

APPEAL BY HOLLINS STRATEGIC LAND LLP

LAND WEST OF GARSTANG ROAD, BROUGHTON

**OUTLINE PLANNING APPLICATION FOR RESIDENTIAL DEVELOPMENT
OF UP TO 51no. DWELLINGS, INCLUDING ACCESS AND ASSOCIATED
WORKS (ALL OTHER MATTERS RESERED)**

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

1. This is a scheme specifically designed to meet the identified needs of the people of Preston and Broughton when measured against the Council's own most up to date assessment of those needs – it is beyond doubt that it meets a local need for the purpose of the criteria in Policy 1(f). It is further beyond doubt that it meets those local needs in the face of a local plan that has failed to review and set down clear policies that enable the needs of specialist groups to be met. This renders the relevant local plan policies (Policy 7 CLCS and RES2 BNP) inconsistent with the NPPF and out of date in line with the decision of Inspector Price at Fradley¹.
2. The scheme includes 40% affordable housing, above the policy requirement of 35%, and housing for older people and disabled people. The s.106 requires that some of the market and affordable come forward as larger homes. As Dr Bullock

¹ CD6.27

said in his evidence, this will create the opportunity for those seeking larger homes for multigenerational living, to find a place to live. Again, a need specifically identified by the Council's own evidence, yet left completely uncatered for in the local plan.

3. The proposal will deliver through the s.106:
 - 3.1. 10% housing for older people's housing (age-restricted to over 55s) secured.
 - 3.2. 40% provision of affordable housing, 25% of which will be First Homes and 12.5% will be larger homes.
 - 3.3. 31 market dwellings, 40% of which will be larger homes.
4. A condition will ensure that 96% of the site will be built to accessible and adaptable M4(2) standard, and 4% as M4(3) wheelchair dwellings. Again, a direct response to the recently identified unmet needs in Dr Bullock's evidence of need that has accumulated from a base-date of 2021.
5. The consent will bring forward a scheme that will deliver cross over benefits, a benefit specifically recognised by Dr Bullock (in XX), through, for example, larger affordable homes, or over 55 homes that are M4(3), or affordable M4(3). The scheme provides flexibility so that at the reserved matters stage it can be further geared to meeting the specific needs of different groups in the community.
6. The Appellant has deliberately tied the permission to meeting the needs of specific needs of different groups in the community and it should not be criticised by the Council for doing so. The Council sought to paint the Appellant's scheme design as opportunistic or not delivering enough of the specialist housing. It is a brave argument to make from a Council whose adopted development plan has failed to plan for, monitor, or review and develop policy to provide for those members of

its community. A failure that is inconsistent with the specific requirements of the NPPF and PPG. Without schemes such as this one, the Council has no way of requiring development to come forward that meets these needs, and as Dr Bullock put it, that means that schemes such as this should be welcomed.

7. The Council's adopted development plan ('the DP') consists of the Central Lancashire Core Strategy ('CLCS') adopted in 2012. The Preston Local Plan ('PLP') adopted in 2015, and the Broughton Neighbourhood Plan ('BNP') made in 2018.
8. The housing requirement for the DP was fixed in the CLCS in 2011, and has not been amended. It is agreed that this housing requirement, set out in Policy 4 CLCS, and the evidence base in the CLCS and PLP are all out of date². The out of date evidence base includes the SHMA 2011, placed into the Core Documents after the end of evidence by the LPA³, notwithstanding that Mrs Williams relies in part on this document in her evidence to show that the DP catered for specialist needs – out of date evidence on need and no policy is a poor argument that needs are being met. This is notwithstanding that it is the Appellant's case that needs have exacerbated since the Core Strategy was adopted⁴.
9. There have been numerous reviews of the housing needs of Central Lancashire – Central Lancashire SHMA 2017⁵, the Central Lancashire Housing Study 2020⁶ ('the Icen Report'), and Central Lancashire Housing Study 2022⁷ ('the DLP Report'). The 2017 SHMA and the Icen Report did not go on to form the basis for any update to the DP policy. The DLP study is part of the evidence base for the emerging Central Lancashire Local Plan ('eCLLP').

² SOCG – CD8.32, para 3.7.

³ No document has been placed into the library as at 12/2/24

⁴ See Mr Saunders POE, Section 8

⁵ CD4.11.

