

CD6.22

Appeal Decision – Jepps Lane

Preface:

This appeal decision is relevant due to the Inspector's comments on the housing supply and relevance of City Deal (paragraph 19 and 21). It is also relevant due to the comments regarding affordable housing (paragraph 25 and 26).

This appeal decision is also important as the Inspector considers that conflict with CS Policy 1 and PLP Policy EN1 brings about conflict with the development plan when considered in its entirety.

Relevant paragraphs: 19, 21, 25, 26 and 47 which are highlighted in green

CD6.22

Appeal Decision – Jepps Lane, Barton

Preface:

This appeal decision is important because it deals with an allowed appeal where the benefit of additional household expenditure would help secure the viability of services in the settlement which is relevant to the consideration of the appeal scheme. The Inspector also considered the support to the general vitality of the community was a separate benefit.

The relevant paragraphs referenced in the Appellant's proof are highlighted yellow.



Appeal Decision

Inquiry held on 19 – 20 October, 18 – 19, 22 November 2021

Site visit made on 20 October 2021

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2022

Appeal Ref: APP/N2345/W/21/3276293

Land north of Jepps Lane, Barton, Preston PR3 5AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Story Homes against the decision of Preston City Council.
 - The application Ref 06/2020/1002, dated 17 September 2020, was refused by notice dated 3 December 2020.
 - The development proposed is residential development for up to 125 no. dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all detailed matters reserved for later consideration, apart from access. I have dealt with the appeal on the same basis, taking the layout provided as indicative of how the development might proceed.
3. A draft agreement made under section 106 of the Town and Country Planning Act 1990 (s106) was submitted at the Inquiry. This secures a policy compliant 35% affordable housing, the implementation, maintenance and management of on-site public open space and various financial contributions. The latter include those in support of sustainable transport infrastructure in the area, including within Barton, the monitoring of a Travel Plan and the provision of primary and secondary school places. A signed and executed s106 dated 20 January 2022 was subsequently provided.

Site and surroundings

4. The proposal is located on the edge of Barton, which is a linear settlement running mainly alongside the A6, some 6 miles north of Preston. Part of the settlement to the east of the A6 falls within the administrative boundary of Wyre Council. To the west of the A6 and further to the south, Barton falls within Preston City Council. This includes the appeal site, which is a roughly rectangular parcel of farmland of some five hectares on the western side of the village.
5. The site directly abuts the settlement's main built-up side to the west, lying just outside the boundary for this defined in the development plan. Access is to be from Jepps Lane, which is served off the A6. This runs alongside the southern edge of the appeal site and follows the settlement boundary to that

side, with existing housing opposite. There is a farmstead with two residential conversions to the northern side of the site but beyond this, and to the east, open countryside.

Main Issue

6. Whether the proposal would be appropriate, when assessed against the policies in the development plan.

Reasons

7. The Central Lancashire Core Strategy¹ (CS) and the Preston Local Plan² (PLP) provide the adopted development plan policies of relevance to this appeal. The CS was adopted in July 2012 and covers the period 2010-2026. It sets out the joint strategic planning policies for Preston City, South Ribble Borough and Chorley Borough Councils. The three Councils have subsequently adopted their own local plans to provide site allocations and development management policies for their respective areas. For Preston, the PLP was adopted in July 2015, covering the years 2012-2026, and includes policies and land allocations to meet the housing requirements set out in the CS.
8. CS Policy 1 provides the spatial strategy for growth in Central Lancashire, focusing this on well located brownfield sites and the Strategic Location of Central Preston, the Key Service Centres of Chorley and Leyland and the other main urban areas in South Ribble, whilst protecting the character of suburban and rural areas and recognising that some greenfield development will be required on the fringes of the main urban areas.
9. CS Policy 1 establishes a settlement hierarchy within parts (a) - (f). Growth and investment are to be concentrated in the Preston/South Ribble Urban Area (a), the Key Services Centres (b) and the allocated Strategic Sites (c). Lower down the hierarchy in terms of settlement scale, some growth and investment are to be encouraged in listed Urban Local Service Centres (d) and limited amounts in listed Rural Local Service Centres (e). Part (f) addresses the other places at the bottom of this hierarchy, including smaller villages. In these places, CS Policy 1 states that development will typically be small scale and limited to appropriate infilling, conversion of buildings and proposals to meet local need, unless there are exceptional reasons for larger scale redevelopment schemes.
10. Barton is one of the smaller villages covered under CS Policy 1 part (f) and the development of up to 125 dwellings would neither be of a small scale nor meet the further criteria set out. The proposal comprises a large-scale scheme for housing which represents a clear breach of CS Policy 1, in respect of the spatial strategy this provides for the amount and distribution of development growth in Central Lancashire. CS Policy 1 is a strategic policy and so relies on the PLP to provide the further level of detail necessary for its implementation, through specific site allocations and development management policies.
11. PLP policies AD1(b) and EN1 act alongside CS Policy 1. Policy AD1(b) is concerned with proposed developments within the villages defined on the PLP Policies Map, such as Barton. The supporting text in paragraph 4.25 refers to Barton as one of a number of villages situated within the open countryside with

