



# Planning Proof of Evidence of Stephen Harris BSc Hons MRTPI

Outline planning application for the erection of up to 151 dwellings, community building and open space with associated works (access to be considered and all other matters reserved)

Cardwell Farm, Garstang Road, Barton, Preston, PR3 5DR

for Wainhomes (North West) Ltd

Appeal Reference: APP/N2345/W/20/3258889

Application Reference: 06/2019/0752



Project : 16-344  
Site address : Cardwell Farm, Garstang  
Road, Barton, Preston,  
PR3 5DR  
Client : Wainhomes (North West)  
Ltd  
Date : January 2021  
Author : Stephen Harris

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## 1. Introduction

1.1 This Proof of Evidence is submitted on behalf of Wainhomes North West Ltd (the Appellant) in support of their appeal against the decision of Preston City Council to refuse outline planning permission for the erection of up to 151 dwellings and associated works on Land at Cardwell Farm, Barton, Preston, Lancashire (LPA ref: 06/2019/0752).

### Qualifications

1.2 I am Stephen Andrew Harris. I am a Chartered Town Planner with over 21 years' experience in private practice. I am a Director of Emery Planning Partnership, based in Macclesfield, Cheshire.

1.3 I am instructed by the Appellant and am familiar with the site and the details of the case.

1.4 I have considerable experience in dealing with housing and sustainability matters, including sites across the North West. I am familiar with the policies of the development plan, including the housing requirement and locational policies. I have been involved with sites in Preston for at least 10 years including the following:

- I was instructed by Wainhomes to prepare representations to the Central Lancashire Core Strategy for their land interests North of Preston and at Grimsargh. I attended the Examination in Public held between 28<sup>th</sup> June and 12<sup>th</sup> July 2011 and on 6<sup>th</sup> March 2012. At the Examination I was promoting the designation of the strategic extension at North West Preston for inclusion in the Core Strategy which was eventually included in the Plan following the suspension of the Examination and the publication by the Council of the Proposed Housing Related Changes in November 2011;
- I was instructed by Wainhomes to prepare representations to the Preston Local Plan and I attended the Examination in Public held between 21 and 30 October 2014;
- I was the planning witness for Wainhomes for their appeal at Grimsargh which was granted planning permission on 12<sup>th</sup> June 2014.
- I was the planning witness for Gladman Developments Ltd for their appeal at Preston Road, Grimsargh which was for 150 dwellings on 9<sup>th</sup> May 2016. I also gave expert evidence on housing land supply and the Inspector concluded that there was not a 5 year housing land supply and allowed the appeal.
- I was the housing land supply witness at the appeal for Wainhomes North West Ltd on their site at Station Lane, Barton dated 8<sup>th</sup> August 2017.
- I have also been the lead consultant for planning applications for residential development in Preston for various clients.

- 1.5 I rely upon the background information set out in the Statement of Common Ground (SoCG) and only repeat it where it is necessary to develop the case. I also provide a separate summary.
- 1.6 I understand my duty to the Inquiry and have complied, and will continue to comply, with that duty. I confirm that this evidence identifies all facts which I regard as being relevant to the opinion that I have expressed and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion. I believe that the facts stated within this proof are true and that the opinions expressed are correct.

## 2. Background and Propositions

### The appeal proposal

- 2.1 This outline planning application seeks planning permission for the erection of up to 151 dwellings on land at Cardwell Farm, Barton, Lancashire (access to be considered and all other matters reserved). It should be noted that part of the site has an extant consent for 55 dwellings so the net increase in dwellings if this appeal is allowed would be 96 dwellings.
- 2.2 A Transport Statement, prepared by SCP, has been submitted with the planning application and this demonstrates that the proposed development would not undermine the capacity of the local road network or highway safety. Primary access to the site would be via the A6, which is a change from the access from the extant consent off Woodlands Way.
- 2.3 Indicative site layout plans (MCK Architects) are also submitted that illustrates one potential option for how the site could be developed for the quantum of residential development proposed. It indicates a mix of family-sized houses and apartments with active frontages onto the public realm. The submitted illustrative layout drawing shows that the proposed dwellings would predominantly take the form of detached houses, although there would also be some terraced houses and two blocks of apartments in the interests of the overall mix of house types.
- 2.4 The site of a community hall is proposed and would be designed to provide the local community with an indoor facility which will be the focal point for the community and foster greater community spirit through the provision of sports provision, performances, meetings and rooms for hire for parties and events. The design would be based on the design note by Sport England titled "Village and Community Halls".
- 2.5 An area of public open space, including children's play equipment, would be created on the southern part of the site providing an attractive open space and area of ecological and biodiversity value. The community hall would front onto this open space immediately adjacent to the north boundary and providing good connectivity to the existing village.
- 2.6 53 of the proposed dwellings would be affordable houses, which accords with the 35% on-site provision required by planning policy. This can be secured by way of a Section 106 legal agreement, which has now been agreed in draft form by Preston City Council.

## The Determination

- 2.7 The application was validated by the local planning authority in June 2019. The Council published a report for the Planning Committee meeting in October 2019 (**CDs D1 and D2**) recommending approval and members resolved to approve the application subject to the completion of a Section 106 agreement.
- 2.8 The Committee Report presented to Members in October 2019 noted that the development would not result in harm to the general character and appearance of Barton, it would not represent an isolated form of development within the open countryside and there would be no site-specific harm arising from the development (e.g. highways safety, flood risk and residential amenity). It was also recognised through the report that the scheme would make an important contribution towards meeting unmet open-market and affordable housing needs and there would be benefits in terms of green infrastructure and biodiversity.
- 2.9 The October 2019 Planning Committee stated:

### *“3.8 Conclusions*

*Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the Development Plan for the purpose of any determination to be made under the Planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.*

*As detailed above, the proposed development would result in the loss of existing open fields and would introduce built development into what has been identified as open countryside. However, the proposal would make an important contribution to the supply of housing, providing both market and affordable housing on the site, in accordance with the policy requirement. The application also includes the provision of a community building within the development site, which can only be given limited weight due to the lack of evidence in respect of an identified need.*

*The submission demonstrates the proposal would not have a severe impact on the operation of the highway network or have an unacceptable impact on highway or pedestrian safety. Subject to conditions, there would be no unacceptable impact on protected species, flood risk and contamination, and the required sustainability levels can be achieved by way of conditions.*

*Subject to securing a Section 106 Agreement, the development would contribute towards provision of school places, provision of affordable housing on-site, provide a financial contribution towards improving sustainable forms of transport in the area, including the monitoring of the travel plan, and secure the future management and maintenance of the on-site open space and proposed community building.*

*All objections received have been taken into account as part of the assessment of the proposed development, and the proposed development seeks to develop greenfield land within the open countryside, which is contrary to Core Strategy Policy 1 and Local Plan Policy EN1. The Council however cannot currently demonstrate a five years supply of deliverable housing land and as such the development plan policies most important for determining the application are out of date and the scheme has been assessed against the tilted balance set out in paragraph 11 of the Framework.*

*In view of the above, it is considered that there are no adverse impacts of approving the development that would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as whole. Given such circumstances and in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 and the Framework it is recommended that planning permission should be granted.*

- 2.10 The Appellant then progressed the Section 106 with the LPA.
- 2.11 However, in December 2019, an appeal decision was issued by the Planning Inspectorate for a site in South Ribble at Chain House Lane, Whitestake (PINS ref: APP/F2360/W/19/3234070) (**CD F2**). On the sole basis of the Inspector's findings for this appeal decision, the local planning authority resolved to again present planning application 2019/0752 to Planning Committee in February 2020 (**CD D3 and D4**). At this point, the Section 106 legal agreement was being finalised. The LPA then considered that a 5-year housing land supply could be demonstrated by applying Local Housing Need and that the 'tilted balance' was no longer engaged. Members resolved to refuse planning permission on this basis.
- 2.1 The only reason for the Council's changed position in February 2020 was the findings of the Inspector for the Chain House Lane appeal. Our position at the time was that the Council was wrong to change its position on that appeal decision. This is because the Inspector's reasoning in that decision was wrong and the Appellant in this case had already lodged a legal challenge in January 2020 to the appeal decision for Chain House Lane. The Appellant's position was essentially confirmed when a few days after the Planning Committee meeting in February 2020, the Secretary of Statement confirmed that it agreed that the Chain House Lane appeal decision should be quashed as it was legally flawed. However, South Ribble Council subsequently resolved to defend the Secretary of State's decision and a Court hearing took place in June 2020.
- 2.2 The High Court Judgment for Chain House Lane (**CD G1**) was handed down on 21<sup>st</sup> August 2020 and Mr Justice Dove quashed the appeal decision. The Chain House Lane decision was the only reason for the LPA to change its position on the grant of planning permission for this proposal. That decision has now been quashed and the reason for the LPA's change of position has been



removed. In those circumstances the only reasonable and consistent approach is for the LPA to revert to its original position as of October 2019 to grant planning permission without delay in accordance with the resolution reached at that time.

