

PLANNING APPEAL BY GLADMAN DEVELOPMENTS LIMITED

IN RESPECT OF LAND AT PEAR TREE LANE, EUXTON

PINS REF. APP/D2320/W/20/3247136

CLOSING SUBMISSIONS ON BEHALF OF

CHORLEY BOROUGH COUNCIL

Introduction

1. This appeal falls for determination, pursuant to s.38(6) of the Planning and Compulsory Purchase Act 2004 ('**PCPA**'), in accordance with the development plan unless material considerations indicate otherwise, i.e. the plan-led system. The development plan comprises the Central Lancashire Core Strategy 2012 (CD7.14) ('**the Core Strategy**') and Chorley Local Plan 2015 (CD7.01) ('**the Local Plan**'). Both components provide a framework for decision-making extending to 2026.
2. Important material considerations include the National Planning Policy Framework 2019 ('**NPPF2**'), Planning Practice Guidance ('**PPG**') and the previous appeal decision ('**PAD**'), dated 30 November 2017 (CD10.1). This concerned the same description of development (for practical purposes), the same site, , and the same reason for refusal as arise for consideration on this appeal.
3. Nothing has arisen during the course of this inquiry to cast doubt upon Inspector Jordan's description of the significance and effect of safeguarding policy, applied to the appeal site by Local Plan Policy BNE3 at CD10.1 [37-39]. Mr Lee has contended that that description was incorrect and that identification of the site at Policy BNE3 is (in effect) a nascent allocation, to be afforded a positive weighting towards the principle of development [5.3.11]. But reference to the Local Plan Inspector's report (CD7.26 [108] & [171]) confirms that this is not so. Safeguarded sites, including the appeal site, are to be considered alongside other sources of potential allocations as part of the process of Local Plan process (Ms Whiteside rx referred). Inspector Jordan's conclusion that very substantial weight should be attributed to the appeal

proposal's conflict with the development plan in the planning balance was well-founded; and it remains so.

Legal Principles

4. Sir, you requested that the parties should set out their position in respect of legal matters and the cases referred to in particular in the Appellant's opening statement and evidence. These submissions address the legal principles applicable at the outset, and these have informed and are in places returned to more explicitly in submissions concerning the main issues below.

Determination of applications for planning permission

5. S.70(2) of the Town and Country Planning Act 1990 ('TCPA') requires that, "*in dealing with an application for planning permission ... the authority shall have regard to – (a) the provisions of the development plan, so far as material to the application ... and (c) any other material considerations*". PCPA s.38(6) is referred to at paragraph 1 above.
6. By operation of s.38(6), the relevant provisions of the development plan are to govern the decision unless there are other material considerations which indicate that in the particular case the provisions of the plan should not be followed: ***City of Edinburgh Council v. Secretary of State for Scotland*** [1997] 1 WLR 1447 Per Lord Clyde at 1458B-F.
7. The statutory requirement is to determine applications against the development plan as a whole, and it follows that conflict with one policy is not automatically fatal to accordance with the plan as a whole: ***Cornwall Council v. Corbett*** [2020] EWCA Civ 508.
8. The NPPF is a "*material consideration*" for the purposes of both TCPA s.70(2) and PCPA s.38(6). Importantly, the NPPF "*cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme*" ***Hopkins Homes Ltd v [SoS] for Communities and Local Government*** [2017] UKSC 37 (CD11.09) per Lord Carnwath at [21]. PPG is also a material consideration for the purposes of both statutory purposes.

Proper interpretation of planning policy

9. The summary of the law on the proper interpretation of planning policy at ***Bloor Homes East Midlands Ltd v. SSCLG*** [2014] EWHC 754 (Admin) (CD11.06) at [19(4)] is entirely sufficient for this purpose:

*“Planning policies are not statutory or contractual provisions and should not be construed as if they were. The proper interpretation of planning policy is ultimately a matter of law for the court. The application of relevant policy is for the decision-maker. But statements of policy are to be interpreted objectively by the court in accordance with the language used and in its proper context. A failure properly to understand and apply relevant policy will constitute a failure to have regard to a material consideration, or will amount to having regard to an immaterial consideration (see the judgment of Lord Reed in ***Tesco Stores v Dundee City Council*** [2012] P.T.S.R. 983 (CD11.16) , at paragraphs 17 to 22).”*

10. The same approach was applied to the interpretation of the NPPF in ***Hopkins Homes*** per Lord Carnwath at [22] – [26] (CD11.09).
11. The submissions made below reflect these principles entirely, avoiding in particular the implication of wording that is clearly not present within PPG 2a-013, altering its meaning to the effect that an agreement or other arrangement concerning the distribution of how it is that local housing need (‘LHN’) should be met should or need be arrived at exclusively by means of the policy-making process.

Proper interpretation of planning guidance

12. Lieven J explained as follows in ***Solo Retail Limited v. Torridge District Council*** [2019] EWHC 489 (Admin) (ID13) [33]:

*‘... the NPPG has to be treated with considerable caution when the Court is asked to find that there has been a misinterpretation of planning policy set out therein, under para 18 of ***Tesco v Dundee***. As is well known the NPPG is not consulted upon, unlike the NPPF and Development Plan policies. It is subject to no external scrutiny, again unlike the NPPF, let alone a Development Plan. It can, and sometimes does, change without any forewarning. The NPPG is not drafted for or by lawyers, and there is no public system for checking for inconsistencies or*

*tensions between paragraphs. It is intended, as its name suggests, to be guidance not policy and it must therefore be considered by the Courts in that light. It will thus, in my view, rarely be amenable to the type of legal analysis by the Courts which the Supreme Court in **Tesco v Dundee** applied to the Development Policy there in issue’.*

13. It is reasonable to give effect to these matters by an approach to PPG that is straightforward, and not legalistic, testing the outcome by reference to whether it makes common and planning sense.

