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**LAND WEST OF GARSTANG ROAD, BROUGHTON**

**OPENING ON BEHALF OF THE LPA**

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1. **Introduction**

This is an application in respect of a 2.57 ha site in current use as agricultural land. The original application form showed 33 market houses of unknown bedroom type and 18<sup>1</sup> houses for social, affordable, or intermediate rent again of unknown bedroom type. No pre-application advice was sought about the application.<sup>2</sup>

2. The description of the development recorded in the ScG is: -

*“Outline Planning Application seeking approval for access only for residential development for up to 51 no. dwellings with associated works (all other matters reserved).<sup>3</sup>*

3. The Planning Statement supporting the application<sup>4</sup>:-

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<sup>1</sup> By the time the application reached committee [ meeting 30/3/23] it was proposing 20 units (40%) and a commitment to provide larger homes for BAME households, self-build plots and accessible and adaptable dwellings.” [ see §3.2 of POR at CD 3.0 ].

<sup>2</sup> All from application made by Hollins Strategic Land LPP on 5/1/23- CD 1.08.

<sup>3</sup> CD 8.12 §2.15

<sup>4</sup> Planning Statement dated January 23[ CD 1.07].

- 3.1 inter-changeably refers to Broughton as a village and a town<sup>5</sup>;
- 3.2 clarifies that the site is being promoted through the emerging local plan process<sup>6</sup>;
- 3.3 Identifies that this is a resubmission of an earlier proposal considered by the LPA throughout 2021. The resubmission seeks to reflect a change the tenure and type of accommodation “*brought forward in response to newly available information*”.<sup>7</sup> The amendment that is introduced is identified to be inclusion of housing for over 55s,<sup>8</sup> increased provision of affordable housing with a focus on the affordable rented sector and First Homes<sup>9</sup>, Accessible and Adoptable M4(2) and Wheelchair M4(3) dwellings<sup>10</sup>, Larger Homes for BAME households<sup>11</sup>, self-build<sup>12</sup> plots.<sup>13</sup> The localised need identified is in each of these respects - that within Preston.<sup>14</sup>
- 3.4 The assessment of whether the site is in a “sustainable location” for the development proposed is not an abstract question uninformed by accordance with the development plan policies applicable, nor is it a simple matter of relative accessibility to some services - it is bound in with strategic and community led planning. The plan makes a spatial choice to direct growth to “the most sustainable” locations. Nor is the suitability of a development proposal detached from the performance or delivery of a plan.
- 3.5 In Broughton, not only has the settlement accommodated unplanned for growth justified by a previous period of inability of the LPA area to maintain a 5 year supply of housing, but it has also grasped the opportunity vested in local communities to make choices within a neighbourhood plan.

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<sup>5</sup> See CD 1.07 §6.1,6.2 [ 8.96 number 4]

<sup>6</sup> See CD 1.07 §6.13

<sup>7</sup> See CD 1.07 §8.1

<sup>8</sup> See CD 1.07 §8.72

<sup>9</sup> See CD 1.07 §8.81

<sup>10</sup> See CD 1.07 §8.84

<sup>11</sup> See CD 1.07 §8.86

<sup>12</sup> See CD 1.07 §8.90

<sup>13</sup> See CD 1.07 §8.60

<sup>14</sup> See CD 1.07 §8.101.

4. This does mean that Broughton has experienced growth but cannot mean that all the agricultural fields around this lower order settlement should now be seen differently or as ripe for speculative further unplanned for development when there is now a comfortable housing land supply position and there is no support from a local plan allocation providing for planned for growth.
5. It is simply wrong to seek to argue for any proper equivalence or comparison with local neighbourhood plan allocations. Whilst none are equivalent the important point about an allocation is that it is an allocation.
6. The justification for the Appellant asserting that the appeal site is a sustainable location is identified within their Statement of Case at §1.12<sup>15</sup> [Oct 23] in incorrectly alleging that the council agrees that Broughton is a sustainable location for further development by inference of the level of growth proposed by the Council in the emerging Local Plan. This is not a proper inference and cannot begin to justify development of the appeal site. For the avoidance of doubt two matters that can be agreed should be recorded in Opening: -

6.1 In §6.109 of his POE Mr Saunders says, “**Policy 1, EN1 and RES1 are in accordance with the Framework** (which is a separate point) **and have full weight.....**”. The remainder of what he thereafter says about various material considerations diminishing harm to these policies is contentious – but the highlighted text is entirely agreed.

6.2 At § 6.65 of his POE Mr Saunders accepts that given the early stage in the emerging plan process, policies in the eCLLP “**can only be given limited weight**” . It is contradictory to nonetheless attempt to read more into the approval for consultation purposes of a draft proposal to nudge Broughton upward within the hierarchy. Moreover, the way in the way the Appellant seeks to rely on the evidence being gathered to support the emerging plan is not appropriate. However, the unsurprising

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<sup>15</sup> See CD 8.17 at 1.11 and footnote 2.

and uncontroversial words about the weight to the emerging plan highlighted can be agreed.