2.3 Prior to the High Court judgement there was an appeal decision in Chorley<sup>1</sup> for up to 180 dwellings on safeguarded land. The key findings were:

- The Appellant considered that the standard method local housing need should be used as the basis for assessing whether a 5-year supply exists as per paragraph 73 and footnote 37 of the Framework.
- The Council considered that the Memorandum of Understanding between the three Central Lancashire authorities (April 2020) should be used as the basis for assessing whether a 5-year supply exists. The Council considered this was justified on the basis of paragraph 2-03 of the PPG and a redistribution of the requirement across the Central Lancashire authorities. The Central Lancashire authorities entered into a second MoU, signed in April 2020 and at this point the first MOU was superseded and became redundant. However, as of 4<sup>th</sup> November 2020 the Council has since withdrawn from the second MoU with immediate effect.
- The Inspector noted that it was not for an Inspector on a Section 78 appeal to seek to carry out a sort of local plan process so as to arrive at a constrained housing requirement figure. The redistribution of housing across the Central Lancashire area is something that should be resolved through a local plan process.
- Full weight should be attached to the standard method local housing need figure for Chorley and this should be used as the basis for assessing whether a 5-year supply exists. A 5-year housing land supply could not be demonstrated on this basis.
- Policy 4 of the Joint Core Strategy should be considered out-of-date. This policy is derived from the former North West RSS, which relied upon out-of-date 2003-based household projections.
- Policy BNE3 (Safeguarded Land) should be considered out-of-date. It serves to prevent the Council from being able to provide an adequate housing land supply within the current plan period and is based on an out-of-date housing requirement.
- The delivery of 30% affordable housing is a significant social benefit.
- The delivery of open market housing carries significant weight in addressing housing needs.
- The economic benefits associated with the creation of jobs and a boost to the economy attracts modest weight in the planning balance.

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<sup>1</sup> Appeal Ref: APP/D2320/W/20/3247136 - Land at Pear Tree Lane, Euxton, Chorley (**CD F1**)

- There would be localised landscape harm that attracts moderate weight in the planning balance.
- There would be less than substantial harm to the heritage significance of the listed Houghton House Farmhouse.

2.4 The appeal was allowed.

2.5 In terms of the traditional, or 'flat' planning balance (i.e. if the tilted balance were not engaged), the Inspector was clear that the grant of planning permission would still be justified. In paragraph 105 he states:

*"Even if I were to conclude that the 'tilted balance' was not engaged in this case, applying the 'flat balance' under section 38(6), I find that the significant benefits of the proposal in addressing housing needs in Chorley would outweigh the harm due to the conflict with Policy BNE3 and its effects on the landscape, visual amenity and the significance of the heritage asset. As such the material considerations would still warrant a decision other than in accordance with the development plan. Accordingly, the appeal should be allowed."*

2.6 As I will set out in this evidence this is an important decision for this appeal.

2.7 In the context of the High Court Judgement and the Chorley decision, the Appellant resubmitted the appeal scheme to the LPA in order to avoid the need for this appeal to take place. That application was recommended for refusal at the 5<sup>th</sup> November 2020 committee (**CD E1 and E2**) and members agreed with officers and the application was refused. The Decision Notice is **CD E3**.

2.8 It is in the 5<sup>th</sup> November 2020 committee report where the LPA provides more a detailed case to that set out in its Statement of Case for this appeal. Their overarching position is that whilst Policy 4 is out of date, the other most important policies, these being policies 1, EN1 and AD1(b), are not out of date and therefore the tilted planning balance is not engaged.

2.9 I disagree with the approach of the LPA and in this Proof of Evidence I will demonstrate that the reason for refusal is not justified and planning permission should be granted accordingly. In coming to that conclusion I also refer to the separate Housing Proof of Evidence of my colleague Ben Pycroft.

## Propositions

2.10 My Proof assesses the following Propositions:

- Proposition 1 – The tilted balance applies as the LPA cannot demonstrate a 5 year housing supply on the basis of Policy 4. Alternatively if LHN is used to calculate housing land supply the tilted balance applies because the most important policies for determining the appeal are out of date.
- Proposition 2 - The proposal represents a high quality development in a sustainable location which would deliver a range of social, economic and environmental benefits in accordance with paragraph 8 of the Framework
- Proposition 3 – The Planning Balance justifies the appeal proposal being allowed.

2.11 The Appellant's primary position is that Policy 4 is not out of date which is dealt with by Mr Pycroft. On the basis that his evidence is accepted then the LPA concede that they do not have a 5 year land supply and the appeal should be allowed which is in essence a reversion to the October 2019 committee. We have prepared our evidence on that basis.

2.12 However, if the LPA is correct and Local Housing Need (LHN) is the appropriate figure, my evidence is that the tilted balance will apply as per paragraph 11 (d) of the Framework in relation to the Appellant's scheme as the use of LHN renders Policy 4 out of date and as a consequence policies 1, EN1 and AD1(b) which are inextricably linked and predicated on a housing requirement (Policy 4) in the CLCS. I also set out a third scenario whereby the use of LHN fundamentally changes the distribution of development which also renders policies 1, EN1 and AD1 (b) as being out of date.

2.13 My evidence will conclude that the appeal should be allowed.

### 3. Policy Context

3.1 The planning policy context is set out in the Statement of Common Ground. I summarise the policy position below.

3.2 In accordance with Section 38(6) of the Town and Country Planning Act 2004 the Development Plan comprises the following:

- The Central Lancashire Core Strategy (2012);
- Preston Local Plan 2012 to 2026 (2015);
- Saved policies of the Preston Local Plan (2004) – These are listed in Appendix D of the Preston Local Plan 2012-2026.
- Joint Lancashire Minerals and Waste Local Plan.

3.3 I now summarise the status of each of the documents and summarise the relevant policies.

#### **Central Lancashire Core Strategy (CD A1)**

3.4 Preston City Council, Chorley Borough Council and South Ribble Borough Council prepared a Core Strategy which was adopted in July 2012. The Core Strategy sets out the spatial strategy for Central Lancashire up to 2026. The relevant policies are set out in the SoCG.

3.5 Policy MP of the Core Strategy sets out the presumption in favour of sustainable development and enshrines the main thrust of the National Planning Policy Framework within the development plan. This policy specifically includes the tilted balance as part of the development plan.

3.6 Policy 1 (Locating Growth) sets out the spatial strategy for the sub-region. Barton would fall within criterion (f). This is one of the three policies set out in the reason for refusal. I accept that the proposal would not accord with part (f) and that therefore the proposal does conflict with this part of the development plan. The weight to any conflict must then be considered. If a 5 year land supply was not demonstrated or local housing need is applied to calculate the housing supply, then I consider that this policy is out of date and should be given limited weight for the reasons I set out under Proposition 1.

3.7 Policy 4 requires the provision and management for the delivery of new housing by: (a) Setting and applying minimum requirements as follows:

- Preston 507 dwellings pa
- South Ribble 417 dwellings pa
- Chorley 417 dwellings pa

with prior under-provision of 702 dwellings also being made up over the remainder of the plan period equating to a total of 22,158 dwellings over the 2010-2026 period.

- 3.8 Mr Pycroft addresses the chronology and status of the requirement in Policy 4 and why it should be used as the housing requirement for this appeal in his evidence.
- 3.9 Policy 4 is a policy which is most important for determining the appeal and both parties agree that it is out of date if LHN is used.
- 3.10 Policy 18 (Green Infrastructure) seeks to manage and improve environmental resources through a Green Infrastructure approach. Three criteria are set out. Whilst criterion (a) seeks to protect and enhance the natural environment, criterion (c) does allow for mitigation and/or compensatory measures where development would lead to the loss of, or damage to, part of the Green Infrastructure network. No conflict is alleged with this policy by the Council.
- 3.11 Policy 21 (Landscape Character Areas) states that new development will be required to be well integrated into existing settlement patterns, appropriate to the landscape character type and designation within which it is situated and contribute positively to its conservation, enhancement or restoration or the creation of appropriate new features. There is no conflict with this policy on the decision notice or in the Council's Statement of Case.

