

IN THE MATTER OF

**LAND AT PEAR TREE LANE,
EUXTON,
CHORLEY**

**CLOSING SUBMISSIONS
ON BEHALF OF
THE APPELLANT**

**GLADMAN DEVELOPMENTS
LIMITED**



No5
BARRISTERS
CHAMBERS

Introduction

1. This is an appeal by Gladman Developments Limited against the refusal of Chorley Borough Council of planning permission for *“The erection of up to 180 dwellings including 30% affordable housing, with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access points from School Lane. All matters reserved except for means of vehicular access”* for Land at Pear Tree Lane, Euxton.
2. The Site has been removed from the Green Belt and is designated as ‘Safeguarded Land’ in the development plan. The Council’s single Reason for Refusal is based upon that designation.
3. The detailed Statements of Common Ground record the substantial agreement between the Appellant and the Council on many other issues.
4. The Site is agreed to be located in a sustainable location, adjacent to the settlement boundary of Euxton, which is an Urban Local Service Centre in the current Core Strategy. That location would enable future residents to access a good range of facilities, utilising a variety of sustainable transport modes.¹
5. It is further agreed that there are no technical or environmental reasons for refusal in respect of landscape, heritage, ecology, highways or local infrastructure.²
6. The Site has even been identified for future allocation for housing within the Issues and Options Draft of the Central Lancashire Draft Plan. That demonstrates that the Council believe the site is eminently suitable for development. And it plainly is.
7. Nearly all of the Borough is either (i) already built up, (ii) Green Belt or (iii) other countryside protected under BNE2 and forming part of the foothills of the Pennines. That means the Council have virtually no other option but to rely on Safeguarded Land to address future housing needs. That much is obvious from the proposals map. It is the obvious location for new housing development to go. And the Council plainly know that.
8. Given this background then the Council’s case really boils down to one point. And that is that the Council claim to have a five year supply of housing land, such that there is no need to release the land now for housing. Yet, the Council’s case on its claim to have a 5YS is not

¹ Planning Statement of Common Ground, [2.2.3]

² Landscape, Heritage, Ecology and Highways SoCGs

remotely credible. It is a complete fiction based on a quite astonishing misunderstanding and misread of both national policy in the NPPF 2019 and the PPG.

9. The Council do not have a 5YS. In fact, under the SM what the Council have is a huge shortfall of nearly 1,500 homes. So one can well understand why the Council is keen to contrive a 5YS. And that is the only way to read the MOU2. It somehow seeks to show that Chorley's requirement is 278 dwellings a year, half of the actual requirement under the SM. The audacity of this exercise is truly breathtaking.
10. That the Council know that a shortfall in the 5YS is pivotal to the defence of their refusal is revealed in the RR. Through the language employed, the RR directly relates the defence of its reliance on the safeguarding policy to the 5YS issue. And for the reasons outline above, that is inevitable as the Council has few, if any, other options in terms of addressing the shortfall.
11. Addressing the shortfall is of course critical here. There is no point having a 5YS requirement if there is no mechanism to rectify it. The presumption provides that mechanism, by making the ability to resist new development proposals more difficult when it is applied. It tilted the balance in favour of the proposal. And as the Supreme Court made clear under the presumption "***The decision-maker should therefore be disposed to grant the application unless the presumption can be displaced. It can be displaced on only two grounds both of which involve a planning judgement that is critically dependent on the facts.***" (Suffolk Coastal v Hopkins: Richborough Estates v Cheshire East [2017] UKSC 37 as per Lord Gill at para 85)
12. The previous appeal was determined under NPPF (2012). That left the list of specific policies in the Framework that indicated that development should be restricted open, such that the Council were able to argue that Safeguarded Land displaces the presumption. But in the NPPF 2019 that route to displacing the presumption is no longer available. The Govt has made the list a closed list, and since Safeguarded Land is specifically identified as a form of policy designation in the NPPF, then it has been excluded deliberately. That firstly signals that the only route to refusing permission is if the tilted balance, balanced in favour of the appellant is overcome. And secondly, it surely signals a recognition of the suitability of the release of Safeguarded Land to address a shortfall in the housing land supply or the continued reliance by an LPA on an out-of-date policies.
13. The previous appeal decision has little currency here in terms of a basis for opposing the proposal. The Appellant's case is that not only is there a shortfall in the 5YS, but also the

most important policies for determining the application are out-of-date. The Appellant can rely on either route to get to the Presumption (CL EIC). As such there is no need to demonstrate a 5YS to trigger the Presumption, or indeed to grant permission. But it is convenient to deal with the 5YS first as the issue of the 5YS has been the main subject of debate

14. The Appellant is clear that the Council does not have a 5YS of housing land. It is, of course, not necessary for an applicant or appellant to show there is a shortfall in the 5YS. This has been made repeatedly clear through numerous appeal decisions determined by the inspectors (Launceston, Fountain Lane, Davenham etc) and the Secretary of State (Hook Norton, Watery Lane, Lichfield etc) all of which are contained in the Core Documents.

Five Year Supply

The Housing Requirement

15. The first part of the 5YS calculation is the requirement. This is the main dispute at this inquiry. The Appellant relies on the Standard Method, as required by the NPPF/73. The NPPF instruction is clear about what requirement should be used

“Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old.”

16. It is useful to approach this issue on the basis of a number of clearly defined stages.

Stage 1

Rejection of the Adopted Strategic Housing Requirement which is more than 5 years old

17. The adopted development plan for Chorley comprises the Core Strategy for Central Lancashire and the Local Plan for Chorley, which is an allocations document. The housing requirement is contained in the Core Strategy. This is “the housing requirement set out in the adopted strategic policies” for Chorley.
18. It sets a figure of 417 dwellings per annum.

19. But the Core Strategy was adopted in 2012. It is therefore not intended to be used. That is what the NPPF (2019) is making clear. And the reason for that is that a plan which has been adopted for more than 5 years will be based on an out of date housing requirement, especially as a plan adopted 5 years ago, will almost certainly have an evidence base formed of household projections which are older than 5 years, and which will have a base date older still (as household projections are issued with a base date which is two years earlier: for example the Household Projections published on Monday 29 June 2020, are the 2018-based household projections).
20. The 2012 adoption date for the Central Lancashire CS needs to be carefully understood. The adoption date post-dates the publication of the NPPF (2012) in March 2012. But it is not an NPPF-compliant development plan. As ZW agreed in XX, the CS and its evidence base was prepared before the NPPF. As such the CS housing requirement figure is not NPPF compliant. The fact is that the Council have never had an NPPF compliant housing requirement figure. The fact the plan runs to 2026 is nothing to the point. The whole plan is based on a housing requirement which has nothing to do with the NPPF. It is in fact a housing requirement figure derived from the old Regional Spatial Strategy for the North West. And that relied upon the 2003-based household projections. A base date which is now 17 years old and a set of projections which are 15 years old. In fairness at the time the CLCS was adopted, there was still a legal obligation upon LPAs that they had to adopt plans which were in general conformity with the RS, such was the mess which Mr Pickles made over seeking to abandon the RS. But it is perhaps this type of time lag, and LPAs seeking to rely on out-of-date housing requirements that the new version of NPPF now contains this wording in paragraph 73 which makes it clear housing requirement in plans adopted more than 5 years ago, are presumed to be out of date.

Stage 2. Unless these strategic policies have been reviewed

21. That is unless the adopted housing requirement is reviewed and found to be still applicable. This is allowed under the NPPF, in light of Footnote 37. It reads as follows:

“37 Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.”