⁶ CD4.12.

⁷ CD4.10.

10. The most up to date evidence of need for Preston and its Parishes, is the Housing Need and Demand Assessment 2022 (‘the HNDA ’)⁸ produced by Dr Bullock. The recommendations from that assessment make for stark reading⁹:
- 10.1. For affordable housing, there is a gross annual need of 1,227 homes. Dr Bullock in XX said he uses this figure to establish a sense of the scale of need. A need of 1,227 affordable houses per year can only be sensibly categorised as a substantial and pressing need. For context, the average annual gross delivery of affordable homes since the start of the Core Strategy has been only 131¹⁰.
- 10.2. After taking into account supply – Dr Bullock was not able to say what sites were in the supply, he relied on the data given to him by the Council – there is a net need of 395 affordable dwellings each year assuming a clearance of gross unmet need over 10 years. The scheme will deliver a positive contribution of 40% affordable homes, above the policy requirement of 35%.
- 10.3. On homes for older people, the HDNA states that “Analysis of demographic change would suggest a need for an additional 1,903 units comprising 833 residential (C2) units and 1,070 older person (C3) dwelling units by 2038”. This comes down to a requirement for 12% of the Council’s 490 annual need being promoted in the eCLLP to be for C3 older people’s homes. Dr Bullock expressly recommends that this figure should be included in policy¹¹ and in XX that if policies do not secure this in the future, they would be “failing”. It is for this reason that Dr Bullock recommends that policies need to be strengthened¹². The

⁸ CD4.09

⁹ CD4.09, section 6, page 119 to 123.

¹⁰ Mr. Saunders POE, para 8.32

¹¹ CD4.09, page 121, para 6.9.

¹² CD4.09, page 122.

scheme will comprise 10% older peoples' homes – targeted at contributing to this need.

- 10.4. On homes for disabled and older people, the recommendation of Dr Bullock, remembering that this is the Council's evidence, is "that 4% of new dwellings are built to M4(3) wheelchair accessible and adaptable standard. All other dwellings should be built to M4(2) accessible and adaptable standard to take account of the ageing demographics of the City of Preston"¹³ which helps to ensure homes can be flexibly adapted to suit someone across their lifetime; a benefit not usually capable in older dwellings which can be expensive to adapt. The appeal scheme will deliver 4% of new dwellings at M4(3) standard and all other dwellings to M4(2) standard. A direct positive response to the Council's most up to date needs evidence. Again, as with older people's homes, there is no policy to require this of development in Preston. This is why Dr Bullock recommends updating the policy.
- 10.5. Finally, it is agreed that the HNDA identifies a need in Preston for 7.5% of new homes to have four bedrooms, and 1.1% to have five or more bedrooms. The Preston Asian Housing Engagement Group confirmed larger houses particularly meet the community's needs for multi-generational living and that there is insufficient larger homes in the area¹⁴. Thus the Appellant's proposal for 40% of market housing and 12.5% of affordable housing to be larger is a further direct positive response to the Council's identification of local specialist housing needs. The provision for these houses as a mix of affordable and open market is also a pragmatic way of meeting that need as directed by the Council.

¹³ CD4.09, page 121, para 6.12.

¹⁴ CD4.09, para 109, para 4.67

11. The appeal scheme is responding to the Council's latest evidence on the needs of specialist groups in a positive way that the Council and its policies have failed to do. So much was clear from the Inspector's question to Mrs Williams, the Council's latest needs assessment sets the destination on what needs to be done, but in the absence of any up to date reflection in the plan, nor any policy or any monitoring of delivery, there is no way of knowing if those needs are being met. Indeed, the analysis of Mr Saunders demonstrates that the existing supply will be wholly insufficient to meet the needs of older people or those with disabilities¹⁵ and no points were taken against him on this in XX.

12. Mrs Williams sought to argue that because the Council has a 5YS against the LHN and housing requirement, then the needs are being met. This is no answer to the question. If the plan does not require delivery of specialist homes other than affordable, doesn't monitor the delivery of those homes, then there is no way of knowing if the elderly, the disabled or those seeking multigenerational living, likely from minority ethnic communities, are having their housing needs met at all.