Assessment and consideration of the full objectively assessed housing need (‘FOAN’)

14. Mr Donagh refers to a number of cases concerning this matter: **Stratford DC v. SSCLG** [2013] EWHC 2074 (Admin) (CD11.14), **St Albans City Council v. Hunston Properties** [2013] EWHC 2678 (Admin) (CD11.12) & [2013] EWCA Civ 1610 (CD11.12), **Gallagher & Lincourt v. Solihull MBC** [2014] EWHC 1283 (Admin) (CD11.13), and **West Berkshire DC v. SSCLG** [2016] EWHC 267 (Admin) (CD11.15).
15. It not necessary to consider these cases further, because assessment of housing need in accordance with the FOAN has been superceded by introduction of the standard method (‘SM’). This generates an assessment of local housing need LHN that is itself unconstrained (PPG [2a-002]). The issue or an issue between the parties is rather whether the calculation of LHN in accordance with SM terminates at the conclusion of PPG 2a-004.

‘The most important policies’ (NPPF [11(d)])

16. NPPF [11(d)] requires identification of the whole of those policies considered to be most important to the application (whether before the LPA or at appeal), and consideration of whether these are out-of-date taken together (or as a basket): **Wavendon v.SSHCLG** [2019] EWHC 1534 (Admin) (CD11.10).

Whether policies are out-of-date

17. Mr Lee refers to **Bloor Homes** (CD11.06) in support of the propositions: that a policy may become overtaken by change on the ground or in national policy or for some other reason such that they become out-of-date; and that whether this is so is a matter of fact or judgment and fact. These propositions are agreed.

18. It is likewise agreed that (eg) settlement boundaries may be out-of-date to the extent that they derive from out-of-date housing requirements, constraining ability to meet housing need (*Hopkins Homes* [63] (CD11.09) refers).
19. It is unnecessary to consider *Peel Investments v. SSHCLG* [2019] EWHC 2143 (Admin) (CD11.08) because none of the policies relied upon here is incorporated within a plan that has, as considered there, expired.
20. It is likewise unnecessary to consider *Monkhill Ltd v. SSHCLG* [2019] EWHC 1993 (Admin) because safeguarding policy is not listed at NPPF2 [fn6].

5 year housing land supply ('5YHLS')

Apportionment & NPPF1

21. *St Modwen Developments Ltd v SSCLG & East Riding of Yorkshire Council* [2016] EWHC 968 (Admin) (CD11.04) determined that where (a) the areas of two authorities comprised one housing market area ('HMA'), (b) there was a strong track record of co-operation, and (c) the unconstrained FOAN had been properly assessed, it was a matter for the authorities to consider its distribution between them on whatever basis provided the apportionment provided for the FOAN to be met across the HMA [79]. The fact that the apportionment was not the subject of a DPD went to its weight, rather than its lawful status [78]. The distribution agreed in that case, which appeared in a Joint Planning Statement, reflected the intention to stem the out-flow and increase housing growth in the Hull (as opposed to Strategic) Market Area to help support economic growth and meet housing needs (the regeneration of Hull being a long term objective of both Councils), i.e. 'policy on' matters.
22. The Court of Appeal in *Oadby & Wigston Borough Council v SSCLG & Bloor Homes* [2016] EWCA Civ 1040 (CD11.17) approved this part of *St Modwen*, noting that there was nothing unlawful in its conclusion on this matter [53].
23. The Council's submissions in respect of how these cases bear on NPPF, PPG & the Joint Memorandum of Understanding & Statement of Co-operation April 2020 (CD7.23) ('MOU2') are set out below. Those submissions are also informed by the further principle, referred to at *Gladman Developments v. SSHCLG* [2020] EWHC 518 (Admin) [88], that where the Government intends to make a significant change to policy in the NPPF, it would be expected to make a clear statement to that effect.

Weight

24. The weight to be given to the benefit of reducing a shortfall against the requirement for a 5YHLS is a matter for the decision-maker's judgment. This is likely to depend on factors such as its broad magnitude, how long it is likely to persist, what the LPA is doing to reduce it, and how much of it the development will meet: **Hallam Land v. SSCLG** [2018] EWCA Civ 1808 (CD11.03) [51]. Though decided in the context of NPPF1, there is no reason to suppose that this should not also apply in the context of NPPF2. That said, it is not to be understood that Lindblom LJ was laying down the law when referring to these factors, rather than simply referring to factors that he expected may influence a decision on weight to be applied to any shortfall that is always a matter for the judgment of the decision-maker subject only to a **Wednesbury** challenge: **Oxton Farm v. Harrogate BC** [2020] EWCA Civ 805 (ID22) [51-54].