22. There is a way in which LPAs can continue to rely unless, it has been subject to a Review through which it has been decided that it can continued to be used. The Council do not claim to have conducted a Review which reaches that conclusion. In its own evidence to this inquiry (Leona Hannify PoE as adopted by Nick Ireland) has been unequivocal about the fact that the Council does not rely on such a Review (see paragraphs 3.6).
23. The Council therefore do not rely on a Review and so there is no question here of the Council handing on to the housing requirement in the Core Strategy. As soon as an LPA starts to prepare a new local plan it is of course signalling a need to move away from the existing local plan. Otherwise it would have just carried out a Review. Especially as the Reviews which are being done are exercised in self-certification and appear to require no independent scrutiny or examination (Woking, Reigate and Bansted) etc.
24. Chorley and the other two Central Lancs LPAs have started the process of preparing a new joint Local Plan. They have avowedly stated that they have not and do not intend to carry out a Review. The main reason seems to be that they want to adopt an even lower housing requirement than that set out in the pre-NPPF Core Strategy (1,010 dpa). Astonishing. That is the only word to describe that reduction. Which flies in the face of the instruction in the NPPF (2012), NPPF (2018) and NPPF (2019) for LPA to significantly boost the supply of housing. How one does that by taking your pre-NPPF figure of 1,341 and reducing it by over 300 homes a year to a figure which is 25% less is genuinely baffling. But to then do so, after the CLCS area has been the recipient of nearly £500 million of Growth Deal funding is just breathtakingly astonishing.

Stage 3:

Exceptional Circumstances permitting a deviation from the Standard Method (NPPF/60)

25. LPAs are required to update their local plans using the standard method. That is very clear from NPPF, paragraph 60. The only basis upon which an LPA is permitted to deviate from the SM is under “exceptional circumstances”.

“To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals.”

26. That exceptional circumstance threshold test is well known in planning. It is the same hurdle required to remove land from the Green Belt. Land such as the appeal site. It is a high hurdle. Mindful of that, the LPAs in Central Lancashire are not seeking to argue against the SM. The Council's witnesses have been very clear in their answers to questions in XX, that they do not rely on the exceptional circumstances test. But nor could they. Both paragraph 60 and 73 must be read in line with must be read in light of the definition of local housing need in the glossary of the NPPF:

“Local housing need: The number of homes identified as being needed through the application of the standard method set out in national planning guidance (or, in the context of preparing strategic policies only, this may be calculated using a justified alternative approach as provided for in paragraph 60 of this Framework).”

27. It is clear beyond peradventure that the alternative approach can only ever be used in the context of plan making. Not in the context of decision-taking.

Stage 4: When is the Standard Method not Standard

28. All of these points lead the Council to a position where they have to say their figure for Chorley is the SM. But it is plainly not. The Council take the SM and change it. To make it the non-standard method. The Council seek to both amalgamate the SM figure across the three LPAs areas and then distribute it differently. This is not the standard method. It is an exercise for local plan process. The SM has only three stages, as is clear from the methodology in the PPG paragraph 004.

- (i) Stage one takes the household projection, which are produced at the LPA level and no other.
- (ii) Stage two is to apply an uplift for affordability, again based on the affordability ration of the LPA unit.
- (iii) Stage three is to apply a cap which does not apply to Chorley.

So we have a two-stage process, both stages of which rely on the LPA unit as the unit for calculating the SM.

29. The Council rely on the rest of the PPG to suggest the SM can be applied at the HMA area. But the rest of the PPG is plainly focused on plan making. Paragraph 013 plainly is, as is clear from the title.
30. But the final nail in the coffin of the Council's argument here is PPG 2a-016. That makes clear what should be done in the case of decision taking, as here. PPG2a-016 directs the decision taker to another part of the PPG. This has since been updated and split into two sections one of which is PPG the new chapter 68. This is the final destination in the link. And that link tells the decision maker at para 005 that unless the local plan has not been adopted in the last 5 years or has not been subject to the type of review described above, then the SM applies to decision making. Not some other method. And indeed only to the SM. All of which has led the Council to accept that it has to follow the SM in this case. And properly understood that is 569 dpa. And nothing else.
31. The Council contest this by making a whole series of elaborate and very surprising claims which are both confused and confusing. These include the following:
 - (1) The claim the Council is itself relying on the standard method, despite the figure it is using being only half that of the figure actually derived from the proper application of the standard method.
 - (2) The claim the Council is able to introduce an additional step into the standard method, by which it significantly redistributes the housing requirement across three local authority areas and yet claims it is still the SM.
 - (3) The claim the Council can redistribute the housing requirement across three local authority areas ahead of the adoption of the local plan (or at least the Local Plan Inspector finding the requirement sound).
 - (4) The claim the Council can redistribute in this way despite the fact the NPPF/2019 now making expressly clear that deviation from the SM is ONLY permissible as "in the context of preparing strategic policies".
 - (5) The claim paragraph 013 of chapter 2a of the PPG is relevant to decision taking, when it is in a paragraph specifically addressing plan making and, moreover, paragraph 016 is the paragraph which expressly addressed the approach to take to decision taking.

- (6) The claim MOU2 can be used for decision making even though it is not a DPD or even an SPD.
 - (7) The claim MOU2 and the HNS should be given full weight; and
 - (8) The claim MOU2 is not a material consideration, albeit it is the whole basis of the Council's case on 5YS
32. None of these claims are remotely credible. LPA's should not be entitled to refuse applications for planning permission based on reasons which are simply not credible. The Council has misread and misapplied both the NPPF (2019) and the guidance in the PPG. There can be absolutely no doubt about that. The process the Council have engaged in is for the local plan. But the local plan is only at the Issues and Options stage and so self-evidently it can only be given very limited weight. So the Council have introduced the MOU2 to try and overcome that problem. That is not permissible. LPAs are not allowed to try and circumvent the local plan process in this way, as decisions such as this should be contained in a DPD: Regulation 5(1) (a) (i) and (vi) and 6 of the Town and Country Planning Regulations 2012/767.
33. The Council plainly do try to rely on the MOU2 in this case. But simultaneously try to suggest it is not being used for the purpose of determining application for planning permission decision, when that is precisely what it is being used for (see the Summary Grounds of Resistance (ID9) at paragraphs 78). Their position on this is about as clear as mud. The Council have got themselves into a very difficult position. The JR of the MOU2 has flushed out the illegality of MOU2. It has forced the Council to try and deny it is a DPD such that it is an attempt to usurp the function of the local plan process. And yet that is precisely what it is: please see the Claimant's Statement of Facts and Grounds.
34. Ironically, Preston Council's defence to this challenge includes the suggestion that the Claimant in the JR has an alternative remedy which is to bring a planning appeal. It has been made clear that Chorley BC wish to join the proceedings. When that happens Chorley BC will presumably adopt the same line of defence. Which means that the Chorley BC will have positively invited this appeal upon itself. And suggested that the appeal is the remedy of the MOU2 and its alleged illegality. That only serves to reinforce the Appellant's costs claim. In effect, we have ignored the SM. We have tried to circumvent the local plan process. And if anyone disagrees with the MOU2, then they should appeal. Well Gladman

have appealed and its reliance on MOU2 means the Council have indeed visited this appeal upon itself for wholly inappropriate and unreasonable reasons.

35. The re-distribution of the amalgamated SM figure across the three LPAs areas has been done on a basis which IcenI have chosen. Why the chosen split has been chosen is difficult to understand. But it manages to give all three LPAs a 5YS. That is plainly the reason it was done. It has not been tested or independently examined. All that has happened is the LPAs have consulted upon it. They have responded to the consultation in ID24. But that resulted in not a single change to the document, revealing the consultation was anything but conscientious.
36. JD explains in his evidence why the approach adopted is erroneous. The whole point of stage 2 of the SM is to uplift the requirement in each authority on the basis of the local affordability index (median values of income to house price). Yet the IcenI approach is to then take the most unaffordable LPA area (Chorley) and halve the housing requirement there. It is completely inappropriate and an approach which is wholly alien to the SM approach. It is not that the variable used by IcenI are necessarily wrong. It is the way in which they have used them. The approach to affordability is wholly wrong. It completely seeks to undermine the Government's approach and with serious consequences as explained in the evidence of JS and explained below.
37. But to be clear, despite showing why it is wrong, at this stage JD does not need to win this argument over why the redistribution is wrong. The main point of his evidence is to demonstrate that there are matters for serious and important discussion here. And that these should be addressed through the LP process. That much is obvious. And most of all there should plainly be an independent examination by an Inspector. That is because it is abundantly clear that without it, the LPAs will do just what they want, which is precisely what they have done with MOU2. The overall housing requirement for Chorley is another major issue of concern as is the combined total for the three LPAs areas which is 25% lower than the present requirement, even though it was a pre-NPPF figure and there is now a Growth Deal in place in the form of the City Deal.
38. The Council's approach is all wrong. The MOU2 is undoubtedly unlawful. But it is not the role of this appeal to determine that issue. What the Inspector here has to decide is which requirement figure to adopt and why, and separately to address the fact the Council's approach and reliance on the MOU2 is unreasonable. Illegality is for the High Court. Not now.