### **Preston Local Plan (CD A2)**

- 3.12 The Preston Local Plan was adopted in July 2015 and is the Site Allocations and Development Management Policies DPD which followed the adoption of the Core Strategy in 2012. The DPD sets out development management policies and allocates or protects land for specific uses. As with Policy MP in the CLCS, Policy V1 includes the filtered planning balance as part of the development.
- 3.13 The decision notice refers to Policy EN1 (Development in the Open Countryside). Policy EN1 states:

*"Development in the Open Countryside, as shown on the Policies Map, other than that permissible under policies HS4 and HS5, will be limited to: a) that needed for purposes of agriculture or forestry or other uses appropriate to a*

*rural area including uses which help to diversify the rural economy; b) the re use or re habitation of existing buildings; c) infilling within groups of buildings in smaller rural settlements."*

3.14 Policy AD1(b) states:

*"Policy AD1 (b) – Small scale development within Existing Villages (including the development of brownfield sites) will also be permitted provided that it meets with the criteria listed above. In all cases, favourable consideration will be given to proposals containing measures likely to result in an overall improvement to the environment and amenity of the area."*

3.15 In terms of the development plan, it is acknowledged that the proposed development would be contrary to Core Strategy Policy 1 and Policies AD1(b) and EN1 of the adopted local plan. However if a 5 year land supply was not demonstrated then I consider that these policies should have limited weight in the planning balance for the reasons I set out under Proposition 1. They would also be out of date and should be given limited weight if LHN is applied to calculate the housing supply. Again this is assessed under Proposition 1.

## **Other material considerations**

### **Barton Neighbourhood Plan**

3.16 Barton Parish Council submitted an application on 30<sup>th</sup> March 2017 for the designation of the Barton Village Neighbourhood Area, and this was approved by Preston City Council on 8<sup>th</sup> September 2017. A Regulation 14 consultation was carried out between October 2020 and November 2020 by the parish council. The emerging neighbourhood plan remains at an early stage in the plan-making process and it is not yet at a stage where it attracts weight in decision making.

## 4. Proposition 1

### **Proposition 1 – The policies which are most important for determining the application are out-of-date and the tilted planning balance is engaged.**

4.1 A key issue for this appeal is which of the policies which are most important for determining the appeal are out of date and whether the tilted planning balance is engaged. The LPA's position is:

*"The most important policies for determining this application are Central Lancashire Core Strategy Policies 1 and 4, and Preston Local Plan Policies EN1 and AD1(b). The Council asserts that these most important policies for determining this application, save for CS Policy 4, are not out of date. As a result, the most important policies for determining the application are not out of date and as the Council can demonstrate a five year supply of housing land the Council contends the "tilted balance" is not engaged and there are no other material considerations that outweigh the clear departure from the Development Plan."*

4.2 I respectfully disagree. This is because it is well-established that there is more than one way in which paragraph 11(d) may be engaged i.e. the tilted balance. I consider that there are three scenarios which can engage the tilted planning balance in this case which are:

1. The absence of a 5-year housing land supply. See footnote 7 of the Framework.
2. Through the application of LHN, the adopted housing requirement and settlement boundaries being based on out-of-date housing needs.
3. The adopted housing strategy being radically different to an alternative housing need figure (LHN) in terms of the distribution of development across a housing market area.

4.3 In addition to these three scenarios is that the acceptance of the LPA that Policy 4 is out of date means that an approval in accordance with the tilted balance is approval in accordance with the development plan.

4.4 I assess each of the scenarios below.

#### Scenario 1: The 5-year housing land supply is assessed on the basis of Core Strategy Policy 4

4.5 The Council's Housing Land Position Statement (October 2020) assesses the deliverable supply of housing land against Local Housing Need. However all previous housing position statements used the requirement in Core Strategy Policy 4. Mr Pycroft assesses and concludes that Policy 4 should be applied and therefore if he is correct it is common ground that the LPA cannot demonstrate

a 5-year land supply. Therefore footnote 7 of the Framework applies and as a result the “most important policies for determining the application are out-of-date” and the tilted balance at paragraph 11 (d) of the Framework is engaged. The LPA agree that this would then be a reversion to the position at the October 2019 committee and planning permission should be granted.

Scenario 2: Through the application of LHN, the adopted housing requirement and settlement boundaries being based on out-of-date housing needs

- 4.6 The Council's Housing Land Position Statement (October 2020) assessed the deliverable supply of housing land against Local Housing Need. I consider that this means that paragraph 11(d) is engaged. This is because the LPA states that the housing requirement in Policy 4 is derived from a requirement from the North West RSS which was based on out-of-date household projections. The Appellant disagrees for the reasons set out by Mr Pycroft with which I entirely agree.
- 4.7 However, if contrary to the Appellant's evidence, LHN is to be used for the purposes of paragraph 73 of the Framework this has significant implications for decision making. This is because the Central Lancashire Core Strategy is the Part 1 development plan for Preston, South Ribble and Chorley. This is set out in the Foreword to the CLCS which states:

*“The Core Strategy is a clear statement of the positive benefits of joint working in Chorley, South Ribble and Preston. It is a single strategy for Central Lancashire, and the Councils are committed to applying the policies consistently. Joint working makes sense because the three Districts have much in common, including their transport networks, and shared housing, employment and retail markets.”*

- 4.8 The LPA agree that if LHN is used, then Policy 4 is out of date. They consider that policies 1, EN1 and AD1(b) are not out of date and the tilted planning balance is not engaged. I consider that is not correct.
- 4.9 I first turn to Policy MP which states:

*“When considering development proposals the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. It will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.*

*Planning applications that accord with the policies in this Local Plan (and, where relevant with policies in the neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.*



*Where there are no policies relevant to the application or **relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise-taking into account whether:***

*a) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or*

*b) specific policies in that Framework indicate that development should be restricted." (my emphasis)*

4.10 At no stage has the LPA suggested that Policy MP is not up to date and my interpretation of Policy MP is that if a relevant policy is out of date, i.e. Policy 4, then that part of Policy MP is engaged which is the tilted planning balance.

4.11 As I will set out later, I take that one step further in that policies 1, EN1 and AD1(b) are inextricably linked and predicated on a housing requirement (Policy 4) in the CLCS which is out-of-date. However, for Policy MP the key point is that its engagement does not require all these policies to be out of date which is what the LPA contend in their Statement of Case and in subsequent reports to planning committee.

4.12 Therefore, on Scenario 2, the use of LHN engages the tilted planning balance.

Scenario 3 - The adopted housing strategy being significantly different to an alternative housing need figure in terms of the distribution of development across a housing market area

4.13 In applying LHN need for Preston, the LPA has not considered the consequences for the single strategy which is the CLCS and for the policies which are most important for determining the application and now appeal.

4.14 The LPA accept that the application of LHN means that Policy 4 is out of date. However they state that "*whilst the minimum housing requirement of Policy 4 is out-of-date, it does not follow that the other most important policies for determining the application are out-of-date*". They then state:

*"Core Strategy Policy 1 promotes the spatial strategy for growth across Central Lancashire. For Preston this means focussing growth and investment in the main urban area (comprising of the Central Preston Strategic Location and adjacent inner city suburbs), the Cottam Strategic Site, the North West Preston Strategic Location and the Key Service Centre of Longridge. Policy 1 does not unreasonably constrain the ability of Preston to accommodate its local housing need calculated by way of the standard methodology. Policy 1 is therefore not out-of-date.*

*Policy EN1 restricts development which takes place in the open countryside to that needed for the purposes of agriculture and forestry (or other rural appropriate uses), the re-use of existing buildings and infill within groups of buildings, as well as development permissible in other policies contained within the Local Plan (namely Policies HS4 and HS5). Given the local housing need in Preston (250 net additional homes per annum) is currently substantially below the housing requirement contained in Policy 4 (507 net additional homes per annum), it is clear that more than sufficient land has been allocated in the current Local Plan to meet the local housing need. Policy EN1 does not unreasonably constrain the ability of Preston to accommodate its local housing need calculated by way of the standard methodology. As a consequence, the rural settlement boundaries do not need to be reconsidered at this time and remain relevant and up-to-date. Policy EN1 is therefore not out-of-date.*

*Core Strategy Policy 21 requires new development to be well integrated into existing settlement patterns and to be appropriate to the landscape character type and designation within which a development is situated. It also requires development to contribute positively to its conservation, enhancement or restoration, or the creation of appropriate new features. Paragraph 170 of the Framework requires planning policies and decisions to contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes (in a manner commensurate with their statutory status or identified quality in the development plan), and recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodlands. As such there is considered to be no conflict between this policy and the Framework, and Core Strategy Policy 21 is therefore not out of date.*

*Accordingly it is considered the tilted balance is not engaged."*

4.15 I consider that the LPA is wrong for the following reasons.

4.16 The first is that both Policy 1 and Policies EN1 and AD1(b) are inextricably linked to Policy 4. The LPA consider that Policy 1 does not "unreasonably constrain the ability of Preston to accommodate its local housing need calculated by way of the standard methodology. Policy 1 is therefore not out-of-date". The error in this conclusion is that the LPA is assessing Policy 1 on the basis of Preston in isolation. That cannot be correct as the application of LHN has ramifications for the Central Lancashire Plan area and whether or not a policy is out of date has to be assessed on a Central Lancashire plan area and not each individual LPA area. As I set out earlier, the Foreword to the CLCS states:

*"The Core Strategy is a clear statement of the positive benefits of joint working in Chorley, South Ribble and Preston. **It is a single strategy for Central Lancashire, and the Councils are committed to applying the policies consistently.** Joint working makes sense because the three Districts have much*

*in common, including their transport networks, and shared housing, employment and retail markets." (my emphasis)*

4.17 The standard method for the purposes of paragraph 73 of the Framework provides a figure for each local authority. The application of the standard method results in a radically different distribution of housing across the housing market area when compared to that contained within Core Strategy Policy 4 as set out in Figure 1 below.