¹ Central Lancashire Adopted Core Strategy Local Development Framework – July 2012

² Preston Local Plan 2012-26 Site Allocations & Development Management Policies - adopted 2 July 2015

tightly constrained and defined boundaries where development will need to be in accordance with PLP Policy AD1(b). Paragraph 4.26 continues by stating that, whilst these villages vary in size and range of services, none are identified in the CS as Rural Local Service Centres, and therefore no significant growth aspirations exist for them. In accordance with CS Policy 1(f), paragraph 4.27 confirms that development within such villages should typically be small-scale, infill, conversion of buildings and proposals to meet a local need and that limiting the scale of development within them serves to abide by the principles of sustainable development.

12. Outside the Barton settlement boundary, the appeal site is designated Open Countryside in the PLP policies map where, alongside CS Policy 1(f), PLP Policy EN1 applies. Other than permissible under PLP policies HS4 (rural exception affordable housing) and HS5 (rural workers' dwellings in the Open Countryside), EN1 limits development here to that needed for agriculture, forestry or appropriate rural economic diversification, the re-use or re-habitation of existing buildings or infilling within groups of buildings in smaller rural settlements. None of these exceptions apply to this proposal, which clearly conflicts with PLP Policy EN1 in respect of the limits this imposes on development in Open Countryside. PLP Policy EN1 works in tandem with CS Policy 1(f) in order to restrain development in Open Countryside so as to focus this into the locations which help deliver the spatial strategy and have been identified or allocated for this purpose.
13. As is common ground between the parties, I find the proposal to be contrary to CS Policy 1 and PLP Policy EN1 and therefore inappropriate in these terms. This therefore provides the starting point, in terms of Section 38(6) of the Planning and Compulsory Purchase Act 2004, whereby if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts this must be made in accordance with the plan unless material considerations indicate otherwise.
14. CS Policy 1 is broadly consistent with the National Planning Policy Framework (the Framework). This is through it setting out an overall strategy for the pattern and scale of growth across Central Lancashire and bringing sufficient land forward in the most sustainable locations, including brownfield, to address development needs over the plan period. In combination, CS Policy 1 and PLP Policy EN1 play a central role in the delivery of the adopted spatial strategy for growth in this area. In terms of meeting the objectives of the development plan, these policies are of fundamental importance. The up to 125 dwellings proposed comprises a large-scale scheme for housing in a location which represents a significant breach of development plan policy.
15. The scheme would result in the harmful loss of open countryside adjacent to a settlement containing only the modest range of services reflective of its position at the bottom of the settlement hierarchy, as established in the development plan. Barton has a reasonable bus service in either direction along the A6, connecting to Preston city centre to the south and other centres to the north. There is little wider public transport connectivity and, whilst there is a primary school, there is not shown to be much by way of other essential services, such as supermarkets, health centres, secondary and further education and main employment areas, to which travelling beyond the village would be required.