39. The arguments about Chorley figures under the SM is too high due to Buckshaw Village, or criticism of the SM itself is raw. Its now raw. Albeit the Council have certainly tried to cook it. So too any arguments about ensuring good delivery in Preston, albeit JD's evidence shows that there is no evidence of this. Sluggish previous delivery seems to be largely due to infrastructure constraints hence Preston CC and South Ribble BC have received huge amounts of public money to fund new infrastructure to delivery growth
40. St Modwen v SSCLG and East Riding [2016] EWHC 968 (CD 11.04) is of no assistance here. It was a case decided under the first version of the NPPF. That was very different. It expressly required 5YS to be calculated on the basis of the HMA area (see CD12.03, para 47). Of course that was not always done. But St Modwen faced a serious hurdle in that challenge because the NPPF 2012 expressly stated the HMA was the unit of analysis for the housing requirement and the 5YS. Then position with now could not be more different. There is no reference whatsoever to HMA in the NPPF 2019. The PPG has also changed beyond recognition since the time of the St Modwen court case. And even though it still refers to HMAs that is no part of Chapter 2a. Added to which 21-016 could not be clearer about the approach to take. To rely on St Modwen, as the Council has sought to do in this case is wholly inappropriate. The approval of the St Modwen judgment by the Court of Appeal in Oadby & Wigston BC v SSCLG and Bloor [2016] EWCA Civ 1040 (CD11.17), is equally of no relevance.

The Harrogate Judgment

41. The Appellant has drawn the Inquiry's attention to the Harrogate court case. It has done so because we are duty bound to do so. The case might appear to assist the Council. But it does not. To date, the Council have not relied upon it all. They are wise not to do so, for the following reasons:
- (i) The Court found it was not unlawful for the LPA to calculate its 5YS based on the housing requirement in its emerging LP: in other words not to use the SM. Demonstrating a decision is unlawful is a high hurdle. Cases such as these do not indicate or assist the decision maker in knowing what is the right decision to make, how to follow policy or guidance or how to exercise planning judgement. It only sets the outer boundaries of what it is unlawful for a decision maker to do.
 - (ii) The Court was quick to rely on the fact that reliance was completely academic. The Council could demonstrate a 5YS using either the emerging LP figure or the

SM. The Claimant in that case did not challenge that. So the point was completely academic.

- (iii) The Harrogate plan was much further down the line by then. The Council has just submitted the plan to the Secretary of State and so they would have themselves believed that the submitted plan contained the correct housing requirement figure.
- (iv) The Court observed that the SM was not mandatory. That is right. It is not mandatory for the purpose of plan making. An alternative is expressly said to be available. The LPA can adopt an alternative approach, which is precisely what NPPF/60 allows them to do. But only if there are exceptional circumstances. And, crucially, only in the context of plan making.
- (v) The Judge does not make that point. And that would seem very odd given what is plainly stated in the definition of local housing need in the NPPF, as explained above. But it is only odd until one appreciates that the Judge was considering a planning permission issued in 2018. Which means that it was the 2018 version of the NPPF which applied to that decision. And that 2018 version had a different definition of local housing needs. One which did not contain an express instruction that the ability to adopt an alternative approach to the use of SM is only available in the plan making context.

The Five Year Supply of Housing Land

- 42. The housing requirement is the pivotal issue in terms of the defence of the Council's case. If the SM is applied properly (as it must be) then the Council accept they have no 5YS. The shortfall is very significant whether the one site in dispute is deducted from the supply or not. Using the SM the requirement figure is 569 dpa, giving rise to a requirement over 5 years of 2,845. With the agreed 5% buffer that adds up to 2,990. The Council's supply figure is 1,663 and so the shortfall is immediately revealed to be huge: it is 1,327 dwellings. That is a supply of only 2.78 years.
- 43. The Appellant has only sought to challenge one site. This is Cowling Farm. It does not really affect the magnitude of the shortfall. But, it should not be in the supply as the clear evidence required is lacking. The site does not have detailed planning permission. But nor does it have outline permission. It is a mere allocation. In fact there is no

planning application submitted. That means the time allowed for the submission of RM and for construction to start on site is not even known at this stage.

44. There is no PPA in place. None of the evidence to support the application has been submitted to the inquiry. It is not enough for the Council to receive a letter promising all this. That demonstrated nothing tangible at all and can be written with no consequence. What issues are in issue? How long will they take to resolved? We have no idea. The Council say Homes England suggest the site is viable. But there is no evidence whatsoever to support that. The site sits next to an industrial site and is in fact part of a mixed-use site. Those industrial uses will plainly effect values and therefore viability may very well be in issue. The Appellant is raising the fact viability is likely to be an issue. But until the planning application is submitted we do not even know if the application will be supported by a viability report, let alone what it says.
45. This site should be removed and all of the 158 dwellings removed. The Appellant's consequential supply figure is 1,505 dwellings. That is a supply of 2.5 years.
46. Whatever supply figure is used the shortfall is significant (agreed in XX) and severe. It is in fact chronic. No LPA should have a shortfall. It is a minimum requirement. And to have only half of the minimum is completely unacceptable.
47. The Court of Appeal has made clear in Hallam Land Management Limited v SSCLG & Eastleigh Borough Council [2018] EWCA Civ 1808, [50]-[53] (CD11.03) as summarised in Wavendon Properties v SSHCLG [2019] EWHC 1524 (Admin), [51] (CD11.10) that the decision-maker (in both those cases, and here, the Secretary of State): "*normally have to identify at least the broad magnitude of any shortfall in the supply of housing land.*"
48. The identification of the "*broad magnitude*" would form one factor in assessing the weight to be accorded to new housing development:
"[T]he weight given to the benefits of new housing development in an area where a shortfall in housing land supply has arisen is likely to depend on factors such as the broad magnitude of the shortfall, how long it is likely to persist, what the local planning authority is doing to reduce it, and how much of it the development will meet."

49. If there is no 5YS then the titled balance is automatically triggered under paragraph 11 of the NPPF. Added to which, the Inspector is entitled to reduce the weight to be given to BME3, as a restrictive policy, pursuant to the approach outlined by Lord Gill in the Supreme Court (CD11.09) at paragraphs 77, 79 and 83. That makes perfect sense here as BME3 should plainly be given less weight and it is the only policy which the Council relies upon to suggest the appeal should be dismissed. A shortfall is also an important material consideration weighing in favour of the grant of planning permission because the appeal proposal can help to address the shortfall. It is part of the benefits of the proposal under the titled balance for the same reason.
50. The RR on its face makes clear that the 5YS is pivotal to the issue of the grant of planning permission. The 5YS is specifically relied upon in tandem with the Safeguarded Land policy. It is also revealed in the use of the word “therefore” in the second sentence of the RR (as accepted by ZW in XX). The 5YS issue is plainly determination of the Council’s defence of its reason for refusal.

The Most Important Policies for Determining the Application are Out of Date

51. The Appellant has a second route to both the titled balance and the reduction of weight to be given to BNE3. This is because key policies in the adopted DP are out of date.
52. The approach to be taken to address this issue of deciding whether the most important policies for determining the application being out of date is explained by Dove J in the *Wavendon Properties Ltd v SSHCLG [2019] EWHC 1524 (Admin)*, [55 to 58]. One needs to identify policies considered to be most important for determining this major proposal. Plainly this is not every policy which had been considered by the officer in respect of this application (albeit the report is a little vague on which are the relevant policies: please see at CD5,1. But nor is this just the policies in the RR, as explained by Inspector Christina Downes in the Nine Mile Ride appeal decision at para 11 (see CD10.11). This is exactly what CL has done in his PoE in Section 5.4.
53. The housing requirement policy is accepted to be out-of-date. That is Policy 4 in the CLCS. The Council expressly accept it is out of date in MOU2 and its evidence to this inquiry.

