the production of this report and provided information promptly to enable the report to be completed to the deadline. I would particularly like to thank James Illingworth who coordinated the Council and Action Group inputs efficiently and effectively.

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POS Enterprises

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