13. The benefits of the scheme are substantial:
 - 13.1. Market Housing – substantial weight given the continuing need for market housing as demonstrated in the emerging housing requirement of 490, set against the LHN of 261. Miss Holden originally gave this benefit substantial weight collectively with Affordable housing in the Officer Report¹⁶. Reducing to significant at the appeal for no good reason.

 - 13.2. Affordable housing – given the substantial need identified by Dr Bullock, who would welcome affordable housing of any tenure, substantial weight should be attached. Miss Holden originally gave this benefit substantial

¹⁵ Mr Saunders POE, Appendix 2 – Composition of existing and future housing supply
¹⁶ CD3.01, page 30.

weight on its own in the Officer Report¹⁷. Reducing to significant at the appeal for no good reason.

- 13.3. Older Persons' Housing – substantial weight given the significant shortfall and the absence of any policy requiring the delivery of such housing against that need.
- 13.4. Accessible, adaptable and wheelchair dwellings – substantial weight, as with older persons' housing, no policy or building control requiring this in the face of accepted need.
- 13.5. Larger homes¹⁸ – significant weight, providing these homes, crossing over with other specialist¹⁹ and non-specialist housing, creates the opportunity for those seeking multigenerational homes to find a home.
- 13.6. BNG – significant weight, in line with the approach of other Inspectors²⁰, in the absence of DP policy and the Environment Act requirement not applying to existing applications, the provision of +30.08% habitat gain and + 22.37% hedgerow gain. In such circumstances moderate weight would be considered highly unlikely²¹.
- 13.7. Bus stop upgrades, 1.07ha of public open space, economic benefits to the community, economic benefits from construction jobs – each moderate weight.

¹⁷ CD3.01, page 30.

¹⁸ Larger homes is secured in the s.106 through the defined term of "Larger Homes". This requires 12.5% of the affordable and 40% of the open market housing to be four or more bedrooms. This passes the CIL Reg 122 test, in the same way as the older person's housing as set out in the CIL Compliance Statement. It is necessary to make the development acceptable because it is put forward to meet the requirement of Policy 1(f) as part of meeting the local need. It is directly related to the development because it forms part of it. It is fairly and reasonably related in scale and kind because it is a deliverable commitment as part of a viable scheme.

¹⁹ See NPPF §63 for definition.

²⁰ CD6.18 and CD6.19

²¹ See eg *Saredon Aggregates Ltd v SoSLUHC* [2023] EWHC 2795 (Admin) at [60].

14. Against these benefits, the Council does not allege any land use planning harms capable of supporting a reason for refusal²².
15. There is no part of the Council's case that the scheme is contrary to the policies in the NPPF.
16. The Council alleges conflict with three policies (Policy 1 CLCS, EN1, RES1). When these policies are properly interpreted and applied to the proposal in a manner consistent with the way in which the Council and previous Inspectors have applied them, then it is clear that the scheme overall complies with the Development Plan. The scheme complies with Policy 1, the conflict with EN1 is technical only, and RES1 imposes no development management control.
17. The Appellant provides three routes to allowing the appeal:
 - 17.1. Scenario 1 – that the proposal accords with the development plan when read as a whole and so planning permission should be granted without delay – NPPF §11(c).
 - 17.2. Scenario 2 – that if there is any conflict with the development plan, the harm is limited and outweighed by the substantial benefits.
 - 17.3. Scenario 3 – that the tilted balance should be applied because the basket of policies is out of date. In that circumstance the considerable benefits are not significantly and demonstrably outweighed by the harms.

²² The development will cause less than substantial harm to the GII listed Bank Hall/Bank Hall Farm at the lowest possible end of the spectrum. This engages the duty in s.66 Listed Building Act 1990. As a result the harm must be given considerable importance and weight. However, as confirmed by Ms Holden in XX, the weight is not sufficient to support a reason for refusal, it is not determinative of the appeal, and if the decision is finely balanced it is not sufficient to tilt the balance in favour of dismissing the appeal. Giving considerable importance and weight to the lowest possible level of harm (negligible), is practically immaterial in the overall balance. See the Heritage Note submitted to the Inquiry by Kathryn Sather and Associates.

18. Taking those in turn.

Scenario 1 – The proposal accords with the development plan when read a whole.