54. Bizarrely, the Council do not suggest that is one of the most important policies for determining the application. Yet that is the housing requirement figure in the adopted DP, and the very thing the requirement in the MOU is designed to distance itself from, alongside the proper application of the SM.
55. Policy 1 of the CLCS is the way in which the housing requirement is distributed. If Policy 4 is out of date it follows that Policy 1 is as well, especially when the number for Chorley has been reduced so significantly downwards (MOU2) or upwards (SM). It would be quite wrong to make assumptions about how the higher or lower figure should then be distributed. This point was well addressed by Inspector Dominic Young in the Wheatley Campus appeal (see CD10.14, paragraphs 13.8 to 13.10).
56. Policy 7 is similarly one of the most important for determining the application since it addresses the need for AH, which is a key component of the NPPF. In his evidence, CL explains why it is out of date because the evidence base behind it is out of date. The Council offer no other policy to replace it. The Appellant therefore have to rely on the policy to determine the level of AH it seeks to provide. But that does not overcome the fact the policy is out of date.
57. In terms of the CLP, plainly BNE3 is on the most important policies. CL explains in his PoE why BNE3 is out of date. He also explains why BNE2 is relevant and also considered to be one of the most important policies.
58. CL has followed the Wavendon approach to the letter. He has reached a conclusion on the fact the most important policies, taken collectively are out of date, as he considers most are.
59. The Council did not engage in this exercise in the report to committee (CD 5.1). Nor again in the ZW PoE. This is a shortcoming of the Council's evidence to this inquiry. The Council case is that there is only one policy that falls into the most important category BNE3. And it is not out-of-date. The Safeguarded areas lie on the edge of existing settlements. Their inner boundaries are defined by the settlement edge. These boundaries are all predicated on a housing requirement derived from the 2003 household projections. That is the context of these safeguarded sites. It is simply not enough to say Policy BNE3 is consistent with the NPPF by simply looking to see if the NPPF supports the designation of safeguarded land. It plainly does. But the NPPF also requires up to date DP (see for example para 11 and 12 of the NPPF) and the use of an

up-to-date housing requirement (para 73 of the NPPF). The DP in this location has neither of those features. That is why it is being replaced. And why nearly all the safeguarded land is being proposed for development. That in itself tells us that the policy is out of date. Added to which the NPPF only refers to safeguarded land being used well beyond the plan period at the time of its designation. That was in the previous plan adopted back in 1997, with an end date of that LP if 2006.

60. It might be thought that this issue can be bypassed if there is a conclusion that there is no 5YS as it also takes one to the tilted balance. But it is respectfully submitted that it is a safer course to explore both routes. In the event the Council challenges the decision in respect of a conclusion the requirement is 569 dpa, then plainly the Court will be able to dismiss the claim on the basis that the tilted balance was also reached via the most important policies route as set out immediately above. That would make a challenge on the requirement issue academic. That is not to suggest in anyway that the Appellant is not right about the requirement. But in the world of politics, some legal challenges to appeal decisions are made by LPAs for political reasons or in attempt to allow an LPA to continue to reject an unhelpful appeal decision. That could happen here. But it not reason to shy away from reaching the right decision on the requirement. Indeed, Preston at least, has already invited it in its defence of the JR to the MOU2, and Chorley look set to follow suit.

Applying the Titled Balance (TB)

61. When the TB is engaged as here then the test is whether the adverse impact demonstrably and significant outweigh the benefits.

The Adverse Impacts

62. The answer here is an entirely obvious. The adverse impacts are minor. The site is already earmarked for development. It is a proposal for housing in the eLP. It is really just a question of timing. The policy objection has reduced weight. That is because the policy is based on out of date housing requirement (Suffolk Coastal as per Lord Carnwath para 63). That case concerned an appeal determined after the end of the plan period. That is a plainly relevant consideration and is not applicable here in the instant appeal. But what Lord Carnwath actually relies upon in paragraph 63 is the settlement

boundaries derived from a housing requirement which is out of date. That plainly does apply here.

63. Separately, if one accepts there is no 5YS, then the weight should be reduced for that reasons: see Lord Gill para 79-83 in Suffolk Coastal. In fact, limited weight should be given to BNE3 in this case given the size of the shortfall in the 5YS. There are no technical objections or indeed any other objections of any kind. The proposal involves the loss of the green fields. But only because it is needed. There is heritage harm but it is less than substantial and the unchallenged evidence of JC is that it is very minor and it is outweighed by the public benefits in any event. Landscape and ecological harm are all manageable and give rise to no RR.

The Benefits of the Proposal

64. Against this must be weighed the benefits of the proposal which are substantial.

(i) The Shortfall in the 5YS

65. Plainly the shortfall in the 5YS is a matter to which substantial weight should be given. The Council's witness accepted it was a matter to which significant weight should be given. The basis for the shortfall and its size are all explained above. It is a matter to which very significant weight should be given.

(ii) The Affordable Housing

66. The Appellant calls detailed evidence on this because it is a really important part of the Appellant's case. Too many Appellant's including this one in the past (at the previous appeal) have failed to do that. The appeal success rate for major housing appeals is now down at around 30%. That is baffling in the context of the housing crisis. The answer lies in setting out clearly why the housing crisis exists, how bad it is and how important and necessary the delivery of AH is. It is especially important in this case, because for perhaps the first time ever in an appeal the LPA suggest the delivery of 30% AH on a major housing scheme should be given limited weight. The Council have not weighed the benefits of the proposal properly. This issue reveals this in spades. In XX ZW accepted that the benefits that come from this proposal are to be judged on their own merits and should not be dismissed as neutral just because they may be delivered on others sites. That is correct. And the approach of Inspector Kevin Ward in the

Firlands Farm, Burghfield Common appeal is to be preferred over that of Inspector Gladman's appeal at Man's Hill in the same village three months earlier

66. The Appellant wishes to make clear that the ability to deliver AH on this site is an important part of this proposal and the benefits of the scheme, especially in the face of a collapsing future supply – as agreed by ID26. Specialist affordable housing advice was commissioned and presented here contrary to many other appeal schemes, which don't rely upon such detailed and forensic evidence.
67. **The Housing Crisis:** This proposal is not made in a vacuum. There is a housing crisis in this country. Not my words, but the words of the former Planning Minister in 2013. He also made clear that this state of affairs is causing misery to millions of our fellow citizens. The crisis is nowhere more evident than in Chorley, the 4th least affordable housing district in Lancashire to purchase a property in 2017 (**CD 8.08 – Page 9 third paragraph**).
68. The extent of the crisis is revealed in the speeches and reports on the housing crisis set out in Mr Stacey's (JS) Appendices. The content of these were unopposed by the Council. Each one warrants careful consideration:
- **Laying the Foundations – A housing Strategy for England (November 2011) (Appendix JS3)**
 - **House of Commons Debate (October 2013) (Appendix JS4)**
 - **Building the Homes We Need (April 2014) (appendix JS5)**
 - **Priced Out: Affordable Housing in England (November 2017) (Appendix JS6)**
 - **House of Commons Briefing Paper: Tackling the under-supply of Housing (June 2017) (Appendix JS7)**
 - **Sajid Javid (Speech to Local Government Association (July 2017) (appendix JS8)**
 - **Former Prime Minister, Theresa May speech (November 2017) (Appendix JS9)**
 - **Sajid Javid (Speech to Local Government Association) (November 2017) (Appendix JS10)**
 - **Prime Minister, Theresa May (Speech to the National Housing Federation) September 2018 (Appendix JS11)**
 - **Centre for Policy Studies Press Release (January 2019) (Appendix JS12)**
 - **Building for our Future: A vision for Social Housing (January 2019) (appendix JS13)**
 - **Bleak Houses – Tackling the crisis of family homelessness in England (August 2019) (Appendix JS14)**
 - **House of Commons Debate on a motion on the British House Building Industry (August 2019) (Appendix JS15)**