Consistency

25. One important reason why PADS are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. It is also important for the purpose of securing public confidence in the development control system. It would be wrong to suggest that like cases *must* be decided alike, since an inspector must always exercise his own judgment; but before disagreeing he ought to have regard to the importance of consistency and to give his reasons for departure from the PAD: **North Wiltshire DC v. SSE** (1993) 65 P&CR 137 per Mann LJ (p.146).

The current housing requirement for Chorley Borough, having regard to the provisions of the development plan and national policy

26. MOU2 is itself an agreement between the Central Lancashire authorities concerning how housing needs should be met in their areas for the interim period pending adoption of a new Local Plan. The housing land requirement for Chorley at 1 April 2020 in accordance with MOU2 and as set out in the Statement of Common Ground ('SoCG') (Housing) - concluded pursuant to MOU2 (CD7.34) - is 278 dwellings per annum ("dpa"), or 1,390 over 5 years. The Appellant contends instead for requirements of 569 dpa and 2,845 respectively. These are the figures at SoCG (Housing) [2.17, 2.18]. Determination of this main issue requires a binary

choice between these irreconcilable figures. That choice involves consideration of the admissibility or appropriateness of distribution in principle, and the distribution in fact.

Distribution in principle

27. The Core Strategy policies are more than 5 years old, and have not been '*reviewed and found not to require updating*' in terms of NPPF footnote 37 ('**fn37**'). Each of the three Central Lancashire councils is therefore required, in accordance with NPPF [73], to maintain a 5YHLS measured against their LHN. Fn37 advises, simply, that '*[LHN] ... should be calculated using the [SM] set out in [PPG]*'.
28. Fn37 takes the reader to PPG generally, and the section addressed to '**Housing and economic needs assessment**' (CD7.56) in particular. The same is true of references to the SM in PPG at NPPF [60] and the definition of 'LHN'. [2a-001] identifies that housing need is an unconstrained assessment of the number of homes needed '*in an area*'. [2a-002] confirms that the SM is formulaic and addresses historic under-supply. [2a-003] confirms that it is not mandatory. [2a-004] explains the calculation of LHN using the SM, with the 2014-based household projections for individual local areas in England as the baseline or starting point. [2a-005] explains the rationale for use of the 2014-based household projections. An affordability adjustment is made in the course of the calculation to start to address the affordability of homes [2a-006].
29. PPG [2a-013] then responds to the question '**How should [LHN] be calculated where plans cover more than one area?**'. This paragraph repeats in terms guidance first introduced alongside the SM at [2a-018-20180913]. Mr Donagh agreed in xx that Central Lancashire is an area '*where plans cover more than one area*' and therefore that [2a-013] is engaged. Agreement of the matters referred to at SoCG (Housing) [2.1-3] - history of joint working, compact nature of this part of Central Lancashire, one integrated local economy & travel to work area, and a single HMA with agreed high levels of containment of travel to work and house moves – all underline the appropriateness or sense that [2a-013] should apply in the circumstances of Central Lancashire. The joint administration of housing waiting lists across Central Lancashire, referred to by Ms Whiteside, underlined this further. What emerges or should emerge from this analysis is not simply an explanation why [2a-013] is engaged, but a realisation that it would be astonishing if it were to be concluded that it did not do so, to enable the interim distribution of LHN.

30. The proper interpretation and application here of [2a-13] are straightforward.
31. The first sub-paragraph is not exhaustive of the circumstances where LHN assessments may cover more than one area. It follows that whilst this guidance applies here because strategic policies are being produced jointly, that need not necessarily always be the case. That being so, the guidance clearly envisages the distribution of LHN outside the plan-making process. Mr Donagh agreed in xx that this sub-paragraph was permissive, i.e. not exhaustive, and that a start had been made on producing strategic policies jointly within its terms.
32. Turning to the second sub-paragraph, it is clear that reference to '*the defined area*' is to the combined area of the local authorities concerned, and that PPG envisages that the combined LHN, i.e. the combined product of the SM, may be distributed across that area provided this results in the distribution of "the sum" for each local planning authority (i.e. that no LHN is 'lost along the way'). Mr Donagh agreed in xx that '*the defined area*' referred to more than one local authority area and that MOU2 does not seek to go below the total sum for the authorities combined.
33. The third sub-paragraph requires re-visiting the LHN to stop once a spatial strategy has been published, but envisages re-visiting in interim period. Mr Donagh agreed in xx that the ability to re-visit the LHN calculation was implicit, referring to authorities being encouraged to review LHN regularly.
34. To conclude, it is clear that it is for the Central Lancashire authorities to distribute, on an interim basis, the total housing requirement arrived at across their joint plan area in accordance with the second-bullet point.
35. The Appellant contends, on the other hand: (a) that distribution is not an option at all (*per* Mr Donagh most particularly); and/or (b) that it should be undertaken and relied upon only as part of the plan-making process (*per* Mr Lee most particularly).
36. The basis of contention (a) is, as explained by Mr Donagh, a suggestion that NPPF [fn37] refers the reader to PPG at [2a-004] alone. This approach excludes (inter alia) [2a-003] (SM not actually mandatory) and [2a-013] (plans covering more than one area) from consideration at all. This is artificial and plainly wrong.
37. The fundamental objections to contention (b) are: (i) that there is no wording within [2a-013] that supports or requires it; (ii) that the wording within that paragraph actually indicates to

the contrary; and (iii) that it involves departure from the approval of distribution outwith the plan-making system approved in *St Modwen* and *Oadby & Wigston* without a clear indication that any such policy change was intended, having regard to *Gladman* (see paragraph 23 above).