**Figure 1: Distribution of Development between CS Policy 4 and LHN**

	Policy 4	% of Total	LHN	% of total
Preston	507	37.8	250	24.8
Chorley	417	31.1	569	56.3
South Ribble	417	31.1	191	18.9
Total	1,341		1,010	

4.18 Therefore applying LHN for Preston would result in a radical redistribution of the housing requirement within the CLHMA as set out in Core Strategy Policy 4. Policy 1 sets out the settlement strategy which is based on Policy 4. Table 1 of the Core Strategy sets out the distribution in greater detail which is based on the hierarchy in Policy 1.

**Table 1: Predicted Proportions of Housing Development by Location**

Location	Total %	Total net Dwellings* in Plan Period	2010-16#	2016-21	2021-26
<b>Preston/South Ribble Urban Area</b>	<b>48</b>				
• Cottam		1300	500	400	400
• Central Preston		600	200	200	200
• North West Preston		2500	600	900	1000
• South of Penwortham and North of Farington		1200	100	500	600
• Elsewhere		5000	2100	1500	1400
<b>Buckshaw Village Strategic Site</b>	<b>10</b>	<b>2300</b>	<b>1500</b>	<b>500</b>	<b>300</b>
<b>Key Service Centres</b>	<b>25</b>	<b>5500</b>	<b>2150</b>	<b>1700</b>	<b>1650</b>
<b>Urban Local Service Centres</b>	<b>9</b>	<b>2100</b>	<b>500</b>	<b>800</b>	<b>800</b>
<b>Rural Local Service Centres and elsewhere</b>	<b>8</b>	<b>1700</b>	<b>750</b>	<b>400</b>	<b>550</b>
<b>Total</b>	<b>100</b>	<b>22200</b>	<b>8400</b>	<b>6900</b>	<b>6900</b>

\* Rounded to the nearest 50

# Includes completions in 2010/11

4.19 As can be seen a minimum of 48% of the total requirement is to be located at the Preston/South Ribble urban area. This does not include the other areas in Preston and South Ribble which would inevitably increase the percentage in these two LPA areas, such as:

- the Key Service Centres of Leyland/Farington in South Ribble and Longridge in Preston<sup>2</sup>;
- Urban Local Service Centres -
- Rural Local Service Centres
- Smaller villages, substantially built up frontages and Major Developed Sites

4.20 From Figure 1 above, the total for Preston and South Ribble is 43.7% of the LHN, with the majority 56.3% being located at Chorley. That is at odds with Table 1 and Policy 1 of the CLCS and these stark figures demonstrate that using LHN renders Policy 1 out of date. As policies EN1 and AD1(b) follow from these two policies they must also be out of date.

4.21 In order to support my evidence I refer to three key decisions.

### **Wainhomes NW Ltd vs. SoS for CLG and South Ribble BC (CD G1)**

4.22 In December 2018, Wainhomes (NW) Ltd applied for outline planning permission for up to 100 dwellings with associated works on land south of Chain House Lane, Whitestake, Preston. That application was refused by South Ribble Council in June 2019. An appeal was subsequently lodged, and a Public Inquiry took place in November 2019. The Planning Inspectorate dismissed the appeal in December 2019. The challenge was made on the basis of five grounds concerning the following:

- Ground 1 – The Inspector's consideration as to whether there had been a review.
- Ground 2 – The Inspector's consideration of the position of the other 2 local planning authorities.
- Ground 3 – The Inspector's consideration as to whether a “significant change” had taken place since the 2017 MOU.
- Ground 4 – The Inspector's consideration of the impact on the CLHMA.

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<sup>2</sup> where land within Central Lancashire may be required to support the development of this Key Service Centre in Ribble Valley – Policy 1 Part B(iii)

- Ground 5 - The Inspector's consideration of the implications of the distributional impact of use of the standard method.

4.23 In terms of Ground 1, the contention was that the Inspector had made the error of concluding that the MOU did not amount to a review for the purposes of footnote 37 of the Framework. Mr Justice Dove accepted that the Inspector's reasoning was unclear and unlawful. See paragraphs 24 to 30 and paragraphs 39 to 40 of the Judgment. Mr Pycroft has dealt with this in his evidence on the applicable requirement to use.

4.24 For my evidence, I turn to Ground 5, which was concerned with the use of the standard method for the purposes of paragraph 73 of the Framework as it provides a figure for a single local authority and it does not provide a figure to reflect a housing market area such as the Central Lancashire Housing Market Area (Preston, Chorley and South Ribble). The case I put forward at the appeal was that the application of the standard method results in a radically different distribution of housing across the housing market area when compared to that contained within Core Strategy Policy 4. The contention was that by adopting the standard method, Policy G3 of the South Ribble Local Plan is therefore out-of-date for the purposes of paragraph 11(d) of the Framework as the safeguarded land in the development plan was predicated on Policy 1 and 4 of the Central Lancashire Core Strategy.

4.25 The Inspector for the appeal had concluded that the redistribution of housing as a result of the application of the standard method was not radical, and a situation such as this in any event is not one referred to in the Framework or the PPG as rendering a policy such as G3 out-of-date.

4.26 Mr Justice Dove agreed with the claimant that the Inspector's reasons were inadequate in that they failed to grapple with and explain adequately the consequences of the standard method for the distribution of housing across the three authorities across Central Lancashire. Paragraph 37 of the Judgment states the following:

*"This is ground 5, related to the conclusion that Local Plan Policy G3 was not out of date. In my view there is conspicuous merit in this ground, on the basis that the Inspector's reasoning failed to deal with the claimant's argument or explain her conclusions in relation to it. The argument which was made by the claimant was related to the consequences of deploying the standard method's measurement of local housing need as a result of the earlier conclusions which the Inspector had reached. The figures set out above identify a stark difference in the housing distribution using the local housing need housing requirement, as compared to the distribution contained within Core Strategy Policy 4(a). The Inspector simply failed to provide an answer to the point raised in relation to the adoption of the standard method and its consequences for the*

*distribution of housing contained within that policy which, in turn, underpinned the quantity and distribution of safeguarded land reflected in Local Plan Policy G3...."*

*"..., Indeed, the Inspector's reliance in her reasoning on a future exercise of policy making, involving review and a fresh exercise of redistribution, reinforced the point that Local Plan Policy G3 was in fact out of date and requiring review at the time of making the present decision if the housing requirement derived from the standard method was to be deployed...."*

*".... Further, her reference to this situation as not being one referred to in the Framework or PPG as rendering this type of policy out of date does nothing to explain either why the claimant's detailed point in relation to the impact on the current distribution of housing of use of the standard method did not render Local Plan Policy G3 out of date."*

4.27 Mr Justice Dove found in the Appellant's favour on Grounds 1 and 5 and quashed the decision and the decision has been quashed. Therefore the appeal decision the LPA relied upon to refuse the application has been quashed.

4.28 In this appeal, the same conclusion must apply. It cannot be said that Policy 4 is out of date but the other policies which flow from it and are inextricably linked to it are up to date. The clear consequence of using LHN is that, as Mr Justice Dove states, it will require "a future exercise of policy making, involving review and a fresh exercise of redistribution". On that basis all of the policies most relevant for the appeal, as listed in the SoCG, are out of date.

### **Oxton Farm vs. Harrogate Borough Council and D Noble Ltd Judgment (CD G2)**

4.29 This Court of Appeal Judgment published in June 2020 concerned a planning application for 21 dwellings and a village shop at Turnpike Lane, Bickerton, North Yorkshire. It was subject to the grant of planning permission in 2018, although Oxton Farm subsequently pursued a legal challenge against this decision. A copy of the Judgment is **CD G2**.