16. A proposal of this scale is neither a minor or technical breach of policy and would run counter to, and undermine, a plan-led approach towards correlating the appropriate amounts of growth with existing levels of transport connectivity, infrastructure capacity, service provision and brownfield land availability.
17. On this basis, the adverse effects would be substantial, through this proposal running counter to a spatial strategy that serves to promote a sustainable pattern of growth, including by leading to housing expanding in a location where this would be likely to generate a significant degree of travel to meet daily household needs. This then conflicts with the key aims of the CS for increasing accessibility to homes, jobs, open space, recreation and other services, and influencing travel patterns to encourage alternatives to the car to help reduce emissions and congestion.

Benefits of the proposal

18. The scheme would provide social benefits by helping to meet the Government's general objective for significantly boosting the supply of homes. However, housing land supply and delivery factors have a bearing on the relative weight I attach to this benefit. The parties are in agreement that, against the Preston requirement of CS Policy 4, a 6.1-year housing land supply can be demonstrated. The end date of the five-year supply period of 31 March 2026 coincides with that of the CS and PLP, at which point the Council is on course for exceeding the requirement by 912 dwellings (or a 1.8-year supply based on the annual requirement of 507 in CS Policy 4).
19. A 6.1-year housing land supply is an amount that puts the Council in a robust position over not needing to look to sites beyond those planned for to meet the requirements of Framework paragraph 74. Therefore, there is no premium to the benefits of this proposal in terms of it supporting the required five-year supply of deliverable housing sites, which can be comfortably met.
20. Furthermore, Preston has performed very well in respect of housing delivery in recent years. Against the CS Policy 4 annual requirement of 507 net additional dwellings, the Council points to the fact that, over the last five years, delivery has exceeded this by approximately 152%. Since the inception of the Housing Delivery Test in 2018, the Council has consistently achieved excellent levels of performance and currently scores joint 8th position nationally.
21. This robust housing land supply position and very good delivery performance provides no strong imperative to increase the weight given to the benefits of this proposal. There is also little argument to the effect that the existence of the City Deal³ should either. This does not supplant the housing requirements of the development plan and evidently was a funding measure intended to help unblock infrastructure impediments to meeting those set out in CS Policy 4.
22. Of the dwellings proposed, up to 44 would be affordable. This complies with the 35% requirement in CS Policy 7, for developments within rural areas. This Inquiry heard detailed affordable housing evidence. Overall, it confirmed what the Inspector had thought to be likely in the quite recent appeal decision⁴ to

³ Preston, South Ribble and Lancashire City Deal

⁴ Appeal Ref: APP/N2345/W/20/3258889 outline application for up to 151 dwellings with associated works allowed on 9 March 2021 at land at Cardwell Farm, Garstang Road, Barton, Preston PR3 5DR

allow housing elsewhere in Barton at Cardwell Farm. This was that Preston's overall affordable needs were substantial, with delivery not keeping up.

23. In arriving at my decision over the weight to give to affordable housing, I have had regard to that given in other appeal cases. This includes the Secretary of State having agreed in the Wheatley Campus decision of 23 April 2020⁵, that the delivery of up to 500 houses, 173 of which would be affordable, were considerations that carried very substantial weight in the planning balance, given the acute seriousness of the affordable housing shortage in South Oxfordshire. Moreover, the Secretary of State endorsed the Sedgefield method in addressing an affordable housing shortfall over a five-year period, even in a context of a demonstrable five-year housing land supply. However, such an approach has yet to form part of Government policy or guidance and, unlike in the Aviation Lane appeal decision⁶ also cited, Preston's development plan does not set an annual requirement for new affordable housing.
24. I also accept that the lack of evidence of a specific affordable housing need in Barton has no bearing over this being a suitable location for helping to meet a district-wide need. Furthermore, I acknowledge that the 'right to buy' provisions further exacerbate concerns that the delivery of affordable housing is not keeping up with need.
25. Whilst proper for the appellant to provide detailed evidence over the acute and growing need for affordable housing in Preston, I accept the Council's point over this having to be considered against a national situation. The housing affordability problem in Preston is in common with that of much of the country. It is not a matter unique to Preston and, on that basis, ought not be a consideration that should weigh decisively against the adopted spatial strategy.
26. In relation to the acute need identified by the appellant, this scheme proposes no more than a policy compliant amount of affordable housing. I acknowledge that this proposal is not put forward as a rural exception affordable housing scheme. Nevertheless, as context, the Council has quite reasonably drawn my attention to PLP Policy HS4, which would only provide support for a scheme such as this, had it wholly been for affordable housing. Furthermore, I accept the Council's point that the CS intentionally never sought to meet Central Lancashire's affordable housing needs in full, and a failure to do so should not warrant the setting aside of a wider spatial strategy for sustainable growth.
27. In allowing a proposal for up to 151 dwellings at Cardwell Farm, my colleague attached significant weight to the social benefits of an amount of housing similar to this and which also included the same policy compliant 35% affordable. On the basis of the housing benefits discussed, I attach the same significant weight to this scheme's social benefits.
28. The development would provide local economic benefits through the construction of the dwellings. Upon occupation, the additional household expenditure would help secure the viability of the existing services within the settlement. Whilst the accessibility of the site to existing Barton services is a neutral factor, the support given to their viability, and to the general vitality of