38. So far as the point at (iii) is concerned, the Appellant points to the fact that the starting point for identification of the housing requirement according to NPPF1 was the HMA, whereas the baseline is now the 2014-based household projection for the local authority area concerned. That does not, however, alter the principle, approved in *St Modwen* and *Oadby & Wigston*, that local authorities should – where they form or are part of a single HMA, and there is a history of joint working - be enabled to agree an appropriate distribution of the housing requirement or (now) LHN between them (including by reference to policy on matters). That principle is not affected or undermined by the difference in baseline or starting point. There is no clear indication of a change of policy having regard to *Gladman*. Indeed, the express insertion of [2a-013] from the outset of reliance on the SM formula itself confirms that it is the government’s policy that the principle as summarised above should remain in operation. The principle should not become, in effect, a victim of the introduction of a purely formulaic approach. As submitted in opening, it is clear that PPG - revised in light of the advent of the SM - articulates and does not reverse the approach that underlay MOU1 (and upon which Inspector Jordan, and others, have commented in favourable terms).
39. Reference was also made to the fact that NPPF2 mentions ‘SoCGs’ in the context of plan-making, rather than decision-making. The fact that this is so cannot sensibly be considered to exclude reliance on SoCGs outside the plan-making context. As Mr Ireland explained in xx, the duty to co-operate applies to plan-making, but is not exclusive to it. That said (if one really is attaching weight to this matter), MOU2 actually takes the form of an agreement, pursuant to which the SoCG at CD7.34 has been produced.
40. For all of these reasons, the Council is entitled in principle to calculate its LHN at this time by process of aggregation and distribution with Preston and South Ribble. It is noteworthy, finally, that the Chain House Lane decision (CD10.29) contains no reference (Mr Lee agreed in xx) to any suggestion or dispute concerning whether MOU2 (then in draft) was an appropriate means of concluding the calculation of LHN in accordance with the SM in the circumstances of Central Lancashire, or whether MOU2 should be proceeding only by means of the plan-making process.

The distribution in fact

Evidence supporting MOU2

41. Before considering the weight attaching to MOU2, it is important, first, to remind oneself that the choice here is binary. It is the Council's case that MOU2 provides a sound basis for conclusion that the requirement of 278 dpa should be relied upon for the purposes of this appeal. It will be necessary for the Appellant to demonstrate that MOU2 is radically wrong in order to justify substitution of 569 dpa. Mr Donagh's evidence does not begin to justify that conclusion.
42. It is also entirely appropriate that the Council should acknowledge at the outset that Ms Whiteside's evidence on the materiality or relevance of MOU2 was not consistent. The evidence of Mr Ireland, on the other hand, was – and there can, in reality, be no mistaking the materiality and relevance of MOU2 from his evidence.
43. The Housing Study (CD7.05) was commissioned to both secure advice on a revised MOU, and as part of the Local Plan evidence base ([1.2]), and provides the evidence base for the distribution within MOU2 in fact. This refers to PPG [2a-013] at [3.2] & [4.3]. It would be surprising if the same study were not also relied upon to inform the current thinking in respect of local plan distribution, and the fact that it does so does not disqualify reliance upon it for the purposes of MOU2. It explains that consideration of the SM figures on an authority-by-authority basis produces a distribution that is significantly at odds with the distribution of people, jobs & services [4.13]. It also sets out why it is that reliance on the 2014 projections generates an inflated requirement for Chorley having regard to longer term trends [4.13-15]. Mr Ireland's PoE [5.7-5.10] explained the effect of Buckshaw Village on trends feeding into the 2014-based household projections in greater detail. The Study then provided extended reasoning for the proposed distribution based on the existing spatial strategy, distribution of affordable housing ('AH') need, constraints, and urban capacity [4.18-4.55]. Mr Ireland's Rebuttal expands upon the merits of the proposed distribution in terms of supporting the City Deal [5.2-5.9 & Appendix A2] and alignment with the geography of economic growth potential [4.40-4.44], whilst also explaining that it is supported by needs-based factors considered alone.
44. MOU2's distribution is supported by a very substantial evidence base, a clear line of reasoning, and both needs-based and policy on justification. Mr Lee does not take issue with

the relevance of the variables that inform the recommended distribution (at CD7.05 Table 4.14), his point being rather that the exercise should be undertaken only by means of the plan-making process. The fact that completions are now proceeding at a substantial rate in Preston in light of infrastructure improvements supported by the City Deal does not justify adoption of a distribution that does not continue to support – by radical reduction of its 5YHLS requirement - substantial housing delivery in Preston. Mr Lee agreed in xx that it made ‘no sense’ to more than halve the annual dwelling requirements in Preston & South Ribble, compared with that in Core Strategy Policy 1, in the context of supporting the City Deal; yet this is an implicit component of the Distribution of SM that halts at the close of PPG [2a-004] without more.

45. Finally, it is appropriate to emphasise without repeating the reasoning at Mr Ireland’s Rebuttal [5.16] in terms of explaining the affordability and employment benefits of focussing residential development in Preston over Chorley. Mr Ireland did not contend that completions in Chorley would harm continuing development in Preston, but pointed to a correlation between new-build sales in Chorley and Preston (Rebuttal [4.17-21 & Table 4.2]), evidencing that they function as part of a single HMA, and that the distribution of housing provision between them should reflect that fact.