4.30 By way of background, the Harrogate Local Plan was adopted in 2009 and Policy SG1 identified a housing requirement of 390 dwellings per annum between the years 2004 and 2023. Policy SG2 identifies development and settlement limits, and Policy SG3 seeks to direct housing growth to within these development and settlement limits. Bickerton is not listed at Policy SG2 and it is within the open countryside.

4.31 The emerging local plan had been submitted for examination with the Planning Inspectorate on the 31<sup>st</sup> August 2018. The emerging local plan identified a housing requirement of 669 dwellings

per annum. The Committee report published only days prior to the emerging plan having been submitted for independent examination stated the following:

*“On balance, it is considered that there are no adverse impacts that would significantly and demonstrably outweigh the benefits of this scheme. [Harrogate] can only demonstrate a 5.02 year supply of housing and this is not sufficiently above the 5 year supply that paragraph 11 of the NPPF can be ignored. Given this position and the proximity of nearby service settlements, officers consider the scheme should be approved. RECOMMENDATION: Approve subject to conditions.”*

4.32 Paragraph 9.11 of the Committee Report stated the following:

*“In order to maintain supply position, greenfield land outside the existing development limits will continue to be needed. This means that development limits are considered out of date and can be given no more than limited weight. Only limited weight can be attached to Core Strategy policies SG1, SG2 and SG3 as these were based on a housing target that is out of date. By virtue of this paragraph 11 of the NPPF is once again engaged.”*

4.33 The challenge concerned two matters: Whether the tilted balance should have been engaged and whether the 5-year supply should have been measured against a different housing requirement. In terms of the tilted balance, the key issue was whether the Committee Report had properly advised Members as to why it was engaged. The Judgment found that officers had provided good reason for the tilted balance being engaged notwithstanding the 5-year housing land supply position:

*“..... Paragraph 9.11 gives two reasons for limited weight to Policies SG1, SG2 and SG3; and the more natural reading of ‘one again’ is that both the first reason and the second reason engage the tilted balance.*

*On the other hand, in paragraph 9.11 the officer considered that development limits were out of date. She gave two reasons for that view. First, in order to maintain the supply of housing land, greenfield sites were needed; and that meant that settlement boundaries were out of date. Second, Policies SG1, SG2 and SG3 were themselves based on a housing target that was out of date. That meant that those policies could only be given limited weight. It follows that the basis on which the tilted balance was triggered was on the basis that relevant policies were out of date.”*

4.34 This Judgment reflects the well-established principle that the tilted balance will be engaged where relevant policies are out-of-date. In that case the emerging housing figure was higher than the adopted development plan, but for this appeal one cannot look at Preston by itself as the strategic policies are in the CLCS which covers three LPA area and these three authorities are undertaking a review in producing a joint local plan. It is therefore too early to conclude what

the distribution will be and which sites will be allocated, but the only conclusion that can be drawn for this appeal is that if LHN is used then the policies most relevant for the appeal are out of date.

4.35 The next key decision that I refer to is the appeal at Pear Tree Lane.

### **Land at Pear Tree Lane, Euxton, Chorley (CD F1)**

4.36 In June 2019, Chorley Council refused planning permission for the erection of up to 180 dwellings with associated works at Pear Tree Lane, Euxton (LPA ref: 19/00654/OUTMAJ). The site is identified as Safeguarded Land through the adopted development plan.

4.37 The applicant subsequently lodged an appeal with the Planning Inspectorate and a Public Inquiry took place in June 2020 (PINS ref: APP/D2320/W/20/3247136). The Inspectorate issued the appeal decision letter in August 2020 and the key findings are summarised below:

- The Appellant considered that the standard method local housing need should be used as the basis for assessing whether a 5-year supply exists as per paragraph 73 and footnote 37 of the Framework.
- The Council considered that the Memorandum of Understanding between the three Central Lancashire authorities (April 2020) should be used as the basis for assessing whether a 5-year supply exists. The Council considered this was justified on the basis of paragraph 2-03 of the PPG and a redistribution of the requirement across the Central Lancashire authorities.
- The Inspector noted that it was not for an Inspector on a Section 78 appeal to seek to carry out a sort of local plan process so as to arrive at a constrained housing requirement figure. The redistribution of housing across the Central Lancashire area is something that should be resolved through a local plan process.
- Full weight should be attached to the standard method local housing need figure for Chorley and this should be used as the basis for assessing whether a 5-year supply exists. A 5-year housing land supply could not be demonstrated on this basis.
- Policy 4 of the Joint Core Strategy should be considered out-of-date. This policy is derived from the former North West RSS, which relied upon out-of-date 2003-based household projections.
- Policy BNE3 (Safeguarded Land) should be considered out-of-date. It serves to prevent the Council from being able to provide an adequate housing land supply within the current plan period and is based on an out-of-date housing requirement.
- The delivery of 30% affordable housing is a significant social benefit.



- The delivery of open market housing carries significant weight in addressing housing needs.
- The economic benefits associated with the creation of jobs and a boost to the economy attracts modest weight in the planning balance.
- There would be localised landscape harm that attracts moderate weight in the planning balance.
- There would be less than substantial harm to the heritage significance of the listed Houghton House Farmhouse.

4.38 In terms of the traditional, or 'flat' planning balance (i.e. if the tilted balance were not engaged), the Inspector was clear that the grant of planning permission would still be justified:

*"Even if I were to conclude that the 'tilted balance' was not engaged in this case, applying the 'flat balance' under section 38(6), I find that the significant benefits of the proposal in addressing housing needs in Chorley would outweigh the harm due to the conflict with Policy BNE3 and its effects on the landscape, visual amenity and the significance of the heritage asset. As such the material considerations would still warrant a decision other than in accordance with the development plan. Accordingly, the appeal should be allowed."*

4.39 In that case the Appellant accepted that the 5 year supply should be calculated on LHN so did not pursue a case on using Policy 4. However the question of whether the settlement boundaries were out of date was considered. The Inspector concluded:

*"48. Turning to Policy BNE3 of the CLP, in designating the land to the east of Euxton as Safeguarded Land it effectively defines the settlement boundary on this side of Euxton to the rear of the dwellings in School Lane and The Cherries. It constrains the development of the appeal site within the current plan period, in order to offer long term protection to the Green Belt. **Whilst this approach is consistent with national policy in paragraph 139 of the Framework, the boundaries of the Safeguarded Land and thereby the adjoining settlement boundaries, as identified on the CLP Policies Map, are predicated on a housing requirement in the CLCS which is out-of-date.** The Green Belt boundaries in Chorley and the associated Areas of Safeguarded Land were defined in the 1997 Chorley Borough Local Plan. **They were carried forward into the 2003 Local Plan Review and then into the current CLP, but on the basis of a housing requirement in Policy 4 of the CLCS, which is now out-of-date.***

*49. **Case law<sup>34</sup> has confirmed that settlement boundaries may be out-of-date to the extent that they derive from out-of-date housing requirements, constraining the ability to meet housing need. That is evidently the case here.** My conclusions on the 5YHLS above indicate that the restriction on the development of Safeguarded Land in Policy BNE3 is preventing the Council from being able to provide an adequate housing land supply, against its standard method LHN within the current plan period to 2026.*

4.40 As can be seen from that decision Chorley could not demonstrate a 5 year housing land supply on LHN and therefore safeguarded land was released. However Paragraph 7 of the appeal decision states that:

*“The appeal site comprises 7.34 hectares of agricultural land to the east of Euxton, which is defined as an urban local service centre in Policy 1 of the CLCS. Most of the land outside of the urban areas in Chorley borough is designated as Green Belt in the CLCS and CLP, where there is a general presumption against inappropriate development”.*

4.41 If LHN is used it is clear that Chorley would be unable to accommodate its 56.3% of LHN and therefore those people in need of a home now. The only way that the implications of LHN can be considered and planned for in Central Lancashire is for a review of the CLCS. This would accord with Paragraph: 062 Reference ID: 61-062-20190315 which under the heading “Plan Making” states:

*“There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise. Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for as quickly as reasonably possible.”*

4.42 The fact that the LPA accept that Policy 4 is out of date means that the Inspector at Chorley's conclusions apply equally in Preston as the policies **are predicated on a housing requirement in the CLCS which is out-of-date** and the policies must be applied on a consistent basis.

## Conclusion

4.43 The tilted balance is engaged regardless of whichever of the above scenarios the LPA wishes to apply or however it seeks to interpret the Chain House Lane Judgment and the appeal decision at Pear Tree Lane.

## 5. Proposition 2

**The proposal represents a high quality development in a sustainable location which would deliver a range of social, economic and environmental benefits in accordance with paragraph 8 of the Framework**

- 5.1 Under this proposition I will demonstrate that there are no site specific technical or environmental issues that would prevent planning permission from being granted.