⁵ Appeal Ref: APP/Q3115/W/19/3230827 up to 500 dwellings at Oxford Brookes University, Wheatley Campus, College Close, Wheatley, Oxford OX33 1HX

⁶ Appeal Ref: APP/B3410/W/20/3245077 128 no. affordable dwellings allowed on 7 October 2020 at land off Aviation Lane, Burton-upon-Trent

the community, is a benefit. I attach moderate weight overall to these local socio-economic benefits.

29. The appeal site mainly comprises improved grassland of little inherent biodiversity value. Through appropriate design and landscaping, the development could enhance the ecological value of the site. This is a further benefit to which I attach some limited weight.
30. The development would provide public open space of wider community value. However, this would principally meet the needs of the additional population and is a benefit to which only modest additional weight is given.
31. The lack of objection on technical grounds from any statutory consultee, amounts mainly to an absence of harm, rather than the scheme providing any material degree of benefit. The sustainable transport contributions secured through the s106, including those to encourage walking and cycling, would help mitigate the impacts of the additional housing, rather than adding any net benefits.

Overall Planning Balance and Conclusion

32. As an expression of Government policy, the Framework is a material consideration that carries great weight. Paragraph 11 d) applies a presumption in favour of sustainable development, which in this case means assessing whether the development plan policies most important for determining the appeal are out-of-date. It is common ground that the Council can demonstrate a five-year housing land supply. Therefore, the policies most important for determining the appeal are not deemed out-of-date by footnote 8 of 11 d). However, it is necessary to assess whether these most important policies are otherwise out-of-date and whether this then applies to the development plan as a whole⁷.
33. CS Policy 4 sets the housing requirement for Preston over the plan period. The proposal does not conflict with this policy since this sets a minimum housing requirement, to which this scheme would contribute. The Council considers CS Policy 4 to be out-of-date because of a significant change in local housing need based on the Government's standard method. This approach generates a much lower annual housing requirement and a correspondingly greater demonstrable housing land supply of 15.3 years. However, regardless of whether or not I agree that CS Policy 4 is out-of-date, there is no conflict with it. It is not referenced in the Council's reason for refusal and is not one of the most important policies for determining the appeal.
34. As the spatial strategy for the location of growth in Central Lancashire, which limits the amount in Barton, CS Policy 1 is a most important policy in this case, as is PLP Policy EN1 which operates in tandem with this to restrain housing outside the settlement boundary. The proposal conflicts with these two policies and so both are most important for determining the appeal.
35. Paragraph 219 of the Framework provides that existing policies should not be considered out-of-date simply because they were adopted prior to its publication and that due weight should be given to them according to their degree of consistency with the Framework. There was no definitive guidance or caselaw put to me on the degree to which a policy must be inconsistent with

⁷ Wavendon Properties Limited v SSHCLG and Milton Keynes Council [2019] EWHC 1524 (Admin) [55-58]

the Framework for it to become out-of-date. This is a matter of planning judgement, based on the circumstances of this case.