Weight attaching to MOU2

46. Mr Ireland expressed the view that ‘full’ weight should be afforded to MOU2. It was suggested that this would result in a disincentive to progress the Local Plan, but that is to perpetuate a misunderstanding of the function of MOU2: it does not allocate land or itself set out land use planning policy. The Council submits that, as Mr Ireland explained, full weight attaches to MOU2 for the following four reasons.
47. First, it supported by a substantial evidence base. There has been no challenge at this inquiry to the materiality of the distribution of jobs, population, affordability, AH need and workforce – or the accuracy of the percentages derived in respect of those matters. Precisely where the percentage split should lie within the resulting range of percentages has involved an element of judgment; but there is no basis on the evidence to consider that Chorley’s 27.5% should be adjusted - whether upwards or downwards.
48. It is important to keep Mr Donagh’s challenge to inter-connection between Chorley and Preston in context bearing in mind both the absence of challenge to the matters referred to

above, and continuing agreement that Central Lancashire is a single HMA. The limited nature or subtlety of his challenge was confirmed at the close of Mr Donagh's xx by affirmation that Chorley and Preston do connect ([3.3] of his PoE refers), that they fall within same Gold Standard Strategic HMA, that the all sales trend between the three authorities over the last decade closely match (*ibid.* [3.11 & Fig. 3.4]), that there is strong similarity in house price growth across the HMA (*ibid.* [Fig. 3.5] & Mr Ireland Rebuttal [Table 4.1]), and that the assertion that '*each district can sustain a consistently high level of housing delivery*' is founded on net additions over just 3 years (2016-19) at the peak of a market cycle (*ibid.* [4.11]).

49. Secondly, draft MOU2 was subject to wide-spread consultation over seven weeks (CD7.24 [1.12-14]). This involved publicity on the Planning Policy Team website and the websites of each authority. It also involved direct notification of elected members, county councillors, Parish Councils, neighbouring and nearby local authorities, developers and agents, private organisations and statutory organisations listed at CD7.24 Appendix 2.
50. Next, there was substantial engagement - with responses from an MP, Ribble Valley Council, Parish Councils, individual councillors, other representative bodies (viz HBF & CPRE), and developers & their representatives. The Appellant in particular was engaged. It is highly material to the weight attaching to the agreed distribution that no alternative was proposed.
51. Fourthly, the consultation responses were the subject of a detailed Outcomes Report (CD7.24). Its content, including the identification and discussion of key themes of objection, has not been the subject of comment or challenge at this inquiry. The Central Lancashire Strategic Planning Joint Advisory Committee considered a detailed report into the results of consultation on 28 January 2020 (ID24). This noted the responses to consultation, that MOU2 was to be taken through the approval process for each authority, that the approved MOU2 and consultation responses themselves would be placed on relevant websites, and that all respondents were to be notified of the MOU2 approval and responses to their objections. The Appellants do not challenge MOU2 as a matter of law.

The Appellant's distribution

52. Mr Donagh agreed in xx, by reference to the table at Ms Whiteside Rebuttal p.10, that rows A & B (Core Strategy Policy 4 & MOU1) reflect agreement to maintain the housing requirements at Policy 4, distributed to reflect the spatial strategy at Policy 1. He also confirmed that the splits at row C (the Appellant's case) are clearly different from

those at rows A & B (Preston down by 12.8%, South Ribble down by 12.1%, and Chorley up by 24.9%). He confirmed his agreement with Mr Lee ([5.2.13]) that row C represents '*a markedly different spatial approach to development across the [HMA] than outlined in Policy 1*' (Lee [5.2.13]). He explained this on the basis that the need is arising in a pattern that is different from that planned for previously. He agreed that the splits at row C are self-evidently in closer conformity with that at rows A & B (Preston up by 2.2%, South Ribble up by 1.4%, Chorley down by 3.6%), explaining that the stand-out point is that the Core Strategy policy distribution does not reflect where, looking at how SM calculates it, housing need actually arises.

53. Mr Donagh's explanations are flawed because calculation of LHN in accordance with the SM does not conclude at the end of [2a-004]. It is required instead to be undertaken in accordance with this part of PPG in its entirety, i.e. including [2a-013]. That paragraph was clearly included in PPG to reflect that local authorities are not (or not many are) islands. CYQC was right, with respect, to put to Ms Whiteside that Chorley is not an island. She was right to confirm that Preston and South Ribble are also not islands. Central Lancashire is not an archipelago. Mr Donagh's evidence assumes or asserts incorrectly, however, that it is or should be treated as one. At least for the time being.
54. Finally, it is also material to the weight attaching to the Appellant's distribution that it has not been out to consultation. National consultation on the SM is not a substitute for consultation on the distribution of housing requirement figures or proportions across an individual HMA.

Conclusions

55. MOU2 is wholly in accordance with PPG including PPG [2a-013]. Its distribution is explained and justified by a substantial evidence base. It commands full weight. You, Sir, are invited to conclude on the evidence before this inquiry that the housing requirement should be determined by reference to MOU2 and the SoCG at CD7.34. The Appellant has not explained the planning or common sense rationale that results in interim reliance on the formulaic output of part only of the SM calculation process described at '***Housing and economic needs assessment***' (CD7.56).