- **Housing Minister, Esther McVey (speech to the RESI convention (September 2019) (appendix JS16)**
- **National Housing Federation Research (September 2019) (Appendix JS17)**
- **Conservative Party Manifesto (December 2019) (CD8.02)**
- **BBC Briefing Report (February 2020) (Appendix JS18)**
- **Spring Budget – Policy Paper Budget 2020 (Appendix JS19)**
- **‘Planning for the Future’ Policy Paper (March 2020) (Appendix JS20)**

69. **Extent of the national shortfall in housing:** Also worthy of careful consideration are the content of the national and regional reports on these issues as set out by JS in sections 4, 5 and 8 of his PoE, namely:

- **The Barker Review of Housing Supply (March 2004) (Appendix JS21)**
- **The Barker Review: A Decade on (March 2014) (Appendix JS22)**
- **House of Lords Select Committee on Economic Affairs: Building more Homes (July 2016) (Appendix JS23)**
- **MHCLG Single Departmental Plan (May 2018) (Appendix JS25)**
- **Chorley Sustainable Community Strategy 2010-2020 (CD8.06)**
- **Corporate Plan 2019/20 – 2020/21 (CD8.07)**
- **Housing Study (May 2017) – CD15.10**
- **Chorley Housing Strategy 2019-2024 (CD8.08)**

70. Plainly there has been no extensive XX on these documents. Their contents are uncontested and uncontroversial. This is accepted in ZW’s rebuttal at paragraph 3.2 page 5 says, *“The Council accepts that there is a national crisis across the country”*. Before going on to say, *“However, Chorley Council has an excellent track record of housing delivery...”*. Notwithstanding this view, they remain critically important. All of this is fuelling a further crisis in respect of affordable housing.

71. The council have in part sought to rely upon the corporate target of 100 affordable homes applied over the past 8 years (**ZW rebuttal table at para 3.7 page 7**). However, examination of the Corporate Strategy 2019/20-2021/22 (**CD8.07**) clearly reveals that the 100 target is for 2019/20 only. As we know, the much-lorded *“excellent track record”* (**ZW rebuttal para 3.2 page 5**) is revealed to have failed by evidence in ZW’s PoE appendix 1, which reveals just 81 affordable homes were completed in 2019/20. Notwithstanding the below-par provenance of the 100 affordable dwelling target (compared to the net needs identified in the 2017 SHMA (146 pa)

(CD7.25) and the 2020 Housing study (132 pa) (CD7.05) the Council have failed to delivery sufficient affordable homes in the last recorded year. Further fuelling the crisis locally.

72. **Description of the extent of the crisis:** the Council evidently are contesting other parts of the evidence of JS by their extraordinary suggestion that only limited weight should be attached to the benefit of AH in the planning balance. Yet, he provides comprehensive evidence about the housing crisis in both Chorley Council and the wider context. He explains that current state of affordable housing need in Chorley and more particularly in Euxton is “**great and pressing**” (JS PoE para 9.11 page 57).

73. Furthermore, JS relies upon the various definitions arising from the Councils own documents including:

- **clear and acute need** (Housing Study 2020) (CD7.05 – page 48 and 97)
- **substantial** need for additional affordable housing (Housing Study 2020) (CD7.05 page 43 and 50)
- **maximise** development opportunities (Housing Study 2020) (CD7.05 page 43)
- there is a **shortage of affordable housing** (Central Lancashire Core Strategy 2012) (CD7.14 page 11)
- **Significantly increase** the supply of affordable housing and supported housing Chorley Local Plan (2015) (CD7.01 page 19)
- affordable housing delivery is a **high priority** Emerging central Lancashire Local Plan Issues and Options (2019) (CD7.02 page 13)
- affordable housing is a **key priority** Emerging central Lancashire Local Plan Issues and Options (2019) (CD7.02 page 17)

74. The 2017 Central Lancashire Strategic Housing Market Assessment (SHMA) CD7.25 identifies an annual requirement of 146 dwellings (JS Figure 7.3 page 46). This is every year for 18 years between 2018-2036. Recently the 2020 Housing Study (CD7.05) reveals a net annual need figure of 132 affordable homes per annum. However, JS indicated it was unclear if this figure is as a result of the redistributed housing needs in MOU2. It remains unclear.

75. This scheme delivers up to 54 affordable housing units in accordance with the requirements of Policy 7 of the Central Lancashire Core Strategy (2012).

- 76. Weight to Affordable Housing** The council's witness failed to give sufficient weight to the benefits of delivering affordable housing. Whilst, ZW prescribed "limited weight" there was no tangible evidence, certainly nothing of the scope, breath and scale of JS's evidence to assist in quantifying the enormity of the problem and correctly ascribing substantial weight to the benefit of delivering affordable homes.
77. JS has demonstrated in his written POE and EIC that there are significant benefits arising from the development.
- (i) Delivery of 30% AH, when there is a significant need for affordable housing to which it is agreed positive weight on the planning balance scales should be attached.
 - (ii) The provision of up to 54 much needed affordable homes in Chorley.
78. The Council's own SHMA reveals the scale of the problem in terms of AH in Chorley. It reveals a need for **at least 146 affordable units a year**. In this context, the Council has little justification for refusing any housing applications which delivery meaningful affordable housing given the wording of paragraph 59 of the Framework.
79. Inspector Stephens in his report on the Droitwich appeals makes it abundantly clear that **"affordability is at crisis point"** and emphasised the social element to this when recognising that **"these are real people in real need now"**. [CD10.23, page 111, para 8.124]. It is rare we see such emphasis in decision letters and Inspectors reports. Which is a failing of system, because the planning system gives far too much of a voice to the objectors of development, and far too little to the beneficiaries. Calling JS as a witness to inquiries, is one way to balance that. But as for those that benefit from AH, we don't hear from them because for most of us, we do not even see them.
80. Without adequate provision of affordable housing, these significant housing needs will be incapable of being met. In terms of the requirements of the NPPF(3) to deliver a mix of housing sizes, types and tenures for different groups, which include **"those who require affordable housing, families with Children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes"**, in paragraph 61, as acknowledged by Inspector Stephens in the Droitwich appeal **"this is a disaster of catastrophic proportions"**.
81. The council's witness rightly accepted that there is a housing crisis in this country.

82. Both JS and CL contend that **substantial weight** should be given to the important delivery of AH in the planning balance, as a separate material consideration. The attempt by ZW to downplay the importance of the AH offer, as merely policy compliant in line with the Development Plan, is deeply concerning not least for the hundreds of households unable to meet their housing needs without some form of assistance.
83. Such an approach is devastating for the 655 households on the housing register. All of whom meet the council's qualification criteria.
84. At the heart of the NPPF and indeed the national agenda, is the requirement for local planning authorities to significantly boost the supply of housing, both market and AH (para 59). The appellant's evidence is that there is incontrovertible evidence of the need for significantly more new housing nationally given the existence and extent of the national housing crisis.
- 85. Government pronouncements:** the former Planning Minister acknowledged in October 2013 that there is a housing crisis in this country. He also made clear that this state of affairs is causing grief and hardship to millions of our fellow citizens. Subsequent planning and housing ministers have all acknowledged this.
86. Furthermore, the MHCLG Departmental Plan to deliver 300,000 houses by the mid 2020's is essential to provide the homes this country desperately needs. Evidence by JS suggests that since 2004, based on the Departmental Plan, there has been a shortfall of over 1.7 million homes. This is clearly the "millions of our fellow citizens" which Mr Boles was referring to (**JS appendix 4 page 20**).
- 87.** A significant part of Appellant's evidence relates to the ability of this site to deliver affordable housing. Consequently, a major part of Appellant's case is the fact that the proposal involves the delivery up to 54 affordable homes on site, equivalent to 30% affordable housing, secured through deliverable planning obligation.
88. The appropriate weight to be given to affordable housing in the overall planning balance is of fundamental importance and has been a matter which the SOS and Inspectors have regularly considered in the planning balance.
- 89.** The delivery of new housing contributes to the social and economic roles of SD. It delivers major benefits in line with the policy in NPPF/11. Those merits are brought into stark reality by the evidence of JS, and especially for the 655 households falling into need, which JS

explained in his PoE is in spite of stricter registration criteria remains a high number of households needing assistance with their housing needs. People who are rarely heard at inquiries such as this. As Inspector Stephens asserted at the Pulley Lane, Droitwich Spa appeal (CD10.25 – paragraph 8.122).