36. Policy CS 1 does not define settlement boundaries but, under criterion (f), secures that growth for places such as Barton be limited and typically small-scale. Working in tandem with PLP Policy EN1, this constrains development in certain places and focuses it to within others. In doing this, CS Policy 1 provides a spatial strategy which directs the scale and location of growth in a manner which is consistent with the Framework's objectives for achieving sustainable development.
37. The Council has, on a number of occasions, granted consent to proposals which conflicted with CS Policy 1. This has evidently included times when there had been a requirement to apply the Framework's 'tilted balance' due to a lack of a demonstrable five-year housing land supply. Even when policies were up-to-date in terms of housing land supply, the Council may take decisions that depart from the development plan, if material considerations in a particular case indicate that the plan should not be followed. The specific case of Bartle Garden Village, considered a sustainable urban extension, is such an example.
38. The evidence is that, in these situations, the Council had been applying section 38(6) and taking into account whenever material considerations indicated decisions be made otherwise than in accordance with the development plan. The Council having previously made such legitimate decisions provides insufficient grounds to find that, thereafter, Policy CS 1 must be considered as out-of-date.
39. The housing land supply situation in the other two Central Lancashire authorities does not alter my conclusion in this regard. CS Policy 4a) clearly disaggregates housing requirements by individual authority. In Preston, the spatial strategy established in CS Policy 1 can be achieved through the allocations and settlement boundaries subsequently provided in the PLP and so remains up-to-date in the context of this decision.
40. The appellant refers to the case law in *Colman v SSCLG*⁸, *Telford and Wrekin v SSCLG and Gladman*⁹ and *Eastleigh v SSCLG*¹⁰ to support an argument over PLP Policy EN 1 being out-of-date. In summary, this is due to it seeking to protect the countryside for its own sake through a blanket ban on development, inconsistent with the more flexible and balanced approach advocated by the Framework. However, these rulings do not alter this remaining a question of judgment.
41. The supporting text to PLP Policy EN1 in paragraph 8.4 states that it is important that the Areas of Open Countryside are protected from unacceptable development which would harm its open and rural character. Framework paragraph 174 b requires that planning policies contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. However, Policy EN1 itself does not go on to apply any criteria for assessing effects upon character in limiting development in the Open Countryside. There is no reference in Policy EN1 to the out-dated policy to protect the countryside for its own sake and I consider its purpose

⁸ Anita Colman v SoSCLG [2013] EWHC 1138

⁹ Borough of Telford and Wrekin v SoSCLG and Gladman Developments Limited [2016] EWHC 3073 (Admin)

¹⁰ Eastleigh BC v SoSCLG [2019] EWHC 1862 (Admin)

complimentary to that of PLP Policy AD1(b), which permits small scale development within defined villages.

42. In terms of whether Policy EN1 is consistent with the Framework, paragraphs 78 to 80 of the latter relate to rural housing. In summary, these seek that planning policies be responsive to local circumstances in rural areas, support opportunities to bring forward rural exceptions sites, locate housing where it will enhance or maintain the vitality of rural communities and avoid the development of isolated homes in the countryside. Further clarification is provided in the Planning Practice Guidance¹¹ which advises that a wide range of settlements can play a role in delivering sustainable development in rural areas, so blanket policies restricting housing development in some types of settlement will need to be supported by robust evidence of their appropriateness.
43. Policy EN1 was part of a plan adopted in 2015, having been found sound on examination in 2014. This was after the publication of the original 2012 Framework, in which rural housing policy was broadly the same as it is currently. I do not find the fact the Examiner's report is silent on the particular question of consistency with the Framework advanced by the appellant in this case reasonable grounds to retrospectively deem it now out-of-date.
44. There is nothing in the revised Framework to indicate that the definition of settlement boundaries is no longer a suitable policy response to providing the basis for a spatial strategy towards meeting planned development needs. Any degree to which Policy EN1 might be deemed a blanket policy, gains robust support through forming part of an overall spatial strategy that has been examined and found sound.
45. The limits to housing in the Open Countryside imposed by PLP Policy EN1 is not preventing an available supply of land sufficient to meet housing needs within the plan-period. Drawing all these considerations together, I consider that for the purposes of determining this appeal, PLP Policy EN1 remains consistent with the Framework and up-to-date.
46. Because of the favourable five-year housing land supply position in Preston, the spatial strategy provided through CS Policy 1 and PLP Policy EN1 is satisfying planned needs. As the policies most important in this decision, I find both to be up-to-date and retentive of very significant weight. These form part of a wider basket of relevant development plan policies, including others that this proposal satisfies, such as CS Policy 4 in respect of housing delivery and Policy 7 over affordable housing requirements.
47. Even if I agreed with the Council that CS Policy 4 was out-of-date, and that Preston's housing requirement should be based on a local housing need calculated using the Government's standard method, this would still be secured through the adopted spatial strategy and so I do not find the development plan to be out-of-date as a whole. As CS Policy 1 and PLP Policy EN1 are fundamental to the delivery of the spatial strategy for growth, the proposal's lack of compliance with these brings about a conflict with the development plan when considered in its entirety.