Whether the Council can demonstrate a five year supply of deliverable housing land against the housing requirement

56. The Council is able to demonstrate a five year supply of deliverable housing land at 1 April 2020 that results in 1,617 dwellings, whereas the Appellant contends that that supply stands at 1,505 dwellings. These figures result in 5.5 or 5.2 years' supply respectively, assessed against the requirement of 1,460 dwellings (inclusive of a 5% buffer). The Council is therefore able to demonstrate a 5YHLS on either basis.
57. The single issue between the parties in this context concerns the deliverability of dwellings on land at Cowling Farm. Mrs Greenwood considers that 112 dwellings are deliverable (PoE [2.12] & App.1), whereas Mr Lee consider that none are deliverable.
58. Mrs Greenwood has given evidence by reference to three of the sources of evidence referred to, as examples only, at PPG [68-007]. The evidence of progress towards submission of a planning application - including a land exchange and MoU between Homes England and the Council – is itself firm. The studies referred to confirm that progress with site assessment is also firm. It is sufficient that Homes England are able to refer the Council to a favourable viability assessment in the context of a greenfield site where there is no particular reason to suppose that there are critical viability issues. Xx of Mrs Greenwood emphasised the added certainty that may result from grant of planning permission, but it is implicit in the open definition of 'deliverable' and PPG [68-007] itself that testing the deliverability of land by reference to the existence of permission as, in effect, a determining factor involves raising the bar for inclusion too high.
59. Mrs Greenwood expressed confidence in Home England's timetable, and there is no very clear basis upon which to dispute it. It is consistent with the timescales envisaged at Local Plan (CD7.01) Appendix B. That said, if it is considered – though Mrs Greenwood did not agree - that insufficient allowance has been made for access works, the effect would be to cause delay measured in weeks or months (at a rate of 3.5 completions per month), and not to justify deletion.
60. You are invited, Sir, to conclude that the 5YHLS stands at 1,505, i.e. 5.5 years.

Whether or not the most important policies of the development plan for determining the appeal are out of date, having regard to the 5 year housing land supply position and relevant national policy

61. The most important policies for determining the current appeal are Local Plan Policy BNE3 (Areas of Land Safeguarded for Future Development Needs) and, arguably at least, Core Strategy Policy 1 (Locating Growth) (Ms Whiteside Rebuttal [4.8-4.11]).
62. Neither of these is out of date having regard to the 5YHLS position (see above). Policy BNE3 was not considered to be out of date upon determination of the previous appeal on 30 November 2017 (CD10.1). NPPF2 [139] has subsequently superseded NPPF1 [85], but there is no material change between these versions of safeguarding policy. The fact that safeguarded land is omitted from NPPF fn6 affects no change on the Council's case, where the tilted balance is not engaged in any event. The spatial strategy for all forms of development (not housing alone) in Central Lancashire set out at Policy 1 is not undermined or rendered out of date by reason of any change to the position in respect of BNE3 or Policies 4 & 7 (below). Policies BNE3 & Policy 1 remain up to date, and full weight attaches to them.
63. Mr Lee considers that the list of most important policies should extend to include Core Strategy Policy 4 (Housing Delivery) and Policy 7 (AH), and Local Plan Policy BNE2 (Development in the Area of Other Open Countryside).
64. Policies 4 & 7 can be considered together, since they travel in tandem (the latter applying a percentage AH requirement to the former). Policy 4 is, however, not a most important policy for determination of the appeal because the housing requirements to which it refers have themselves been superseded in accordance with NPPF2 [73] & [fn37], i.e. by calculation of the LHN in accordance with the SM. For this reason, Policies 4 & 7 have become tangential. The basket of most important policies should not be weighed down by policies that no longer themselves have direct bearing or relevance to the decision in hand.
65. Policy BNE2 should be excluded because it applies to the Area of Open Countryside as shown on the Local Plan Proposals Map, and the appeal site is not shown as within it. True, there is cross-reference to it within Policy BNE3. But this confirms limited forms of development that remain permissible pending review of the Local Plan, and has no bearing on the current proposal for permanent development in conflict with Policy BNE3. Finally, Mr Lee agreed in xx that Policy BNE2 was not amongst the most important on a freestanding basis.

66. To summarise, Policy BNE3 and arguably Policy 1 are the most important policies. Ms Whiteside agreed that the proposal is not in conflict with Policy 1, but it is in clear conflict with Policy BNE3. It is therefore not in accordance with the most important development plan policies relevant to the appeal considered as a whole – and this or these are not out of date.

Whether this, or any other material consideration, would justify the development of safeguarded land at this time

The balance

67. The development plan, with which the proposal is not in accordance, are to govern the decision on this appeal unless there are other material considerations which indicate that its provisions should not be followed (paragraph 6 above). It follows from proper resolution of the first three main issues above, that the tilted balance at NPPF2 [11(d)(ii)] is not engaged, and that the balance of advantage assessed in accordance with PCPA s.38(6) is to be determined on the flat balance.