“Needless to say these socially disadvantaged people were unrepresented at the Inquiry.”

90. National planning policy on boosting the supply of housing in this country is not being done just for the sake of the helping the development and construction industry. It is being done to address a really serious problem. Added to which, the country is in the grip of a longstanding housing crisis.
91. A serious and dramatic step change in affordable housing delivery is required in order to address both the current and future need for affordable housing.
92. There is a wealth of evidence from figures at the highest levels of Government and recognised bodies such as National Housing Federation, Shelter and KPMG which demonstrate that there is a clear and pressing requirement to build more homes to meet the significant level of unmet need, particularly for homes that are affordable. Evidence suggests that failure to do so will present a risk to the future economic stability of the United Kingdom.
93. **Government speeches and reports:** As noted above, between November 2011 and March 2020 there was a seemingly endless stream of speeches, and reports demonstrating just how severe the housing crisis is within the UK and how important it is to take action to increase the housing supply.
94. A debate took place in the House of Commons on 24 October 2013 concerning the issue of planning and housing supply; despite the debate taking place over six years ago the issues remain, and the commentary is sadly still highly pertinent to the issues surrounding affordable housing in the Chorley. The former Planning Minister, Nick Boles, provided a comprehensive and robust response to the diverse concerns raised, emphasising the pressing need for more housing, and in particular affordable housing across the country. He opened by stating:

“I need not start by underlining the scale of the housing crisis faced by this country, the extent of the need for housing or the grief and hardship that the crisis is visiting on millions of our fellow citizens.”

95. When asked to clarify the word “crisis” by the Member for Tewkesbury, Nick Boles commented that in the past year the percentage of first time buyers in England who were able

to buy a home without their parents' help had fallen to the lowest level ever, under one third. He also commented that the first time buyer age had crept up and up and was now nudging 40 in many parts of the country. He stated that the crisis:

“is intense within the south-east and the south, but there are also pockets in parts of Yorkshire.”

96. In July 2017 the Former Secretary of State for Housing, Communities and Local Government Sajid Javid addressed the Local Government Association (LGA) and said

“there’s a serious shortage of decent, affordable housing in this country”

97. He added that:

“since the 1970s – under Wilson, Callaghan, Thatcher, Major, Blair, Brown, Cameron and now May – we’ve supplied an average of 160,000 new homes each year. That’s far below what’s needed, and that failure of supply to keep up with demand has led to predictable results.”

And went on to say:

“the simple fact is that to put this right we need to build more homes that people want to live in, in places people want to live.”

98. In November 2017, the former Prime Minister Theresa May delivered a speech in which she made it her ‘mission’ to speed up the delivery of more homes. Mrs May announced that:

“For decades we simply have not been building enough homes, nor have we been building them quickly enough, and we have seen prices rise”. Whilst “the number of new homes being delivered each year has been increasing since 2010”, the Prime Minister acknowledged that “there is more we can do.

99. She went on to state that:

“We must get back into the business of building the good quality new homes for people who need them most” and “that is why I have made it my mission to build the homes the country needs and take personal charge of the Government’s response.”

100. In concluding, Theresa May stated that:

“This will be a long journey and it will take time for us to fix the broken housing market - but I am determined to build a Britain fit for the future.

101. The former Secretary of State James Brokenshire highlighted in July 2018 the failure of successive Governments, of all stripes, to build enough homes, stating that

“The consequences of this are plain to see - ordinary families, young people starting out in life and many others struggling to secure that most basic of human needs - a place to call their own - and being denied the opportunities and security that come with it.”

102. The report by KPMG and Shelter (April 2014) confirms that each year fewer homes are being built than needed, adding to a shortage that has been growing for decades. The reports make clear that without action there will be escalating social and economic consequences.
103. **Past Delivery:** the past delivery of AH in Chorley has overall been insufficient to meet need. The gulf between affordable housing delivery and needs is enormous. In the five recorded years following the publication of the 2009 SHMA (**CD8.09**) there has been a shortfall in the delivery of affordable housing amounting to 2,795 affordable homes (**JS PoE Figure 7.2 page 45**)
104. The AH need was assessed changes significantly in the 2017 SHMA. In the period covering the 2017 SHMA there has been a shortfall of 101 affordable homes. (**JS PoE Figure 7.3 page 46**). That is 101 households who have not had their housing needs met.
105. **Future Affordable housing delivery:** ID26 confirms the burgeoning problem. JS describes the future affordable housing as collapsing (**JS PoE para 9.26 page 60**). Based on the now agreed figures in ID26 it will most certainly collapse. 60 affordable homes per annum or 52 depending on delivery at the disputed site over the next 5 years is a complete failure to work out what is going on. No doubt this is an issue the development industry, will be raising at the EIP into the eLP
106. Applying the past delivery rates of development namely 22% (**JS Figure 7.1 page 43**) or 24% (**ZW rebuttal page 7**) it is evident that if the past delivery percentages continue there will be insufficient affordable homes. Policy 7 requires 30% AH, to deliver the 132 affordable homes based on the 2020 Housing Study it will require 440 homes per annum. To delivery 132 based

on past delivery of 22% continuing it would require 600 per annum and if the council's figure of 24% is used it would require 550 homes to delivery the annual need of 132 affordable homes.

107. These annual requirements to delivery the necessary affordable homes (132 per annum) all exceed the council's redistribution approach. Worryingly, if this persists the delivery of just 278 homes in Chorley would delivery at best 83 homes (30%), or 67 AH (24%) and at worst just 61 AH (22%). The latter being remarkably similar to JS's analysis in ID26, which reveals either 60 or 52 affordable homes per annum over the next 5 years.
108. **Affordable Housing Indicators: Rental prices:**The evidence of higher rents is set out in **JS para's 8.25 and 8.26 on page 52** of his PoE which confirms the following average lower quartiles rents:
- £450 the average lower quartile market rents in 18/19 in England
 - £474 the average lower quartile market rents in 18/19 in Chorley
 - 6% increase in average lower quartile market rents between 2013/14 and 18/19 in Chorley
- 109: **Housing Register:** The Housing register and the implications of various housing allocation policies is set out by JS in his **paragraphs 8.2 – 8.24 on pages 47 – 51 of his PoE**. The latest figure is 655 households on 1st April 2020. However, prior to the first Housing Allocations Policy change the register stood at 1,524 Households in April 2013. The register dramatically declined to 1,115 households in 2014. There was a general downward trend until a further change in the allocation policy in 2018, which saw a further decline between 2018 and 2019 from 835 households to 655 households. A decline of 180 households, which JS explained was not as a result of an uptick in delivery in the same corresponding period. In fact, delivery fell to just 81 homes (**JS Figure 8.1 page 47**).
110. Despite the stricter qualification changes there is still a significant number of households on the register in need of affordable housing.
111. JS sets out in his POE that this phenomenon was not unusual. The Inspector at to land at the Corner of Oving Road and A27, Chichester (**CD10.13 – August 2017**), where JS presented similar evidence, highlighted the impacts of the freedoms introduced by the Localism Act.
112. He acknowledged the wider cohort of people who have been removed from such waiting lists as a result of these changes. The Inspector set out at paragraph 63 of his report that:

“with some 1,910 households on the Housing Register in need of affordable housing, in spite of stricter eligibility criteria being introduced in 2013 there is a considerable degree of unmet need for affordable housing in the District. Consequently, I attach substantial weight to this element of the proposal.”