19. When the policies are properly interpreted and consistently applied, then the scheme plainly accords with the DP. The approach to the interpretation and application of policy is clearly established:

“Policy statements should be interpreted objectively, in accordance with the language used, read as always in its proper context”²³.

20. The role of justifying text in the interpretation of policy is also well established:

“The supporting text consists of descriptive and explanatory matter in respect of the policies and/or a reasoned justification of the policies. That 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. I do not think that a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. That applies even where, as here, the local plan states that the supporting text indicates how the polices will be implemented.”²⁴

21. Importantly, as Lord Reed said in *Tesco v Dundee*²⁵, “planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean”.

²³ Lord Reed in *Tesco v Dundee* [2012] EKSC 13 at para 18, CD 7.02.

²⁴ *Cherkley Campaign Limited v Mole Valley District Council* [2014] EWCA Civ 567 at para [16], CD7.06.

²⁵ At paragraph [19].

22. Where there are policies that pull in different directions, that is to be resolved by the decision maker. It is untenable to argue that breach of a single development plan policy would mean that a proposal could not be in accordance with the development plan when read as a whole²⁶. A decision maker must also consider the relative importance of each of the different policies to the application before exercising planning judgement on whether or not the proposal accords with the development plan as a whole²⁷.
23. Taking the three policies in the RfR, it is submitted that the proposal does accord with the development plan when read as a whole, even if there is some limited conflict with EN1. This is because the proposal gets specific spatial strategy support from Policy 1 and AD1(a) of the DP. Mrs Williams accepted that if the Inspector agrees that the scheme conforms with Policy 1 or AD1(a) then it would have support from the spatial strategy of the DP.
24. Policy 1 is the main settlement hierarchy that directs the spatial strategy in Central Lancashire. It seeks to direct growth to the main urban area of Preston. It is a truism that one can expect the restriction to be greater at the lower end of the hierarchy than at the top, as Mr Saunders accepted in XX, that is the purpose of the hierarchy. But the fact is that the Inspector must apply the terms of Policy 1(f) and not any of the policies applying to different tiers of the hierarchy. There is no cap placed on development in tier (f) settlements, which plainly allows certain types of development, and the scheme complies with 1(f).
25. It is agreed that Policy 1 requires that development is “*small scale*” and then that one of the other criteria are met “*appropriate infilling, conversion of buildings and proposals to meet local need*”, not that all the criteria must be met. There is no definition of any of these criteria in the DP, nor is there any guidance on what

²⁶ *Tesco v Dundee* at [34]

²⁷ *Corbett v Cornwall Council* [2020] EWCA Civ 508,

they mean in the justifying text. One must therefore look elsewhere for guidance on how these criteria are to be applied, including the Council’s own decisions.

26. In the phrase “*small scale*”, the word scale must mean something. Ms Holden accepted that this could be interpreted to mean that the scale of the development should be assessed against its context. This would be consistent with how senior officers at the LPA have assessed scale previously – see Touch of Spice²⁸ and Cumeragh Lane²⁹. Consistency of decision making being, of course, an important material consideration in its own right. Showing that the same interpretation applies inside (Touch of Spice) and outside (Cumeragh Lane) the defined settlement boundaries as Miss Holden agreed.
27. It is also consistent to the way in which the Development Plan approaches small scale through the BNP. The Neighbourhood Plan allocates “*small scale development*” in RES1³⁰ with a capacity across two of the allocations of up to 72 units³¹. The BNP is the only place the DP applies “small scale” where it allocates sites yielding a comparable number of units as this scheme. It is common ground that the appeal site would be a similar scale to the allocations of the BNP³².
28. Notwithstanding that Miss Holden accepts this as a valid way of assessing “*small scale*”, she produces no evidence comparing the 51 units proposed with the context of development in Broughton. She accepted that this assessment must include the scale of the scheme against the settlement, including approval of 130³³ and 97³⁴ units on the neighbouring sites³⁵. The only evidence comparing the scale

²⁸ CD8.02.
²⁹ CD8.19.
³⁰ CD4.07.
³¹ CD4.07 paragraph 8.5.11.
³² SOCG, CD8.32, para. 4.12.
³³ CD6.05 – Keyfold Farm.
³⁴ CD6.04 – Sandy Gate Lane.
³⁵ See Mr Saunders Appendix 9.

of the site to its context is Mr Saunders' rebuttal and from that evidence it is clear that this proposal is small scale.