Breach of Policy BNE3 & other harm

68. It is important to emphasise the significance of Policy BNE3 and consequences of breach. Mr Lee agreed in xx that *'the plan period'* referred to at Local Plan (CD7.01) [7.16] is the period of that plan. Reference to the long lasting protection of GB boundaries therefore refers to a period lasting beyond 2026. Safeguarded land is, in that context, a strategic reserve serving a strategic purpose. Mr Lee emphasises that it cannot be right that very special circumstances (**'VSC'**) must be shown to justify breach of this policy bearing in mind that the land has been excluded from the Green Belt (**'GB'**); and Ms Whiteside agreed (eic). There is or should, on the other hand, be limited difference, as Ms Whiteside also explained, between the approaches to release from the GB or of safeguarded land bearing in mind that VSC are required to alter GB boundaries themselves, whose long term integrity the safeguarding of sites is designed to protect.
69. Mr Lee's evidence confirms the nature or scale of justification required to indicate that planning permission should be granted in breach of Policy BNE3. The Leeds PADS (CD 10.30, 31 & 32) all involved the release of safeguarded land where the relevant plan period had expired some years before, and the authority was also unable to demonstrate a 5YHLS. Neither of those matters, fundamental to those decisions, applies here. The only other PAD in

evidence concerning safeguarded land is that relating to Chain House Lane (CD10.29). There were other issues and differences arising in that appeal, but – whatever the outcome of the challenge to it - it provides no encouragement that planning permission should be granted on the current appeal bearing in mind that the relevant plan period had not expired, the Inspector found that South Ribble were able to demonstrate a 5YHLS, and the appeal was dismissed. The Council agrees with Mr Lee that what is required (as confirmed in xx), if the appeal is to succeed, is that circumstances ‘dictate’ the release of safeguarded land in advance of adoption of a Local Plan review (Mr Lee Rebuttal [1.3.4]).

70. The PAD concerning the appeal site is a significant and helpful indicator whether the appeal should succeed, bearing in mind (a) that it is not suggested that there is a material difference between the schemes themselves (except insofar as the Self-Build component is concerned), and (b) the absence of material policy change, in the Council’s view, at national level. It has been suggested that the weight attaching to that decision should be discounted because specialist evidence was not called concerning AH and Self Build. The second point is clearly correct. But Inspector Jordan was clearly seized of both the strong emphasis in NPPF and other national policy on boosting the supply of housing and the need for AH in the Borough having regard to both the Strategic Housing Market Assessment 2017 (**‘SHMA 2017’**, CD7.13) and the Appellant’s own estimate of the FOAN (CD10.1 [64]) (noting also that Mr Stacey takes no issue with SHMA 2017). There is no sound basis for discount.
71. Finally in respect of Policy BNE3, the fact that deferral of consideration of the appeal site for development or its development may be for a shorter rather than longer period has no bearing on the appropriateness of determining that planning permission should be granted now, ahead of Local Plan review (Ms Whiteside rx). The significant effects of deferral are continuing protection of the GB boundaries and to enable decisions about the relative suitability of the site for a range of developments to be taken alongside consideration of other contenders by means of the Local Plan process.
72. To harm resulting from breach of Policy BNE3 there is to be added (a) less than substantial harm to the setting of Houghton House and (b) adverse impact on the character and appearance of the site and its immediate surrounds.
73. According to the SoCG (Heritage) (Agreed Matters 4 & 5), the appeal site makes a minor contribution to the significance of Houghton House Farmhouse due to its close physical

association to the former farm complex, and (though to a minimal degree) its former use in relation to the farmhouse and farm complex (though this relationship is now largely eroded). Its historic setting has also been compromised by the expansion of Euxton and the settlement's development to the north, west and south of the farmhouse. The proposed development will result in a very minor reduction to the significance and setting of the Farmhouse. Mitigation strategies include the retention and reinforcement of landscaping to the site boundary and within the site, retention of the historic field boundary features, and introduction of limited built development at the north-east section of the site. By undertaking the relevant policy assessment contained in section 16 of the NPPF, the statutory duty of s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 will have been discharged. It is, quite properly, agreed nonetheless that: *'When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, 'irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance' (para 193).'* (SoCG (Heritage) [4.7]).

74. Reference was made to the absence of a heritage-based reason for refusal on the footing that public benefits outweighed harm to Houghton House Farmhouse considered on its own; but it does not follow that harm to the significance of the Farmhouse should not feature, with great weight attached, in the (different) overall planning balance exercise.
75. The SoCG (Landscape) concludes (sections 5 & 6) with agreement that the scheme will result in some adverse landscape and visual effects (as is the case with all greenfield development), and that the impact is considered to be minor to moderate adverse. Measures mitigating the impact of development are appropriate to be conditioned and can be dealt with at reserved matters stage to integrate open space within the development and secure implementation of a landscape strategy within the built form of the development. The parties agree that the harm resulting from the impact of development upon the character of the open area is not considered of itself to be so significant as to warrant the refusal of the application on this ground alone. The weight actually attaching to the landscape and visual harm in the planning balance is not, on the other hand, agreed. Ms Whiteside's response to the Inspector was that the weight attaching should be at the lower end of the scale.