113. JS pointed out that the 655 households was also a high number “in spite” of changes made to the allocation policy in Chorley.
114. **Average Affordability Ratio:** as an indicator of the unaffordability of housing in Chorley JS identified that the average house price to average income ratio of 7 in 2017/18 (**JS PoE paragraph 8.28 on page 51**).
115. **Lower Quartile Affordability Ratio:** Furthermore, he also identified that the lower quartile house price to income ratio of 6.88 in 2019/20. JS in EiC described this as the highest on record. **JS figure 8.2 on page 52** shows that the ratio has increased from 5.82 in 2009/10 to 6.88 in 2019.20 equivalent to 10% increase and at time when the North West Region saw a 4% drop in the same period (**JS para’s 8.31 and 8.32 on page 52**).
116. Armed with this array of statistics backed up by a strong corporate priority to boost the supply of affordable housing identified within his evidence JS subsequently places great reliance on the delivery that can be achieved here to boost the supply of much needed affordable housing.
117. **Conclusion on Affordable Housing:** There can be no doubt that there is a **great and pressing** need for affordable housing in Chorley. Nor can there be any doubt that the proposals will deliver a significant number of high-quality affordable homes, in a highly sustainable location, for which there is a significant demonstrable need. 180 of the households on the register expressing a preference to live in Euxton. (**JS para’s 9.9 and 9.10 on pages 56/57**). JS subsequently ascribes **substantial weight** to the delivery of much needed AH. And much needed is precisely what it is.

(iii) Self-Build and Custom Housebuilding

118. As Mr Moger’s evidence illustrates at paragraph 2.6 of his PoE, as far back as the 2011 Housing Strategy for England the Government’s ambition to grow this sector has been clear, namely that:

“The Government wants to make building your own home a mainstream housing option – an affordable way of building a place people are proud to call home.”

119. The Housing White Paper (CD7.06) was also abundantly clear that:

“The government wants to support the growth of custom build homes.”

120. The 2019 NPPF (CD12.01) sets out at Paragraph 60 that in determining the minimum number of homes needed, strategic policies should be informed by a local housing need assessment. It goes on at Paragraph 61 to say that within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in policy, including “people wishing to commission or build their own homes” with footnote 26 of the NPPF detailing that:

“Under Section 1 of the Self-Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and Custom-Build properties could provide market or affordable housing.”

121. As Mr Moger explains at paragraph 2.76 of his PoE, as recently as the December 2019 Conservative Party Election manifesto the Government have reaffirmed their commitment to the growth of this sector in stating that they will:

“Support community housing by helping people who want to build their own homes find plots of land and access the help to buy scheme”

122. The Council’s adopted policy is silent on the provision or delivery of self-build and custom housebuilding. The 17 April 2019 appeal decision of *The Meadows, Bromsberrow Heath* (CD10.06) provides relevant guidance as to the consequences of such a policy lacuna:

“Given the lack of any clear policy within the Development Plan regarding such housing or evidence of local initiatives to promote it, I do not share the Council’s apparent confidence that the requirement would be met. In any case, what is clear and relevant is that up to 5 custom or

self-build houses would contribute towards meeting the requirement for such housing in the area.”³

123. The Council contends that it has thus far been unable to react to the need to provide for those wishing to build or commission their own homes on account of the Self-Build and Custom Housebuilding section of the PPG having not been introduced until 2016, a year after adoption of the Chorley Borough Local Plan in 2015. Such an approach is evidently incorrect as it ignores the very simple fact that the 2012 NPPF (**CD12.03**), published some three years prior to adoption of the Council’s Local Plan, required local authorities at paragraph 50 to:

“Plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to, families with children, people with disabilities. Service families and people wishing to build their own homes).”

124. The Council’s emerging Plan offers no comfort that there is any cohesive strategy for meeting demand in future. The main Issues and Options Consultation paper (**CD7.30**) bears no mention of Self-Build and Custom Housebuilding and Ms Whiteside went so far as to contend in her EiC that there were no questions relating to specific housing types and this therefore explained why there was no mention of self-build. One must be aware of course that there were questions about specific housing types within the Issue and Options paper from questions 7 through to 12, so Ms Whiteside is clearly incorrect in her contention.

125. In the face of mounted evidence against its approach, the Council now seeks to advance the argument that Annex 7 of the Final SHELAA Methodology for Cabinet (**ID9.12**) shows that the Council do in fact have a strategy to address demand for self-build.

126. As Mr Moger’s response note to Annex 7 explains at his paragraph 10, in relation to supply this merely relates to a call for sites process and as such does not concern sites that are subject to planning applications nor, at present, allocations. In addition to which there is no published documentation of the Council’s assessment of sites submitted to Call for Sites 3 and their potential suitability, or otherwise, for development.

127. Furthermore, Annex 7 does not tell us how many small sites were received through the Call for Sites 3, nor how many of these face constraints to delivery such as being located within the Green Belt or

³ CD10.06 paragraph 31

within Flood Zone 2 or 3 and nor does it tell us how many of the sites submitted the Council consider may, or may not, be suitable for development

128. In respect of the strategy for future supply of Self-Build and Custom Housebuilding within Chorley Borough, one can draw no robust conclusions based upon a single bullet point reference at paragraph 2.2 of Annex 7 indicating that the Council are seeking smaller sites to, amongst other things, 'encourage' self-build.

129. Turning to the matter of the Council's Self-Build Register itself, whilst it is a useful tool in helping to gauge demand, the Self-Build register cannot predict longer term demand for plots and is therefore only part of the picture in robustly assessing demand. The Self-Build and Custom Housebuilding section of the PPG (**Appendix AM9**) makes clear that:

"Local authorities should use the demand data from the registers in their area, supported as necessary by additional data from secondary sources (as outlined in the housing and economic development needs guidance)."⁴

130. The PPG then signposts the reader to the 'housing and economic development needs' guidance, which under the 'housing needs of different groups' section at paragraph 003 reference ID 67-003-20190722 states that:

"In order to obtain a robust assessment of demand for this type of housing in their area, local planning authorities should assess and review the data held on their register. They should also supplement the data from the registers with secondary data sources such as: building plot search websites, 'Need-a-Plot' information available from the Self Build Portal, and enquiries for building plots from local estate agents."⁵

131. In light of which, it is important to draw reference to paragraph 5.21 of Ms Hannify's PoE (since adopted by Mr Ireland) which states that the Housing Study (**CD7.05**) was jointly commissioned by the Council alongside South Ribble and Preston to:

"Provide a robust up to date evidence base regarding the scale, type and mix of housing needed to inform development of the local plan and consideration of housing mix on individual development sites".

⁴ Paragraph: 011 Reference ID: 57011-20160401

⁵ Paragraph: 020 Reference ID: 2a-020-20180913

132. Ms Whiteside's original PoE specifically refers to the "*robust evidence from the Central Lancashire Housing Study*"⁶ and yet by the time of her Rebuttal Evidence (and despite no change in the content of the Housing Study between the two) she amended her position to state that in respect of self-build and custom housebuilding the Housing Study "*does not provide a robust assessment of actual demand for self-build in Chorley.*"⁷
133. To be clear, the final version of the Housing Study which was published as recently as March 2020 was subject to a period of public consultation and was approved for publication in its final format following presentation to the Central Lancashire Strategic Planning Advisory Committee on 28 January 2020.
135. There has been no indication at any stage prior to Ms Whiteside's Rebuttal Evidence that Chorley Borough Council considered the Housing Study, or any component part of it, to be anything less than robust. It is therefore an extraordinary turn of events that in the face of approval from the Central Lancashire Strategic Planning Advisory Committee and the wording of her own original PoE Ms Whiteside acting as main Planning witness on behalf of the Council now seeks to advance a completely different view specifically in relation to self-build and custom housebuilding.
136. Putting aside for a moment Ms Whiteside's about turn in respect of the robustness of the Housing Study, the fact remains that in respect of self and custom build the Housing Study (**CD7.05**) that forms part of the Council's evidence base to its emerging Plan follows the recommendations of the PPG in relation to undertaking a robust assessment of demand.
137. And in doing so, it finds that when consideration is given to secondary data sources such as 'building plot-search websites', the largest database of prospective self-builders in the country, held by Buildstore, finds 699 people looking for a serviced plot to build or commission their own home in Chorley, and 185 people looking for an opportunity for a customisable home in the Borough (**CD7.05 paragraph 9.36**).
138. Not forgetting of course that in analysing other secondary data sources as the PPG allows for, using Ipsos Mori polling data which found that 1 in 50 of the adult population wish to self-build, and extrapolating this data to the adult population of Chorley, the Housing Study found that there could be a need for as many as 1,929 serviced plots in Chorley Borough (**CD7.05 paragraph 9.39**).