### **Affordable housing**

- 5.2 CLCS Policy 7 and the Central Lancashire Affordable Housing SPD requires that new housing developments within the rural area deliver 35% on-site affordable housing.
- 5.3 The proposed development would deliver 53 affordable units which accords with CS7. The provision of affordable housing is a significant material consideration which weighs in favour of the proposed development given the substantial affordable housing needs across Preston.
- 5.4 However, the LPA's Statement of Case states:

*"7.20 Whilst the benefits of the appeal development are acknowledged in respect of the contribution the proposal will make to housing land supply and affordable housing, along with the economic benefits from employment opportunities during the construction phase. However, given that the Council can demonstrate a healthy housing land supply (13.8 years), these benefits are considered to be generic and no more than would be expected from any major housing development anywhere within the borough, and thus do not outweigh the conflict with the development plan strategy."*

- 5.5 I respectfully disagree with the LPA in concluding that the contribution to affordable housing is generic. The Statement of Case does not quantify the benefit from the delivery of affordable housing although the November 2020 committee report would seem to indicate that the benefits attract limited positive weight. It states:

*"With the exception of the vehicular access the application site is located in the open countryside as shown on the policies map of the Preston Local Plan 2012-2026 (Site Allocations and Development Management Policies). The proposed development would not result in the loss of a valued or distinctive landscape and would deliver 35% on site affordable housing, include open space and provide sustainable access to local services. The proposed dwellings would be energy efficient and be supplied with electric vehicle charging points. There would be no unacceptable harm to protected species and their habitats due to mitigation measures that could be secured by condition, and*

*the proposal would potentially help to improve biodiversity. Any harm arising from potential contamination and flood risk could be mitigated by condition. Furthermore, the education and highways impacts of the proposed development could be successfully mitigated by conditions and/or planning obligation. Whilst these are considered to be benefits resulting from the proposed development, the majority of these benefits are generic and no more than would be expected from any major housing development, and as such they attract limited positive weight."*

5.6 The evidence of Mr Pycroft sets out the affordable housing need. He states:

*"The 2017 SHMA identifies a net need of 239 affordable homes in Preston per annum over the period 2014 to 2034. This is notably greater than the projected annual average household growth and almost as much as the total local housing need using the standard method.*

*The Central Lancashire Housing Study (March 2020) includes an updated assessment of affordable housing need which responds to the widened definition of affordable housing set out in the 2019 Framework. It concludes that the need for rented affordable housing in Preston alone is 250 homes per annum over the period 2018 to 2036. This is as high as the total local housing need using the standard method."*

5.7 When compared with delivery to date and the number of affordable homes in the supply there is a clear and compelling need. These are people in need of an affordable home now. When considered against the Framework which seeks to "support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations" I can only conclude that the benefit of affordable housing is significant.

## **Community Building**

5.8 Paragraph 19d of the Framework states that "Planning policies and decisions should aim to achieve healthy, inclusive and safe places which:

*"c) enable and support healthy lifestyles, especially where this would address identified local health and well-being needs – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling."*

5.9 Paragraph 92(a) states:

*"92. To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:*

*a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space,*

*cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;*

5.10 Policy 25 (Community Facilities) of the Core Strategy states:

*“Ensure that local communities have sufficient community facilities provision by:*

*(a) Working with public, private and voluntary sector providers to meet demonstrable need;*

*(b) Encouraging and coordinating new provision at locations that are accessible by all modes of transport;*

*(c) Resisting the loss of existing facilities by requiring evidence that they are no longer viable or relevant to local needs;*

*(d) Assessing all development proposals for new housing in terms of their contribution to providing access to a range of core services including education and basic health and care facilities.”*

5.11 The appeal proposal also includes the construction of a community building as well as providing on-site public open space and play facilities for use by the existing and future residents of the village. The precise details would be finalised through a subsequent reserved matters application. This outline planning application seeks to establish the principle and the delivery would be secured through the Section 106 agreement. We would intend to have further discussions with the community on this aspect of the development should permission be given.

5.12 At this stage it is proposed that the community hall will be designed to provide the local community with an indoor facility which will be the focal point for the community and foster greater community spirit through the provision of sports provision, performances, meetings and rooms for hire for parties and events. The design would be based on the design note by Sport England titled “Village and Community Halls”<sup>3</sup> and the draft S106 legal agreement requires the community building to be a minimum size of 370sqm internal floorspace.

- Indicative elevation and floor plans of the multi-purpose facility envisaged and were submitted to the LPA with the appeal and this included a multi-use activity hall, changing rooms, office, meeting room and toilets.
- The multi-purpose facility referred to could provide a wide range of opportunities for community events and groups e.g. cubs, beavers, girl guides, football teams, further education classes and leisure activities such as yoga.

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<sup>3</sup> <https://www.sportengland.org/media/32402/Village-and-community-halls.pdf>

- It is intended that the developer would build out the multi-use facility with opportunity for the ownership of the facility to be transferred to the parish council or local authority or otherwise to a third party. Alternatively, management arrangements could be put in place for the maintenance of the building going forwards.

<b>Sport/play</b>	<b>Other activities</b>
Badminton	Clubs/societies
Short mat bowls	Concerts
Gymnastics	Conferences/meetings
Aerobics/keep fit	Dance/dance classes
Martial arts	Drama/films
Judo	Receptions
Yoga	Private functions
Playgroups	Auctions
Table tennis	Cheese and wine
Five-a-side (softball)	Women's Institute
Short tennis	Guides/scouts
Fencing	Discos

5.13 It is therefore clear that the range of activities that a hall of these dimensions would provide to the local community are extensive and would be located at the village which would create greater community cohesion and reduce the need to travel to access these facilities.

5.14 The committee report states:

*"It is acknowledged that there may also be potential commercial benefits for the applicant in providing such a community facility on site, including potential income from renting out the building and also making the proposed dwellings more marketable with such a facility in the vicinity. However there are also potential benefits to the community that will be able to use this facility, both potential residents of this development and also existing residents in the area."*

5.15 Therefore the proposal has a social and economic benefit.

## **Site Specific Matters**

5.16 A number of third party representations were received to both the planning application and appeal which raise a number of points.

- 5.17 A suite of environmental and technical studies were prepared to accompany the planning application and it is common ground with the LPA that notwithstanding the reason for refusal there are no technical or environmental reasons why the appeal should be dismissed. This is due to the statutory consultees not raising an objection following receipt of the application submission and/or requiring a financial contribution.
- 5.18 The key points raised by the technical reports are summarised in the Statement of Common Ground and no issue is taken by the Council on these matters.
- 5.19 Any mitigation required will be addressed by condition and/or the Section 106 which has been prepared in accordance with the following tests:
- Necessary to make the development acceptable in planning terms;
  - Directly related to the development; and
  - Fairly and reasonably related in scale and kind to the development.
- 5.20 I first turn to landscape impact.

## **Character and appearance**

### **Policy Context**

- 5.21 CS Policies CS5, CS13 and CS17 and Policy EN9 of the adopted local plan state that development proposals should have regard for the character and appearance of the local area and the sense of local distinctiveness.
- 5.22 CS Policy 21 relates to landscape character areas and states that new development will be required to relate well to existing settlement patterns and be appropriate to the relevant landscape character type.
- 5.23 The NPPF states that local planning authorities should seek to protect and enhance 'valued' landscapes or those subject to formal designations (paragraph 170). The application site is neither a valued landscape nor subject to a formal landscape designation.

### **Assessment**

- 5.24 The NPPF is clear that '*protection*' is a term to be applied to landscape designations and local planning authorities should not seek to protect the open countryside 'for its own sake'. The

appeal site is not the subject of any landscape designations and there is no indication that it is 'valued' for the purposes of the paragraph 170.