29. The Council, through Miss Holden and the questions to Mr Saunders, sought to remove the word "*scale*" from the policy and state that the site should be small in line with NPPF§70. This bears no scrutiny whatsoever. Firstly, it ignores the policy direction to assess scale, not just small size sites as in NPPF§70. Secondly, it relies on a definition of size from the NPPF that relates to plan making and not decision taking; and a definition that post-dates the DP policy and so can't have been in the mind of the draftsman; a definition that is inconsistent with the Council's own decisions; and, without being able to point to a single case where this approach to policy 1 has been taken by the Council.
30. Finally, the argument that scale was a reference to the size of the buildings being proposed is also fundamentally misplaced. The term "*small scale*" is in the context of Policy 1. A policy that is focussed on directing quantum of development within the settlement hierarchy³⁶. It matters not a jot to Policy 1 whether those units are individual detached houses, or blocks of flats several stories high. This argument from the Council should also be dismissed.
31. The site should be considered "*small scale*" for the purpose of Policy 1. This aligns with the proportionate approach taken by senior officers at Cumeragh Lane.
32. With regard to the other criteria, the most obviously met is that the development is aimed at meeting a local need. As set out above, that is precisely what this scheme seeks to do. This manifestly is not just another edge of settlement scheme with a policy compliant mix of general market and affordable housing. This is a scheme that has been specifically geared to meeting the identified needs of

³⁶ See Table 1, CD4.01, page 42, justifying text to Policy 1 CLCS.

specialist groups set out in the Council's own evidence in the absence of any policy requiring them to do so.

33. This applies whether need for Policy 1 is measured at the Preston level (Mrs Williams), the Broughton level (Dr Bullock) or a mix of them. Touching briefly on meeting a need at the level of Broughton as a settlement, Dr Bullock in his report to the Council produced no evidence at this level, stating that the data would be difficult to gather to assess need at such a low level. The Appellant should not be criticised for not doing something the LPA themselves have not done in their most up to date evidence base. When Dr Bullock's report is considered, the scheme meets the needs of Preston and Broughton Parish, satisfying Miss Holden's catch all definition.
34. The scheme is small scale and designed to meet a local need. It complies with Policy 1(f).
35. Finally, consistent with the Council's own decisions, the scheme is to be considered infill – see Mr Saunders' POE at 6.70 to 6.73 and Touch of Spice³⁷. Furthermore, the fact that it complies with EN4 on the Area of Separation (a policy protecting the character and identify of settlements and maintaining openness) is a strong indication that the scheme operates as infill³⁸.
36. It is clear that the proposal accords with Policy 1(f) and therefore has support from the spatial strategy of the DP.
37. The other policy which gives support to the development in this location is AD1(a). The Appellant's interpretation and application of this policy is straightforward:

³⁷ CD8.02.

³⁸ PLP Inspector, Para 141.

- 37.1. The words of the policy itself does not limit its application to the Existing Residential Area of Preston. The LPA is implying a term into the policy that forms an additional locational criteria for its application, directly contrary to the case law in *Cherkley Campaign Limited*³⁹
- 37.2. The Existing Residential Area is not explicitly defined in the justifying text.
- 37.3. Although it is plain from the justifying text that Preston is an Existing Residential Area (of course it is), the full justifying text also makes it clear that it is not the only Existing Residential Area (my emphasis):
- 4.24 All development proposals within the existing urban area of Preston, *or in close proximity to an existing residential area*, will be expected to comply with Policy AD1 (a).
- 37.4. If the Council’s interpretation was correct, the justifying text would read – “*all development proposals within the existing urban are of Preston, or in close proximity to it, will be expected to comply with Policy AD1(a)*”. It does not say this and the difference is marked – this is not a difference of a single word.
- 37.5. It is consistent with the Council’s own decision applying AD1(a) to a tier (f) settlement – Cumeragh Lane⁴⁰. There are also other examples as set out in Mr Saunders rebuttal⁴¹.
- 37.6. It also makes sense in its context. The Appellant’s interpretation means that non-small scale development in Existing Villages covered by AD1(b), would be subject to the controls in AD1(a). If the Council is

³⁹ CD7.06.

