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EP ref: 16-344

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Dear Mr Major

Re: Application 2019/0752 - Cardwell Farm, Garstang Road, Barton, Preston

We are writing with regard to your email dated 20th December 2019 advising that the Council is to reconsider the above application at committee on 13th February 2020. You will have received our letter dated 15th January 2020. Following the publication of the committee reports and our subsequent legal challenge to the appeal decision at Chain House Lane we have updated our response. This letter forms that updated response.

Whilst we do not agree with the approach taken by the Council on either the housing land supply position or, the decision to return the applications to committee, we write to outline why this application should continue to be supported by the LPA at committee on 13th February 2020.

We set out our position on a number of matters below.

Timetable

The timetable set by the Council was and is as follows:

- Committee Reports will be published on Friday 17th January 2020. They were published on Monday 20th January 2020;
- Requests to speak at the Planning Committee meeting must be submitted by 12 noon Monday 10th February 2020. I can confirm that we wish to speak at committee;
- Until 31st January 2020 the Council will accept and consider any further representations to the planning application; and,

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- Thursday 13th February – Planning Committee.

The period for representations for this and the other applications has been set as 31st January 2020. However, the committee report will be issued on 20th January 2020. Clearly discussions and decisions by the City Council on this application did take place in the lead up to the original 17th January deadline. It is quite clear that by producing the reports prior to the deadline for submissions that they were not duly considered by the Council in preparing the recommendation. Therefore, we maintain that there is an unfairness for all the applicants who are in a similar position. This is further compounded by the Council's conclusion that it has a 5 year supply which has been made without any consultation which is required under the Framework and PPG.

"How can authorities confirm their 5 year housing land supply?"

When local planning authorities wish to confirm their 5 year housing land supply position once in a given year they can do so either through a recently adopted plan or by using a subsequent annual position statement.

Paragraph: 009 Reference ID: 68-009-20190722"

Paragraph: 012 Reference ID: 68-012-20190722 then asks "How is a 5 year housing land supply confirmed through an annual position statement?". It then states:

"To ensure their assessment of the deliverability of sites is robust, the local planning authority will also need to carry out an engagement process to inform the preparation of the statement, before submitting their statement to the Planning Inspectorate for review by 31 July of the same year."

Paragraphs 015 (Reference ID: 68-015-20190722) and 016 (Reference ID: 68-016-20190722) then set out the process to be followed. The Council has not followed this guidance and therefore the unilateral decision to declare a 5 year land supply does not have any weight for decision taking.

In addition, we consider that the Council is unreasonably taking these applications to committee for a number of reasons, which are:

- The appeal decision at Chain House Lane should not be used for the purposes of determining planning applications in Preston as we consider that the Inspector's conclusions to be flawed and contrary to the position adopted by Preston City Council up to the 20th December 2019 for the purposes of determining planning applications. In addition, the Inspector considered matters in South Ribble which do not directly apply to Preston as set out in paragraph 21 of the appeal decision. Wainhomes submitted the legal challenge to the Courts on Thursday 23rd January 2020. We consider that the Inspector erred in the decision based on the written and oral evidence at the Planning Inquiry held between 12th and 15th November 2019 in that:
 - The Inspector failed to give intelligible and adequate reasons for her decision;
 - The Inspector's reasons give substantial doubt whether she erred in law by misunderstanding relevant policy and/or failing to reach a rational decision on relevant grounds;
 - The Inspector failed properly to understand and apply relevant policy; and,
 - The Inspector failed to have regard to material considerations and/or took into account immaterial considerations.
- In total there are five Grounds, these being:

- 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; and,
 - Ground 5 - The Inspector's consideration of the implications of the distributional impact of use of the standard method.
- The consultation on the revised Memorandum of Understanding only concluded on Monday 13th January 2020 and it is premature to apply its conclusions for development management purposes as representations need to be duly considered. In short the Council is seeking to apply a 'policy on' housing requirement for Central Lancashire without having undertaken the necessary consultation, sustainability assessment, assessing reasonable alternatives and independent examination. For the reasons we set out later in this submission this is contrary to the Framework and PPG. For example, paragraph 17 of the Framework states:

"17. The development plan must include strategic policies to address each local planning authority's priorities for the development and use of land in its area¹¹. These strategic policies can be produced in different ways, depending on the issues and opportunities facing each area. They can be contained in:

a) joint or individual local plans, produced by authorities working together or independently (and which may also contain non-strategic policies); and/or

b) a spatial development strategy produced by an elected Mayor or combined authority, where plan-making powers have been conferred."