- 5.25 The existing site is unremarkable in landscape terms. It is relatively flat and is not subject to any significant tree coverage. There are no public rights of way extending through or adjacent to it.
- 5.26 The proposed development would relate well to the existing settlement boundaries of Barton and the surrounding built form. Although extending further eastwards than the existing housing fronting onto the A6, the proposed development would not extend beyond the mature landscaped eastern boundary. It would be viewed as a logical addition to the village in a similar way to the Forest Grove development.
- 5.27 Views of the proposed development would be 'localised' and framed within the context of the existing built development and A6 highway to the western boundary, the commercial haulage yard and the mature landscaping on the eastern boundary.
- 5.28 Indeed, the Committee Report acknowledged that the scheme would relate well to the existing settlement boundaries of Barton and the surrounding built form. It states:

*"The existing landscape is however in keeping with the wider rural countryside around Barton Village and although the development would lead to the loss of agricultural land it would be located directly adjacent to existing Barton village boundary, forming an extension which would project eastwards a similar distance to the most eastern part of the existing settlement boundary to the north (almost in line with residential properties on Forest Grove). As such the development of this site would represent an extension of the existing built form rather than creating an isolated and detached development within the open countryside."*

*"As such the proposal would be in keeping with the semi-rural character of Barton Village which is considered acceptable in principle with CS Policy 21, subject to a suitable final design at reserved matters."*

- 5.29 It also noted that the character and appearance of the surrounding area is subject to further change. For example, works are ongoing on the implementation of the construction of 72 houses on land directly opposite the application site (LPA ref: 06/2015/0306 and 06/2017/027). There are other extant housing schemes where construction works will soon commence. The pattern of built development to the western side of the A6 pursuant to this approved scheme would mirror that of the eastern side of the A6 as a result of the proposed development.



- 5.30 Issues relating to landscape impact have been discussed at length for a number of residential developments within the locality. The Council and Planning Inspectorate have concluded for a number of such schemes that developments along the A6, which is characterised by a linear pattern of built development, would not result in significant harm to landscape or the character and appearance of the area.

## Highways

### Policy context

- 5.31 Policy ST2 of the adopted local plan and CS Policy 3 state that major new development proposals shall provide safe and satisfactory access with an acceptable impact on the local road network and suitable linkages to public transport provision.

### Assessment

- 5.32 A Transport Assessment, prepared by SCP, was submitted with the planning application. It demonstrates that there would no adverse impacts on the local highway network as a result of the proposed development with an imperceptible impact on the road network. They have prepared a Technical Note for this appeal (Appendix EP1).
- 5.33 The site is locationally sustainable in terms of access to a range of key services. For example, the site is within easy and convenient walking distance of food and drink premises (e.g. Barton Village Hall, Barton St Lawrence Church of England Primary School and St Mary's and St Andrew's Catholic Primary School). In terms of public transport provision, the site benefits from bus services along the A6 corridor with regular and direct connections to the principal centres of Lancaster, Preston and Garstang and the smaller settlements in-between. The site also benefits from excellent cycling provision with a dedicated cycle lane along the A6 corridor and connections to regional and national cycle networks beyond (e.g. the Preston Guild off-street cycleway).
- 5.34 Due regard should also be had for the planning history of other sites within the area, such as at Avonhurst, Forest Grove and directly opposite the site which establishes that major residential development is appropriate within Barton in terms of accessibility to key services and public transport options.

- 5.35 The proposed development is fully compliant with Policy ST2 of the adopted local plan and CS Policy 3 with respect to the potential impact on highways safety and the road network and the proximity of the site to a range of key services and public transport options.
- 5.36 Concerns were raised by the residents along Woodlands Way during the determination of current planning approval for 55 homes. Whilst those concerns were not a reason against the development, the applicant has nevertheless taken note with this revised proposal with the access directly off the A6. Should this appeal be approved then it is this development which would be implemented. Under either scenario a safe and secure access will be achieved although the appeal access would seem to be favoured by residents.

## **Flooding and Drainage**

### **Policy context**

- 5.37 CS Policy 29 relates to water management and states that development proposals should have due regard for the implications for flood risk.

### **Assessment**

- 5.38 A Flood Risk Assessment, prepared by Betts Associates, has been submitted with the planning application. This shows that the site is located within an area at low risk of flooding and the report provides a basis for a detailed surface water run-off scheme to be secured at the reserved matters stage. They have prepared a Technical Note for this appeal (Appendix EP2).
- 5.39 The submitted Flood Risk Assessment is consistent with the provisions of CS Policy 29. This has already been acknowledged as the case by the Council through planning application 06/2019/0752.

## **Residential amenity**

### **Policy context**

- 5.40 CS Policy 17 and Policy AD1(b) of the adopted local plan state that new development should be compatible with the existing land uses of the surrounding area in terms of the amenity of existing and future occupiers.

## **Assessment**

- 5.41 The layout submitted shows that generous separation distances would be retained between the new houses and existing properties surrounding the application site. It demonstrates that the proposed development would not undermine the residential amenity of the existing residents in the locality in terms of outlook, privacy and light.
- 5.42 The layout also demonstrates that the scheme would provide appropriate levels of amenity for all future occupiers. Each plot would benefit from a generous amount of internal and external amenity space.
- 5.43 The proposed development would not undermine the residential amenity of existing nearby occupiers, and a good standard of amenity would be provided for future occupiers. The proposal is fully compliant with the provisions of development plan in terms of residential amenity. This has already been acknowledged as the case by the Council through planning application 06/2019/0752.

## **Ecology**

### **Policy context**

- 5.44 Policies EN10 and EN11 of the adopted local plan state that the local planning authority will have due regard for the protection and safeguarding of habitat features, wider ecological networks and protected species.

### **Assessment**

- 5.45 An Ecological Appraisal by Rachel Hacking Ecology was submitted with the planning application. The appraisal presents the results of an Extended Phase 1 Habitat Survey Great Crested Newts Survey. They conclude that the ecological value of the site does not represent a constraint to development and the proposals are feasible and acceptable in accordance with ecological considerations and relevant planning policy. The indicative masterplan shows the retention of trees, hedgerows and water body within the proposed development and the development at the site will provide an opportunity to secure ecological enhancement for wildlife associated with residential development.

- 5.46 The proposed development is therefore compliant with the provisions of Policies EN10 and EN11 of the adopted local plan in respect of ecology, and it would result in net overall biodiversity benefits as acknowledged as the case by the Council through planning application 06/2019/0752.

## **Agricultural land**

### **Policy context**

- 5.47 CS Policy 31 states that the Council will seek to protect the best and most versatile agricultural land (Grades 1, 2 and 3a) when considering new development proposals.
- 5.48 Paragraph 112 of the NPPF states that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land, and that where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.

### **Assessment**

- 5.49 An Agricultural Land Classification Report, prepared by Acorus, has been submitted with this planning application. The site is assessed by Acorus as being predominantly of Agricultural Land Classification 3b (i.e. Moderate Quality) with small areas of Grade 4 are likely to be included, for example the steeper sloping land on the southern margin of the site.
- 5.50 With due regard for the size of the site and its agricultural grading, there would therefore be very limited harm as a result of the potential loss of a farming use on the site, and no conflict with the provisions of CS Policy 31 and the NPPF.

## **Sustainable development**

- 5.51 The proposed development should be determined in accordance with the presumption in favour of sustainable development. Paragraph 8 notes that sustainable development has three roles relating to the economic, social and environmental dimensions.
- 5.52 With regard to the economic role, the proposed development would result in both direct and indirect benefits that include the creation of construction jobs and additional household spending within the wider economy (e.g. on household goods and services). There will also be a

substantial New Homes Bonus and council tax receipts associated with the proposed residential development.

- 5.53 These economic benefits should attract moderate weight in the decision-making process.
- 5.54 Turning to the social role, the proposed development would add much-needed quality and quantity to the local housing market. The provision of open market and affordable housing attracts particularly substantial positive weight in the decision-making process given the record of under-delivery of housing across Preston, the emphasis through the NPPF on boosting housing land supply and the substantial affordable housing needs. See the approach adopted by the Secretary of State in the Stapeley decision (**CD F5**) in terms of the weight to be afforded to the benefits of housing even within the context of a 5-year supply (i.e. great positive weight). There are also benefits associated with the Community Building and open space.
- 5.55 With regard to the environmental role, the site is unremarkable in landscape and agricultural terms. Whereas part of the site is within the identified settlement boundaries, much of the site is located within the designated open countryside. The Council has accepted in other cases that the settlement boundaries are out-of-date and that the release of greenfield sites beyond the existing settlement boundaries is necessary in order to meet unmet and future housing needs. Therefore, the loss of a small parcel adjacent to the settlement cannot comprise a significant adverse impact. The proposal would be viewed as a logical extension to the existing settlement boundaries and the site is accessible in terms of local services and public transport options.
- 5.56 The localized and very limited landscape harm has already been accepted by the Council, and such harm attracts limited weight in the decision-making process. The delivery of extensive areas of open space and the biodiversity benefits associated with the development, acknowledged by the Council through the October 2019 Committee report, weigh in favour of the grant of planning permission.
- 5.57 With due regard for the points outlined above, the proposed development comprises sustainable development for the purposes of the Framework.