⁴⁰ CD8.19 – page 12, under residential amenity.

⁴¹ CD8.28, para. 2.3

right, then non-small scale development would not be controlled under AD1(a) in terms of design, character and appearance, residential amenity, over concentration or over intensification. They would not be controlled at all. It is no answer to this point to say that those points could be regulated through other policies, because they must be regulated under AD1(a) (and applied through (b)) for a reason. This means that both AD1(a) and (b) can be applied within the boundary of Broughton because AD1(a) deals with all development and AD1(b), specifically with small scale. It is also what the paper policy map plainly shows.

38. The Council's interpretation is entirely unclear and seemed to change throughout the inquiry:

38.1. The paper map is accurate and shows AD1(a) doesn't apply to Broughton – Mrs Williams's POE para 2.1. and Rebuttal para 4.6.

38.2. In oral evidence, she agreed, and the Inspector noted her paper plan accordingly, that policy AD1(a) applies to areas shaded peach, and AD1(b) to the red hatched area. The shows AD1(a) applying to Broughton. So the paper map does not show what Mrs Williams' evidence asserts.

38.3. Then in answer to questions from the Inspector, Mrs Williams argued that the paper plan showed that the criteria of AD1(a) applied to Broughton through AD1(b). This is not what the plan shows. It would suffice to show that AD1(b) applied through the red hatch and white background. It wouldn't need the peach shading.

39. In practical terms, the boundary of AD1(a) has been carefully and deliberately drawn around existing residential areas which include settlements at tier (f). If Mrs Williams is correct, why has the policy map stood the test of time for nearly a decade and why have the LPA's officers applied AD1(a) to other villages.

40. The appeal site is clearly in very close proximity to the existing residential area of AD1(a) in either visual terms on the ground or on the online/paper policy map. It is also in close proximity because the site is functionally related to Broughton, as accepted by Ms Holden in XX.
41. It is agreed that if AD1(a) applies⁴², then the scheme accords with its criteria. In light of the above, it is clear that it does apply, adding further support to this scheme from the DP. It would not automatically result in a ‘precedent’ being created. Firstly because it is based upon the correct interpretation of the policy. Secondly, because the application of the policy to each development will be on its own merits in terms of the criteria of AD1(a) and whether the close proximity test is met. The merits of the appeal proposals would not be the same as other schemes.
42. This leaves EN1 and RES1 in the RfR.
43. EN1 is a countryside protection policy. The appeal site is in the open countryside. It is accepted that the exceptions in the policy do not apply. However, no land use planning harm results from that conflict; the aims and objectives of the policy are not offended; and the Council has a track record of granting consents contrary to this policy:
- 43.1. The aim of EN1 is to protect the open countryside “*from unacceptable development which would harm its open and rural character*”⁴³. The Council accepts no landscape and visual harm arises from the proposal.
- 43.2. The Council granted planning permission for 60 no. bedroom care home (Class C2), 60 no. apartments (Class C3), 20 no. bungalows (Class C3) in Grimsargh, Preston, notwithstanding that it was within the Open

⁴² CD8.32, para 3.8.

⁴³ CD4.03, page 95, para 8.4.

Countryside⁴⁴. The officer report concluding that the scheme accords with EN1⁴⁵.

44. Finally RES1, the words of the policy are to allocate the sites. All development management is deferred to Policies 1 and 19 and Preston Local Plan Policies EN1 and EN4 to ensure it is in conformity with the strategic policies in order to meet basic conditions. So the proposal cannot conflict with this policy.
45. Drawing this together, the spatial strategy support through Policy 1 and/or AD1(a) is more than sufficient to indicate that the development plan is complied with when read as a whole in line with the judgments in *Tesco* and *Corbett* (paragraph 20, above). The appeal should be allowed and permission granted.