⁶ Zoe Whiteside Proof of Evidence paragraph 5.6

⁷ Zoe Whiteside Rebuttal Evidence paragraph 2.3

139. Ms Whiteside's Rebuttal Evidence sought to criticise the approach Mr Moger took in his PoE looking at Buildstore demand data within a 10-mile radius of the appeal site on the basis that it washed over other local authority areas and did not therefore represent a picture of demand relative to Chorley.
140. Of course one must be alive to the fact that the Council do not apply a local connection test in relation to their Self-Build Register and therefore the Council clearly see no issue with individuals and associations of individuals looking to build or commission their own home within the Borough joining their Register from other local authority areas. If it did have an issue with this, then it was entirely within the Council's gift to have taken the necessary steps to introduce a local connection test to prevent this as the PPG expressly allows them to do.
141. For the avoidance of doubt, Chorley Borough has not opted to implement a local connection test.
142. In response to Ms Whiteside's criticisms, Mr Moger submitted a Note for the Inspector (**ID9.08**) which specifically focussed upon identified demand within the PR7 postcode within which Euxton is located. This Note clarified that of the 185 individuals on the Buildstore Custom Build Register as set out in the Council's evidence base, some 27 (15%) were specifically looking for opportunities in Euxton.
143. Similarly, of the 699 on the Buildstore Plot-Search database looking to purchase a serviced plot in Chorley, some 121 (17%) were specifically looking to purchase a plot in Euxton.
144. The evidence demonstrates that the demand for serviced plots in Euxton and Chorley Borough is significantly greater than current supply. Mr Moger's analysis of the Council's five year housing land supply at **Appendix AM11** to his PoE demonstrates that just 27 plots are secured by legal agreement with the remaining 22 being sites where it has been indicated by the applicant that the CIL Self-Build Exemption will be applied for.
145. Mr Moger's Supplemental Evidence illustrates that in the period between April 2016 and October 2019 the majority of those who had indicated they would apply for the Self-Build CIL Exemption had not actually proceeded through to the CIL Form 7 Part 2 stage which is the point at which evidence must be provided to demonstrate qualification as a self-builder.
146. To be precise, just 37 out of 116 had proceeded to the Form 7 Part 2 evidence stage suggesting that CIL Self-Build Exemption applications are not a sufficiently robust method for monitoring self-build and custom housebuilding supply.

147. This further serves to highlight the importance of securing the delivery of plots by legal agreement as is proposed by the appeal proposals through a Unilateral Undertaking which has been agreed with the Council.
148. The appellant recognises that there is unmet demand for this type of housing product within the Borough and that the Government has expressed a very clear commitment to increasing the delivery of this sector of the housing market for almost a decade now.
149. The serviced plots are secured by Unilateral Undertaking to ensure that they meet the provisions of the Self-Build and Custom Housebuilding Act (as amended). This legal agreement also requires marketing of the plots for a period of 24 months, and for these plots to be marketed to those on the Self-Build Register, a qualifying self-build or custom-build developer or other persons agreed with the Council prior to disposal.
150. The Inspector in the land west of Parsonage Road, Takeley (CD10.10) appeal decision of 31 January 2020, where Mr Moger also provided self-build and custom housebuilding evidence, found at paragraph 46 of her report that:
- “Identified demand for self-build plots has been demonstrated. The provision of 12 plots, being some 10% of the overall number, would help to meet that demand and the requirements of the Self-build Act and accord with paragraph 64 of the Framework. A mechanism to ensure that such development would meet the definition of self-build and custom-build housing is necessary, and the provisions do that”***
151. Whichever way one looks at it there is a clear commitment from the appellant to deliver serviced plots to meet unmet demand within Euxton and Chorley Borough. A level of demand that is identified within the Council’s own evidence base in the form of the 2020 Housing Study (**CD7.05**) which applies the recommendations of the PPG to undertake a robust assessment and in doing so identifies a level of demand that far exceeds that recorded on the Council’s own Self-Build Register.
152. As Ms Whiteside conceded during XX, not only does she accept that the nine people on the Council’s Self-Build Register do not constitute the full extent of demand in the Borough but she also conceded that there are no other large sites like this this within Chorley making provision for self and custom-build serviced plots.
153. Without sites such as the appeal site which will deliver 10% of units as serviced self-build and custom housebuilding plots, providing 18 serviced plots, and given the policy

vacuum in respect of self-build and the lack of any alternative strategy to address this, it is entirely unclear how the Council intends to address demand for Self-Build and Custom

154. For all the reason given the Appellant invites the inspector to give the self-build component of this proposal substantial weight.

(iv) Economic Benefits

155. The proposal will deliver a host of economic benefits. These include the employment generated during constructions phase and all the indirect employment as well. Given the present Prime Ministers very recent emphasis this week on the need to “build, build, build” to assist the national economy out of the present crisis, this is now surely a matter which attracts significant weight. An indication that such weight should be given to the economic benefits of new housing was revealed in the SoS decision letter on the Wheatley Campus decision in April.

156. There is also the additional spend which will be brought into the area.

(v) Other benefits

157. There are other benefits arising from this proposal addressed in CL PoE

Section 38(6) PCPA 2004

158. The Appellant also submits that the proposal should be allowed under the statutory test. That is because the development complies with the DP as a whole: Cornwall v Corbett [2020] EWCA Civ 508. Even a most important policy, in that case the AONB policy, is capable to being breached and a proposal still being capable of being on conformity with the DP as a whole

159. In addition, and in the alternative, the appeal should be allowed because if it decided it does not comply with the DP as a whole, then the material considerations (which are the same as the benefits) outweigh the conflict with the DP.

The Concerns of Local People

160. Local people have participated in this appeal process, in writing, by video camera and by telephone. Their views are all ones that are perfectly nature. But as grounds of objection the vast majority are not supported by any professional expert opinion or evidence. They have been addressed in the Appellant evidence, including the additional notes submitted by Suzanne Mansfield during the inquiry.

The Previous Appeal

161. National policy in relation to key issues such as the application of the presumption to safeguarded land, the basis for calculating 5YS and when a housing requirement in an existing plan becomes out of date has all changed. So too is the Council's reliance on the Policy 4 of the CLCS. The consequential state of the 5YS has changed. The decision has little relevance to the RR. The conclusion on heritage, location, landscape etc are however still relevant.

Conclusion

162. For all the reasons set out in the evidence of the Appellant, the oral evidence of its witnesses and the opening statement and these closing submissions, the Inspector is respectfully invited to allow the appeal.

2 July 2020

**Christopher Young QC
James Corbet Burcher
No5 Chambers
Birmingham - Bristol - Leicester - London**

Abbreviations

AM	- Andy Moger
CD	- Core Document
CL	- Christien Lee
CLCS	- Central Lancs Core Strategy
CS	- Core Strategy
EiC	- Evidence in Chief
HMA	- Housing Market Area
JD	- James Donagh
JS	- James Stacey
LP	- Local Plan
LPA	- Local Planning Authority
MOU	- Memorandum of Understanding
NI	- Nick Ireland
NPPF	- National Planning Policy Framework
OAN	- Objectively Assessed Need
PCPA	- Planning and Compulsory Purchase Act 2004
PPG	- Planning Practice Guidance
SoS	- Secretary of State
TCPA	- Town and Country Planning Act 1990
ZW	- Zoe Whiteside
XX	- Cross examination
5YS	- Five Year Supply