¹¹ Paragraph: 009 Reference ID: 67-009-20190722 Revision date: 22 07 2019

48. The proposal is in conflict with relevant development plan policies which provide a spatial strategy that promotes a sustainable pattern of growth within Preston. That I have found these policies not to be out-of-date means that the proposal would not benefit from the presumption in favour of sustainable development as set out in paragraph 11 of the Framework. The following Framework paragraph 12 advises that where a planning application conflicts with an up-to-date Local Plan, permission should not usually be granted.
49. This planning balance is not made on exact measurements of weight. However, in the descriptions used in this decision, a substantial weight is one that greatly exceeds significant. The benefits of the proposal are of significant weight only in respect of the contribution towards housing supply along with its policy compliant percentage of affordable homes, and less so in other regards. In all, these benefits would not justify departing from a spatial strategy that holds a pivotal role in ensuring that future development growth proceeds in a manner that accords with the principle of sustainable development.
50. The proposal amounts to a housing scheme of a significant scale that creates a commensurate degree of conflict with development plan policy, to which I attach substantial weight and find the equivalent degree of harm. The weight given to the benefits would be insufficient to outweigh that attached to the harm found and so, as material considerations, would not indicate my decision be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

Jonathan Price

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Martin Carter of Counsel

He called

Mr Chris Blackburn BSc MSc MRTPI– Planning Policy Team Leader Preston City Council

Mr Robert Major BSc MSc MRTPI– Principal Planning Officer (Development Management) Preston City Council

Dr Michael Bullock BSc(Hons), PhD, MMRS, MCIH - Managing Partner Arc4 Ltd

Mr Ian Blinkho – local authority solicitor.

FOR THE APPELLANT:

Mr Vincent Fraser of Queen’s Counsel

He called

Mr Daniel Hughes BA(Hons) MPLAN MRTPI Associate, PWA Planning

Mr James Stacey BA(Hons) Dip TP MRTPI Director, Tetlow King

INTERESTED PERSONS

Mr Roger Hacking – Chairman, Barton Parish Council

Mr Michael Calcutt – local resident

Mr Mick Gornall – local resident

INQUIRY DOCUMENTS

<https://www.preston.gov.uk/jeppslaneinquiry>

S1 Appellant’s opening statement

S2 Council’s opening statement

S3 a-d Central Lancashire Local Plan Issues and Options Consultation November 2019 Annex 1 – Site Suggestions Proposed by Chorley Council Annex 1 parts 1-4

S4 Statement of Common Ground on 5-Year Land Supply Matters August 2021 for Appeal A – Land at Tincklers Lane, Ecclestone (PINS ref: APP/D2320/W/21/3272310) and Appeal B – Land North of Town Lane, Whittle-le-Woods (PINS ref: APP/D2320/W/21/3272314)

S5 Cardwell Farm decision - Court Order permission to apply for statutory review

T1 Appellant’s closing statement T2 Council’s closing statement