Dealing with strategic matters via a Memorandum of Understanding is directly contrary to the Framework.

On that basis, the application should not be re-considered at the 13th February 2020 committee and applications with a resolution to approve, such as our client's, should continue to be handled in accordance with that resolution until the three councils have undertaken the necessary consultation on the emerging local plan and it has the necessary weight to be used for decision making in accordance with paragraph 48 of the Framework. Applications should continue to be determined with the tilted planning balance engaged unless a 5 year supply can be demonstrated against the requirement in Policy 4.

We now address the requirement.

The Housing Requirement to Apply

The Council states that it can demonstrate a 5-year housing land supply by applying Local Housing Need (LHN). The two figures are:

- 12.66 using LHN; and,
- 7.43 using the revised MoU.

A number of points arise:

- Preston City Council has been clear that the 2017 MoU and other factors such as the City Deal meant that Policy 4 of the Core Strategy should continue to apply. Whilst the Inspector at Chain House Lane concluded that the 2017 MoU did not constitute a review, this was a decision taken against the weight of evidence at the Inquiry and for the reasons set out in evidence by South Ribble Borough Council. The Inspector states that in relation to Preston:

“21. I acknowledge that both Preston and Chorley currently use the CS housing requirement in decision making and in their most recent Housing Land Position statements⁹. Whilst I do not have the benefit of direct evidence from Preston and Chorley Councils, I have had regard to the evidence produced by Mr Pycroft and **it seems to me that there are various other reasons, not solely relating to the MOU, that they continue to use the CS figures and consider that a review of Policy 4 has taken place.**

22. The Preston City Council press release¹⁰ does not specifically refer to the MOU, instead it refers to **the costs associated with defending two recent appeal decisions in their area which concluded that Preston did not have a five year supply of housing. I cannot make any conclusions on this as those decisions are not in the evidence before me.** Preston's latest housing land position statement (HLPS)¹¹ also refers to those appeal decisions (at paragraph 1.6), and draws attention to the Preston Local Plan examination where it was agreed that there was no requirement to reconsider the Objectively Assessed Need. Mr Pycroft pointed out paragraph 1.9 of the HLPS¹² in relation to the MOU. However, to my mind this suggests uncertainty given the punctuation of 'review' (in single quotation marks).

23. **Preston's HLPS goes on to explain at paragraph 1.10 that its' OAN resulting from the SHMA is lower than the CS requirement, and it seems to me that this was a factor in the aforementioned appeal decisions. This contrasts to the situation in South Ribble, where the OAN was calculated to be very similar (and slightly higher) to the existing CS requirement.**”

The appeals referred to were determined on 3rd April 2018, which was before the introduction of LHN in July 2018 as set out in the revised Framework, yet the City Council has continued to apply Policy 4 and the 2017 MoU as set out in paragraph 1.9 of the April 2019 Housing Supply Statement which states

“1.9 Whilst the housing requirement policy (Policy 4) is now almost seven years old, Preston are still using this requirement rather than the local housing need figure due to a 'review' of this policy which took place in 2017. At this time, following the publication of the new Central Lancashire Strategic Housing Market Assessment, Preston entered into a Memorandum of Understanding⁴ with its neighbours South Ribble and Chorley Council's endorsing the requirements set out in Policy 4. This decision was taken to ensure the three authorities continued to meet their own respective Objectively Assessed Needs, but also to meet the aspirations of the Preston, South Ribble and Lancashire City Deal and Government's aspirations to increase the supply of housing.”

There is no reason why the conclusions of the Inspector at Chain House Lane now justifies or indeed should change the position adopted by Preston until 20th December 2019.

With regard to the City Deal, the Inspector at Chain House Lane stated:

78. The City Deal³⁰ is frequently referred to by the Appellants relating to aims to boost the housing supply in the area. However, the City Deal is not part of the Development Plan; rather it assists in supporting investment into infrastructure delivery programme for Preston, South Ribble and Lancashire. It has ambitious targets for housing delivery, related to employment and infrastructure delivery. Whilst it is briefly referred to in the SRLP foreword, I give it limited weight given that

it is not embodied in policy and is currently undergoing a mid-term review which raises some uncertainty over its continuation.