7. *Whether or not the appeal proposal conflicts with the area's adopted development plan.*

The issue of conflict with policy and whether a policy is out of date are separate issues. The weight attached to a policy conflict is a yet further issue.

8. Whilst there is inevitably harm to the landscape, the level of harm arising from these proposals and the opportunity over time to mitigate the harm is not so significant as to justify refusal on the ground of harm to the landscape and the LPA do not make the case on this basis.
9. The LPA will show that the appeal proposals conflict with the development plan taken as a whole and really this should not be controversial. Policy 1 is the policy which provides direction for the scale and location of development, it is a fundamental part of the spatial strategy. It directs more growth to larger settlements and operates restraint **at the smaller settlements and in the countryside**. This is good basic spatial planning. It can properly found the basis of a refusal and recent appeal decisions within the locality show that it has done so.<sup>16</sup>
10. This is true of PLP policy EN1 concerned with “development in the Open Countryside”. The appeal proposals are in the Open Countryside as shown on the policies map, the proposals are not permissible under HS4 and HS5 and none of the permitted development limitations under a to c apply.
11. This cannot reasonably be controversial. Under the PLP development proposals within the settlement limits are assessed according to policy AD1(b). Outside the settlement, the management of development is exercised under EN1. This is not a simple

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<sup>16</sup> Just one example is the Langley Lane, Broughton DL at §5-17 – CD 6.24 referring to the “spatial strategy for growth” and ‘minimising the scale of development at the smaller settlements.

countryside protection policy it is key foil to Policy 1 in achieving sustainable development of certain types and scale to the most appropriate locations for receiving growth. EN1 was found sound pursuant to an examination which explicitly considered NPPF1.

12. Both Policy 1 and PLP EN1 are clearly breached.
13. The case for the LPA will deal with the belated and novel arguments of the Appellant concerning the AD1 policies and the perverse suggestion of founding a costs application.
14. These are essentially addressed in the evidence including the rebuttal proof of Carolyn Williams. The policies of the PLP are to cover the period 2012-26 and the PLP was adopted in July 2015.
15. Chapter 4 of the gives effect to the tiers of strategic locations, down to key service centres down to other places introduced in chapter 2.8 to 2.14 of the PLP and identifies “Areas for Development”[AD]. Within chapter 4 Major Development is introduced at 4.1 to 4.21 whilst introducing the Cottam and North West Preston major allocations. The follow up to those major allocations is AD1(a) concerned as it is wholly with “full utilisation of land and buildings **in the main urban area of Preston**”. AD1(a) is concerned with that area and takes an approach to that area (which is dominated by residential uses [and at the top end of the settlement hierarchy]) addressed to impact on residential amenity where a residential amenity impact can properly be expected. Then the approach to “development within existing villages” is introduced and explained in §4.25 to 4.28. The policy AD1(a) clearly and obviously does not apply to rural areas outside villages in open countryside forming the “other places”. To suggest it does fails to interpret the plan correctly nor does it reconcile with the policy approach of the plan.
16. For the avoidance of doubt to interpret the plan in this way would be a serious misinterpretation as a matter of law. <sup>17</sup> Reference should be made to §4.25 to 4.28 of

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<sup>17</sup> See *Tesco v Dundee* §18 – see CD 7.02 “policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context” [referred to in evidence by Mr Saunders]

the PLP – this cannot be reconciled with the way the Appellant’s now appear to have chosen to read the plan. I have asked for the Cherkley Campaign case to be added to the case library to ensure proper consideration of explanatory text. The Council have looked at both the policy, the policy map and the explanatory text in a mutually reconcilable way and used all correctly. It is of the utmost significance that only the Council’s interpretation of how the policy is to be interpreted and should be applied can properly be reconciled with the text at 4.25-4.28. This is to use explanatory text properly to explain how the policy is to be interpreted and applied. As the Court of Appeal explains:-

“The supporting text consists of *descriptive and explanatory matter* in respect of the policies and/or a *reasoned justification* of the policies. The text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy.”<sup>18</sup>

17. Policy AD1(a) is not intended to override the role of EN1 as a foil to Policy 1 to enable a simple route to by-pass the hierarchy and directing of growth to the most sustainable locations in accordance with the spatial plan. The reading of AD1(a) such that it applies to any location close to an existing residential area misreads the policy:-

17.1 First it does not apply to “an existing residential area” but “the Existing Residential Area” – thus the means something;

17.2 This is explained in §4.22 to refer to “the main urban area of Preston”. The appeal site location is not that area – it is open countryside outside a 1(f) village.