Scenario 2 – that the benefits of the scheme outweigh the limited conflict with the DP

46. Turning to scenario 2. The weight to be given to any conflict with a policy is a matter for the decision maker. The important considerations are whether the conflict produces any land use planning consequences and whether the conflict impacts on the ability of the policy to deliver its objectives. Taking a contrary approach would run counter, as set out below, to long established principles and recent application in Preston.
47. This is precisely the approach followed by Inspectors Manning⁴⁶ and Price⁴⁷ with regard to Policy 1.
48. Inspector Price, considering an application in Barton, a tier 1(f) settlement further away from Preston city, when considering the conflict with Policy 1, focussed on the effect of granting permission that would “*run counter to, and undermine, a plan-led approach towards correlating the appropriate amounts of growth with*

⁴⁴ CD8.06.

⁴⁵ See CD8.06, section titled - Impact on the open countryside and landscape character of the area

⁴⁶ CD6.04 – Sandy Gate Lane, and CD6.05 – Key Fold Farm.

⁴⁷ CD6.22 – Jepps Lane

existing levels of transport connectivity, infrastructure capacity, service provision and brownfield land availability”⁴⁸. This resulted in a conclusion that “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”⁴⁹.

49. The same simply cannot be said about Broughton. It was agreed with Miss Holden that the Council is not running any case against the proposal on accessibility to services or on promoting unsustainable travel contrary to Policy 3 CLCS.
50. It was further agreed with Miss Holden, that the appeal scheme offended none of the objectives of Policy 1(f), in terms of limiting development at that tier, as set out by the CLCS Inspector⁵⁰:

Exceptionally, larger scale development schemes may be permitted, but as a matter of principle there is little point in encouraging significant growth in places where services are limited, likely to remain so and where it would be all too likely to result in travelling to larger centres for work, education, shopping and leisure, and often on roads ill-suited to accommodate substantially more traffic.

51. It is agreed that none of these principles which underpin Policy 1 are offended.
52. It is unsurprising then, that Inspector Manning concluded as he did in the Key Fold Farm and Sandy Gate Lane appeals, that developing in Broughton is development in a sustainable location and any conflict with Policy 1 is technical only. He noted that Broughton contains many of the necessary services for day to

⁴⁸ CD6.22, para 16.

⁴⁹ CD6.22, para 17.

⁵⁰ CD4.01, para 27.

day living – this has improved since with the opening of the Co-Op⁵¹ alongside other services and facilities. Concluding at paragraph 70:

However, the underlying rationale of the policy [Policy 1 CLCS] is the achievement, essentially, of a spatial pattern of development that is sustainable and the degree of harm to that aspiration is tempered to a significant degree in the case of these appeals by my conclusions on the previous issue regarding accessibility. The conflict with the policy itself is greater than the conflict with its originating intentions. That might well not be the case in a more remote and less accessible location or in a settlement lacking, for example, very necessary schooling facilities.

53. If the Inspector concludes that there is a conflict with Policy 1, then given the points above, and the importance of consistency in decision making with Inspectors Manning and Price, then only limited weight should be given to that conflict.
54. Miss Holden sought to argue that the conflict with Policy 1 was still fundamental because of the plan based system and because it would set a dangerous precedent. Dealing with precedent first, Inspector's must determine each application on its merits, whether or not that would amount to precedent is not a material consideration. Secondly and in any event, it would not amount to precedent because it is specific to the circumstances of this case and the details of this application. ON the plan based system, plans are drawn up to achieve development objectives, if those objectives are not compromised, then there is no harm. The plan need not be protected for the plan's sake.
55. The above from Scenario 1 still applies with regard to the limited conflict with EN1, and no conflict with RES1.

⁵¹ CD6.04 and 6.05 – paragraphs 62 to 68.

56. In circumstances where the Inspector concludes conflict with the development plan, then the substantial benefits convincingly outweigh any harms.

Scenario 3 – the tilted balance is engaged and the harms do not significantly and demonstrably outweigh the benefits

57. The NPPF has changed since the adoption of the CLCS – see Mrs Williams Rebuttal, Appendix 1. Previously LPA’s were told to ‘plan’ for the provision of specialist housing. Since 2019, LPA’s have been required to ‘assess and reflect’ in planning policies the needs of different groups.

58. The Council argues that this change has no material effect. It is hard to comprehend how that can be the case, the government changed the words for a reason. That reason is exhibited through the accompanying changes to the PPG⁵² requiring “*clear policies*” showing how application for different types of housing will be considered. This could include indicative figures or a range of numbers for specialist housing.