The Inspector gave the City Deal limited weight as she concluded "*it is not embodied in policy and is currently undergoing a mid-term review which raises some uncertainty over its continuation*". This conclusion has clearly misunderstood the City Deal and what both councils have committed to with the Government where significant investment has been provided on the basis of a significant uplift of housing delivery, which LHN is completely at odds with.

One of the reasons why the Inspector gave limited weight to the City Deal was because the only reference to the City Deal in the South Ribble Local Plan was in the Foreword. The reason why there is no policy on the City Deal is because the South Ribble Local Plan was submitted for examination on 26th October 2012 and the Examination hearings were held between 5th and 14th March 2013. The City Deal was only at application stage as set out in paragraph 75 of the South Ribble Local Plan Inspectors Report which states:

*"75. This site is some 65 ha which was allocated as a Major Inward Investment Site in the Local Plan. It is a large greenfield site, well located for the M65 and M6 motorways. The Council considers that the site is capable of attracting regionally significant inward investment and this is supported by LCC36 and **the Lancashire Enterprise Partnership (LEP)37 who have included this site in their City Deal application to the Government.**"(our emphasis)*

The other reason why she gave the City Deal limited weight was that it is "*currently undergoing a mid-term review which raises some uncertainty over its continuation*". We understand there is no suggestion that the City Deal will cease and that was not a point that was raised at the Inquiry; rather there is a proposal that it should be extended in time. However any change needs to be approved by Government so the current City Deal remains in place and the councils have obtained significant investment from Government which is predicated on 17,420 homes being delivered in 10 years and they are committed to delivering those homes. On both points giving limited weight to the City Deal was an error.

Notwithstanding her conclusion for South Ribble, in Preston, the City Deal is a significant material consideration which the City Council has used to justify the continued use of Policy 4 despite the introduction of LHN. As set out earlier, paragraph 1.9 of the April 2019 Housing Supply Statement specifically refers to the City Deal.

The City Deal also has various references within the body of the Preston Local Plan, such as:

"1.19 The Preston, South Ribble and Lancashire City Deal (City Deal) was signed by Government, the Lancashire Enterprise Partnership (LEP) and the 3 local authorities in September 2013.

1.20 The City Deal is a 10-year initiative that aims to enable and deliver significant housing and economic growth through the provision of critical highway, transport and associated community infrastructure.

The City Deal is also referred to in the Preston Local Plan Inspectors Report. The following extracts are relevant.

*"7. Preston City Council has worked with South Ribble Council and the County Council to secure the 10 year 'City Deal' signed by the three councils with the Lancashire Enterprise Partnership and the Government in September 2013 to **finance the delivery of the significant infrastructure improvements required to support the development of the strategic location of North West Preston.***

56. MM8 would be a significant amendment to policy MD2 as included in the submitted plan. The substantive nature of the representations on it reflect the central role the policy plays in securing the delivery of the majority of the housing development in Preston over the next 10+ years. My attention is drawn to guidance in the PPG7 which states that the Local Plan should make clear, at least for the first five years, what infrastructure is required, and how it relates to the anticipated rate and phasing of development. That level of detail would not be included in policy MD2 as subject to MM8 and in response to my supplementary question on the issue **the Council draw attention to the detail contained in the masterplan and City Deal Infrastructure Delivery Plans, which form part of the evidence base for the Local Plan.** The Council have also confirmed that they are progressing the masterplan as an SPD, not as an Area Action Plan. It will not, therefore, be part of the statutory development plan.”(our emphasis)

Applying LHN ignores the obligation the City Deal has placed on the City Council and its commitment to it. The requirement in Policy 4 must continue to apply.

The Tilted Planning Balance

The planning application was determined on the basis that the tilted planning balance was engaged. If the Council continues to apply LHN for the determination of this application, then the tilted planning balance continues to be engaged. This is because:

- a) given that the Housing Market Area (HMA) is the 3 authorities, housing distribution goes to the heart of the adopted Development Plan;
- b) If the Council applies the LHN the distribution policies are out of date because of the change in the housing distribution from that set out in the adopted Development Plan; and,
- c) any attempt to address this change in distribution by the revised Memorandum of Understanding is contrary to Government policy.