## 6. Proposition 3

### **The Planning Balance justifies the appeal proposal being allowed.**

- 6.1 Section 38 of the Planning and Compulsory Purchase Act 2004 requires that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise. An important material consideration is the presumption in favour of sustainable development which is set out within Paragraph 11 of the Framework.
- 6.2 To significantly and demonstrably outweigh the benefits is a deliberately very high threshold, hence the term 'the tilted balance'. In the case of this appeal, the proposal would result in a number of significant benefits.

### **Social**

- The delivery of housing to contribute towards meeting the housing needs of Preston. I rely on the evidence of Mr Pycroft on this issue. I consider that the LPA has unreasonably given limited weight to the provision of the new homes proposed. In the context of "*the government policy imperative is to boost the supply of housing*<sup>4</sup>", this is a benefit of significant weight.
- The delivery of affordable housing to help meet borough wide levels of identified future and previously unmet needs. I rely on the evidence of Mr Pycroft on this issue which sets out the need. This is a benefit of significant weight.
- The provision of the Community Building. This is a benefit of moderate weight.

### **Environmental**

- The proposal would result in net overall biodiversity benefits as acknowledged as the case by the Council through planning application 06/2019/0752. This is a benefit of limited weight.

### **Economic benefits**

- the creation of jobs in construction and the supply chain. This is a benefit of limited weight.
- housing economically active people to meet the district's economic aspirations and jobs growth targets and increased household spending in the local area. This is a benefit of limited weight.

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<sup>4</sup> Land off Audlem Road/Broad Lane, Stapeley, Nantwich

- the provision of the New Homes Bonus and increased Council Tax revenues. This is a benefit of limited weight.

6.3 I now assess the adverse impacts set out by the LPA.

## **The Planning Balance**

### **Tilted Balance**

6.4 In terms of the development plan, it is acknowledged that the proposed development would be contrary to Core Strategy Policy 1 and Policies AD1(b) and EN1 of the adopted local plan. Although such conflict is a material consideration and must be weighed in the balance, it should be given limited weight. However, even if such harm was given a greater level of weight, I consider that it would still fall some way short of outweighing the benefits of this proposal with the tilted planning balance engaged. This has already been acknowledged as being the case by the Council through the resolution passed at the October 2019 Planning Committee meeting for planning application 06/2019/0752.

### **Flat Balance**

6.5 Notwithstanding the point as to the tilted balance being engaged which is our primary case, it is considered that the limited harm arising from the proposed development would be outweighed by the benefits of the scheme. Planning permission is therefore considered to be justified based on the general planning balancing exercise i.e. 'other material considerations' as per Section 38 of the Planning and Compulsory Purchase Act 2004. This position is supported by three decisions.

#### Land off Audlem Road/Broad Lane, Stapeley, Nantwich

6.6 This Secretary of State decision issued earlier this year concerned a mixed-use development including 189 dwellings in Stapeley, Nantwich (LPA ref: 12/3747N and 12/3746N). The site was beyond the settlement boundaries established through the local plan and the scheme was contrary to a number of development plan policies, including those policies seeking to direct development to identified settlements.

6.7 The Secretary of State allowed the appeal and his findings are summarised below:

- There would be a degree of visual/landscape harm although this harm is limited by virtue of the urbanised context of the site.

- There would be a degree of harm as a result of the loss of best and most versatile agricultural land; this attracts modest weight in the planning balance.
- The Council can demonstrate a housing land supply of between 5.7 years and 6.6 years. The 'tilted balance' as per paragraph 11(d) of the Framework does not apply.
- There would be economic benefits as a result of the development, including employment during construction and expenditure into the local economy. This is a benefit that attracts medium weight in the planning balance.
- The site is in a sustainable location and Nantwich and is one of the preferred locations for development in the development plan strategy. This is a benefit that attracts medium weight in the planning balance.
- The provision of extensive areas of open space and scope for a new primary school and improvements to sustainable transport connectively represent significant social benefits. This attracts medium weight in the planning balance.
- The delivery of significant number of market housing is a significant benefit. Although the Council can demonstrate a five-year supply of housing land, the government policy imperative is to boost the supply of housing. This is a benefit that attracts significant weight in the planning balance.
- The delivery of affordable housing is a tangible benefit that attracts significant weight in the planning balance.
- The appeal scheme is not in accordance with Policies PG6, SD1 and SD2 of the Cheshire East Local Plan Strategy and Policy RES5 of the Crewe and Nantwich Local Plan. Furthermore, the scheme is not in accordance with Policies G5, H1 and H5 of the Stapeley Neighbourhood Plan.

6.8 In the overall balance of material considerations, even with a 5 year land supply, the benefits outweigh the disbenefits including conflict with the development plan. Planning permission was therefore granted on the basis of a traditional, or 'flat', planning balance (i.e. the tilted balance was not engaged).

Application 06/2018/1157 - Land adjacent 329 Preston Road, Preston, PR2 5JT

6.9 At the 5<sup>th</sup> November 2020 committee members resolved to grant planning permission for a scheme to the edge of Grimsargh contrary to the officer recommendation for refusal for 30 dwellings with 35% affordable housing. The committee report and Decision Notice is CDx. It should be noted that the proposed reason for refusal was the same as for this appeal which was also considered at the same meeting. The minutes from the meeting state:



*"The Director of Development and Housing presented a report on an outline planning application for 30 dwellings and associated infrastructure with access from Preston Road (all other matters reserved) land adjacent 329 Preston Road.*

*The Director recommended that the application be refused.*

*Contrary to the advice of the Director of Development and Housing it was moved and seconded that subject to conditions and a Section 106 Obligation planning permission be granted for the following reason:*

*The village has been extended in the past, to the south of Preston Road, and therefore it is not considered that this development would result in a further extension of the village into Open Space. The development would constitute infill development, and would provide affordable housing. The benefits of the development would outweigh the conflict with the Development Plan.*

*The Chair put the motion to a vote and it was*

*Resolved – That*

- i) subject to a S106 obligation being secured for providing on-site affordable housing, education provision and the future management of the public open space, planning permission be granted subject to conditions listed in the report which was presented to Committee on 5 March 2019; and*
- ii) in the event that a satisfactory Section 106 obligation is not concluded by 12 November 2020, or other agreed extension of time, delegate authority to the Director of Development and Housing to refuse planning permission on the grounds that the obligations which make the development acceptable have not been legally secured.*

*All Members (8) voted in favour of the resolution except for Councillors Landless and Mrs Whittam (2) who voted against."*

6.10 This approval was made on the basis of the flat balance and not the tilted planning balance. Like Barton, Grimsargh has the same status in Policy 1 (f). The two reasons given to approve were that *"it is not considered that this development would result in a further extension of the village into Open Space. The development would constitute infill development, and would provide affordable housing"*.

6.11 As I have set out under Proposition 2, there is no landscape or visual impact objection to the proposal, the committee report states:

*The proposed site is made up of agricultural fields bounded by hedging with a few dispersed trees and is not a protected landscape. The existing landscape is however in keeping with the wider rural countryside around Barton Village and although the development would lead to the loss of agricultural land it would be located directly adjacent to existing Barton village boundary, forming an extension which would project eastwards a similar distance to the most eastern part of the existing settlement boundary to the north (almost in line with*

*residential properties on Forest Grove). As such the development of this site would represent an extension of the existing built form rather than creating an isolated and detached development within the open countryside.*

- 6.12 I consider that the reasoning given by members on the Grimsargh application would apply equally here.
- 6.13 With regard to affordable housing, I have already set out the need and weight to the benefit. However, the Grimsargh application does demonstrate that members give much greater weight to officers on the provision of affordable housing which is important.

#### Pear Tree Lane, Chorley

- 6.14 As I have set out earlier, the Inspector at Pear Tree Lane did engage his decision with the traditional, or 'flat' planning balance (i.e., if the tilted balance were not engaged). This would have to include that the LPA could demonstrate a 5 year supply. The Inspector was clear that the grant of planning permission would still be justified:

*"Even if I were to conclude that the 'tilted balance' was not engaged in this case, applying the 'flat balance' under section 38(6), I find that the significant benefits of the proposal in addressing housing needs in Chorley would outweigh the harm due to the conflict with Policy BNE3 and its effects on the landscape, visual amenity and the significance of the heritage asset. As such the material considerations would still warrant a decision other than in accordance with the development plan. Accordingly, the appeal should be allowed."*

- 6.15 The approach taken by the Secretary of State in the Stapeley case, the LPA in Grimsargh and the Inspector for the Pear Tree Lane appeal decision should be noted where the benefits were given significant weight and not generic as the LPA in this case allege.
- 6.16 I can therefore conclude that whether the tilted planning balance is engaged or not, in accordance with the presumption in favour of sustainable development, planning permission should be allowed for the proposed development.

## 7. Appendices

- EP1. Highways Technical Note from SCP
- EP2. Drainage Technical Note from Betts