Benefits

Economic

76. Ms Whiteside agreed in xx that the proposal would not result in any specific negative economic impacts and that the economic benefits should not be neutral in the planning balance. She considered, however, that the weight attaching to them should be limited because they are capable of being provided elsewhere, i.e. by the development of land that is not itself safeguarded (PoE [7.27]). Temporary economic benefits, indirect spend and New Homes Bonus funding also attract limited weight (PoE [7.28]).
77. Xxd, Mr Donagh played down uncertainty attaching to the impact of the coronavirus pandemic and resisted a suggestion of serious adverse effect on housebuilding. Ms Whiteside, in eic, explained that weight should not attach to the effects of the pandemic in this case, referring to Mrs Greenwood's evidence that '*No developers indicated that their site may no longer go ahead due to Covid-19*' and that the delays it had caused had been factored into the 5YHLS (Mrs Greenwood PoE [2.4]). Mr Lee referred to statements by the Prime Minister about 'Build, Build, Build' (with an emphasis, it must be said, on infrastructure provision – as City Deal), but these do not suggest any relaxation or departure from the plan-led system or protection of the GB and safeguarded land alongside it. This is not an instance where the evidence itself suggests that greater weight should be afforded to economic benefits at this time.

Environmental

78. It was agreed: that new landscape proposals would help to mitigate and off-set the residual harm; and that a comprehensive Landscape Creation and Management Plane can be secured by condition (SoCG (Ecology) [2.8]). Moderate weight attaches to the benefits to be derived from the proposed on-site Sustainable Drainage System and likely net gain in biodiversity. Open space and highways & access provision mitigate the impact of development rather than contributing benefit (Ms Whiteside PoE [7.23-12]). These various environmental effects do not contribute positively, again, to a justification for grant of planning permission at this time.

Social

79. The Council considers that limited weight attaches to the provision of market housing (Ms Whiteside PoE [7.14]), bearing in mind the 5YHLS position.

80. It is understandable that the Council should not currently have a development plan policy position on Self-Build bearing in mind when the Local Plan was adopted. It did not, understandably, feature in the high level 'Issues & Options' consultation (CD7.30). But the SHELLA Methodology (ID19 p.11) confirms that the Council is factoring in the encouragement of Self-Build from the outset of the Local Plan process.
81. The Housing Study refers to Buildstore registration levels, but expresses the view that '*this may in part reflect a level of aspiration rather than a genuine need*' (CD7.05 [9.37]). It then refers to Ipsos Mori research applied to the working population of the Borough advises that '*figures should .. be treated with caution*' ([9.4]). It considers that these sources point to a level of demand greater than that reflected in the Council's Register. But the fact remains that (free) registration on that Register has been at a low level (9 at March 2020: Ms Whiteside PoE [7.21]), and that statistical evidence of interest is susceptible to there being multiple expressions of interest by individuals who are not realistically in a position to advance a Self-Build scheme. The Council has, on the other hand, granted planning permission for 20 Self-Build plots in Euxton itself, with plots remaining at both Gleadhill House Stud and Euxton Mill (Ms Whiteside PoE [7.21]). It is therefore considered that limited weight should be afforded to this benefit (Ms Whiteside PoE [7.22]).
82. Turning to AH, Mr Stacey was able to agree the figures at Ms Whiteside Rebuttal [3.4, Table] & [3.9] (albeit with some caveats), which show that Chorley has met, over the recent past, 93% of identified need for AH, and performed well in this respect compared with Preston & South Ribble. Agreement of the facts at Ms Whiteside PoE [7.17 & App.1] and Rebuttal [3.11-14] confirm a supply of AH provided in close proximity to the appeal site. Mr Stacey also agreed, by reference to his PoE [Fig. 7.3] a much reduced shortfall since the PAD in November 2017. It is understandable that Mr Stacey should explain in evidence that his primary focus was on future delivery. He agreed also, however, in response to the Inspector's question that the evidence in respect of AH needed to be considered '*in the round*'.
83. Looking forwards, Mr Stacey also acknowledged the slightly reduced annual requirement resulting from the Housing Study (CD7.05) compared with SHMA 2017. He has, however, also identified that the 5YHLS implies production of 63 or 52 AH units pa (by reference to the Council's & Appellant's HLS respectively) against a requirement for 132 pa.
84. Ms Whiteside accepted that there was limited evidence she could refer to concerning how the Council would address this need, but settled (in evidence) on the conclusion that limited weight

should nonetheless attach to the benefits of the proposed AH. This was based on three factors. (i) AH provision made (35 units) and authorised and remaining to be built (91 units) in Euxton (PoE [7.17 & Table 1]; Rebuttal [3.13]). (ii) The findings of the Housing Study that the need to AH had changed, with no need to provide significant quantities of houses under the new definition of 'AH ownership', and a clear and acute need for affordable rented housing (CD7.05 [10.13-18]). (iii) The sub-regional Choice-based lettings scheme, whereby lets or vacant units are made available to applicants across the sub-region. She also referred to the volume of lettings delivered and in the pipeline in Euxton, and the risk of localised oversupply in the short term.

Conclusion

85. The Council recognises and accepts that the proposal would deliver a number of benefits. Principal amongst those is the proposed AH, with the Self-Build component being very much secondary to that. But it is important that the case in respect of AH should be viewed '*in the round*' (see above), with regard to both past and future provision within Chorley and Euxton.
86. Doing so, the benefits do not, cumulatively, '*dictate*' that planning permission should be granted or '*justify the development of safeguarded land at this time*' (as main issue above, underlining added). Mr Lee agreed in xx that this is the crux of the case and the difference between the parties. It is the Council's case that the scales remain weighted against the proposed residential development of this safeguarded site at this time.

Conclusions

87. The various routes to planning permission remain closed, and the Council requests, for the reasons set out above, that the appeal be dismissed.

SIMON PICKLES

2 July 2020

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