17.3 The location is further explained in §4.23 as referring to “The existing residential area of Preston , identified as AD1(a) on the Polices Map. As is the rationale which is that this is an area dominated by residential uses. As such the impact of development proposals on residential amenity will be a principal consideration in determining planning applications.” This area is not so shown and it is not possible to properly consider this in context to apply to this area especially so bearing in mind the adoption of this policy in 2015.

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<sup>18</sup> See CD 7.06 at §16.

- 17.4 If the Appellant persists with this bad point it will be further explored but ultimately dealt with in final submissions.
18. In this case you will be invited to accept that the conflict with the adopted development plan as a whole is clear cut in a manner that is consistent with other recent appeal decisions which do have relevance to these specific policies.
- Whether or not the appeal site is a suitable location for the residential development proposed, with regard to the adopted spatial strategy, identified local housing needs and the National Planning Policy Framework (the Framework).*
19. The appeal site is not such a location. The regard to the adopted spatial strategy has already been addressed under the failure to comply with the development plan as a whole. Development in the open countryside outside a Policy 1 (f) village is not a suitable location for this windfall proposal on a green field site in agricultural use.
20. Moreover, the appeal site it is not within the village, it is not infill, is not small scale, nor is it redevelopment and the case to the contrary will be tested. The appeal site is not in accordance with RES 1 of the NP which successfully allocates 3 housing sites but re-inforces the importance of the correct spatial approach to sites not so allocated. Thus, planning at the strategic and neighbourhood level has taken place, made spatial choices, and is delivering market, affordable and specialist housing consistent with the strategy and notably so in Broughton.
21. The proposal remains market housing led, contains a small element of housing proposed to be restricted to the elderly and whilst the benefits will need to be considered under “material considerations” there is nothing within this proposal which makes it “uniquely suited to meeting the housing needs of Broughton”.<sup>19</sup>
22. More fundamentally there is no development plan policy nor national policy which changes the clear position under the spatial strategy, or which means that this location becomes a suitable location for the proposal by seeking to address local housing need.

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<sup>19</sup> See POE Dr Bullock - §5.6.

23. The land supply position is plainly relevant here. The evidence shows that the supply in the local plan area more than meets a five year supply as properly calculated in accordance with national policy pursuant to the standard method<sup>20</sup> or by reference to a supply calculation making use of the requirement derived from CLACS Policy 4 figure<sup>21</sup> – which it is acknowledged and agreed is out of date. This is not a local planning authority which is failing to deliver housing<sup>22</sup> nor is this a settlement which is failing to address the making of provision for its local needs.

24. Moreover, as Carolyn Williams explains in her rebuttal meeting local needs including affordable housing needs or those for the elderly has been an ongoing feature of national policy and there is no new text in the NPPF [12/23] version which materially changes this. Within a series of changes to the Appellant’s policy position there is no basis for now alleging that Policy 7 is out of date.

25. This is not a rural exception site for affordable housing under policy PLP HS4 which explicitly does apply to sites adjoining this village (alongside 5 others also so named) – it is a market housing led scheme brought forward to meet Policy 7 of the CLACS in providing a proportion of affordable housing which just exceeds the target of 35 per cent.

26. There is a 5 year land supply and the most important policies are up to date, those policies are consistent with the NPPF and are to be accorded full weight. The proposals are dependent upon material considerations to justify departure from plan.

*Whether or not benefits would arise from the appeal proposal and the weight to be accorded to such benefits.*

27. It is not the purpose of this Opening to set out the benefits (and disbenefits) of the proposal within a planning balance. The position of the LPA has been set out within the proofs of evidence.

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<sup>20</sup> See LH POE at §5.5 – 12.6 years.

<sup>21</sup> See CW evidence at

<sup>22</sup> See LH POE 5.11



28. The less than substantial harm to the setting of the Grade II Listed Bank Hall is a matter which weighs negatively in the planning balance under §208 NPPF (a matter of great weight) but in this instance the LPA consider that the new and closer open space would offset that harm such that it is not said that there is a heritage reason for withholding planning permission. This benefit does not outweigh the spatial conflict nor should the exercise under section 38(6) of the 2004 Act be a planning balance which leads to permission for the reasons set out in the evidence.
29. There are matters of acknowledged weight in favour of the proposals but none of such individual or combined weight as to justify taking a decision other than in accordance with the development plan. This is the clear conclusion reached by both the officers and the members of the LPA and is one which is fully justified and it is one with which you are invited to agree by dismissing the appeal.

**G.A.GRANT**

**KINGS CHAMBERS**

**MANCHESTER-LEEDS-BIRMINGHAM**

**6<sup>th</sup> February 2023**