59. Dr Bullock agreed that the NPPF§63 requires a two stage approach, an assessment of need which he undertook, and reflecting that need in policy. The LPA has failed to reflect the needs of those seeking older persons or disabled housing in their policies.

60. It cannot be said that the allocation of a single site that does not meet the need and has not been delivered 6 years post permission, is enough.

61. The methodology of assessing consistency of a DP policy with the NPPF is not dependant on the development under consideration – as Ms Holden accepted. It

⁵² ID7 – Housing for Older and Disabled People. Paragraph 006, Reference 63-006-20190626.

is about comparing what the NPPG says is required, with what the DP policies say. If there is sufficient material inconsistency, then the policies are out of date⁵³.

62. The methodology of assessing consistency was applied in exemplary fashion by Inspector Price in the Fradley decision⁵⁴. In that case the policies were out of date because:

62.1. The policies in the local plan were broadly supportive of specialist housing but did not assess and reflect those needs. Here, Policy 7 and RES2 are supportive of specialist housing in a broad way but do not assess or reflect those needs.

62.2. The policies did not set indicative figures or allocate. Here it is agreed that the DP does not include indicative figures and the one allocation is based on an out of date needs assessment and has failed to deliver anything.

62.3. The policies in Fradley were based on the 2012 SHMA. Here, Policy 7 and RES2 are based on an even older assessment in the 2011 SHMA.

62.4. The 2012 SHMA in Fradley was out of date because it did not reveal the extent of the need. The same can be said here.

63. On that basis, policy 7 and RES2 should be considered out of date.

64. The next step is for the Inspector to consider whether the basket of most important policies is out of date for the purpose of NPPF §11⁵⁵. Where a policy is complied with, then the decision maker can choose not to include it in the basket of most

⁵³ See Lindblom J in *Bloor Homes v SoSCLG* [2014] EWHC 754 (Admin) at [45], CD7.04.

⁵⁴ CD6.27.

⁵⁵ *Wavendon v SoSHCLG* [2019] EWHC 1524 (Admin) at [56] to [58]. CD7.05.

important policies⁵⁶ - this would mean that Policy 1, EN4 and RES1 would not go into the basket of most important policies for the purpose of NPPF §11(d).

65. The most important policies are set out in the SOCG⁵⁷, Policies 4 and 7 are out of date. Similarly, the settlement boundary in the AD1 policies is also out of date. This is because the whole purpose of the PLP is to deliver the now out of date housing requirement in Policy 4. It was on the basis of this now out of date requirement that the boundaries were drawn⁵⁸.
66. The basket of policies is out of date and the tilted balance applies. In those circumstances, the non-existent technical harms and the limited conflict with the DP cannot significantly and demonstrably outweigh the benefits, and the appeal should be allowed.

Conclusion

67. The appeal scheme is the right scheme, in the right location at the right time. It is agreed it causes no land use planning harms. The only harm alleged by the Council, in response to a question from the Inspector to Mrs Williams, is the effect the proposals may have to the plan-led system. However, failure of the development plan to meet newly identified specialist housing needs, or review existing policies in a timely fashion, would also indicate that public confidence in the plan-led system has already been undermined. It is agreed the appeal site does not harm the principles underpinning the settlement hierarchy as set out by the CLCS Inspector; and, it does not distort the settlement hierarchy.
68. It is a proposal that will do what this Council has failed to do through its policies. It will meet a clear and pressing need for affordable, older peoples' and disabled housing. Whilst also continuing this Council's growth agenda, one that is

⁵⁶ *Goesa Ltd v Eastleigh BC [2022] EWHC 1221 (Admin)* at [158] and [159].

⁵⁷ CD8.32 at para 3.8.

⁵⁸ See PLP, CD4.03

understood even at the Parish Council⁵⁹. It is a specialist and housing need-led scheme⁶⁰ which would help improve the vitality of the community and the variety and balance of housing in Preston and the sustainable settlement of Broughton. That can only be a good thing.

69. On any of the scenarios above, the appeal should be allowed.

Philip Robson
13 February 2024

KINGS CHAMBERS

⁵⁹ CD8.10.

⁶⁰ 40% affordable + 10% older peoples' + 4% wheelchair + larger homes (40% of the market) would be equivalent to 78% of the total scheme geared towards specialist needs.