With regard to (a) and (b) above, the redistribution proposed in the revised MoU is materially different to that in Policy 4 of the Core Strategy. This is set out in the table below:

	Policy 4	% of Total	LHN	% of total
Preston	507	37.8	241	23.3
Chorley	417	31.1	579	56.1
South Ribble	417	31.1	213	20.6
Total	1,341		1,033	

The Inspector at Chain House Lane did not engage the tilted planning balance on the change in the housing distribution because she applied the ‘policy on’ distribution in the revised Memorandum of Understanding rather than the ‘policy off’ figure. This is set out in paragraph 88 which states:

88. Moreover, whilst I have given limited weight to the Housing Study and the 2019 draft MOU, the re-distribution which is suggested within the documents is not ‘radical’ as suggested by Mr Fraser. I note that the re-distribution recommended in the Housing Study is based on a reasonable set of criteria including jobs, population, and affordability as well as Green Belt constraints. The recommended share of the housing requirement³³ of 27.5% for Chorley, 40% for Preston and 32.5% for South Ribble is not significantly different from the current CS distribution of 31.1%, 37.8% and 31.1% respectively. Distributional consequences do not weigh heavily in giving me reason to conclude that the policy is out-of-date.”

This forms one of the basis for our challenge and the Council persisting with this 'policy on' requirement to justify a 5 year supply and then not applying the tilted planning balance is continuing what we consider to be an error in the absence of a full and proper testing of the conclusion of the ICENI report by including strategic policies in a Memorandum of Understanding. As set out earlier in this submission the Council is applying a 'policy on' housing requirement for Central Lancashire without having undertaken the necessary consultation, sustainability assessment, assessing reasonable alternatives and independent examination. Dealing with strategic matters via a Memorandum of Understanding is directly contrary to the Framework and PPG.

If the Council is to accept that point and apply the 'policy off' requirement (241 dpa) that does have consequences which it perhaps has not realised in expediting these applications back to committee which is that Policies 1 and 4 are out of date due to the significant change in distribution from that in the adopted Development Plan. Therefore the tilted planning balance is engaged even with a 5 year supply based on LHN.

Site Specific Considerations

October 2019 Committee Report

We summarise below the key points made through the published Committee Report when this planning application was presented to Members on 3rd October 2019:

- The development would result in the loss of predominantly Grade 3b and 4 agricultural land and it would not lead to the loss of the highest value agricultural land for the purposes of CS Policy 31 and the Framework.
- The site does not form part of a 'protected landscape'.
- The development would be sited directly adjacent to the existing Barton village boundary and it would not project beyond the most eastern part of the existing settlement boundary to the north (i.e. Forest Grove).
- The development would represent an extension of the existing built form rather than creating an isolated and detached development from the open countryside.
- The plans show landscape buffers with transitions provided between the application site and countryside beyond.
- The development would be in keeping with the semi-rural character of Barton.
- The proposed community building responds to CS Policy 25, which seeks to ensure sufficient community facilities and recognises such facilities continue towards community cohesion.
- There are no PROWs within the site and views from the PROW alongside Black Fir Wood would be limited.
- In terms of the A6 frontage, the scheme involves no change in terms of tree loss when compared to the approved Phase 1 development.
- There is significant scope for new tree planting throughout the site to compensate for the loss of trees.
- The delivery of up to 53 affordable units weighs in favour of the grant of planning permission.
- The scheme would make an important contribution in terms of the delivery of open market housing.
- The plans show substantial areas of the site could be allocated for open space comprising semi-natural greenspace, amenity greenspace, childrens play areas and a pedestrian trail.
- The submitted ecology report states that the scheme would provide greater species diversity than what presently exists.
- Subject to relevant conditions/obligations, there would be no harm in terms of the local road network, highways safety, residential amenity, ground conditions, air quality, flood risk and drainage, education provision, energy efficiency and waste management.

The Committee Report October 2019 undertakes a planning balancing exercise:

- There would be economic benefits in terms of the construction phase.
- There would be social benefits through supporting the growth of a strong and vibrant community, the delivery of a community building and affordable housing units.

- In terms of the environmental role, visual impacts would be acceptable albeit there would be a loss of existing fields.

The Committee Report October 2019, as summarised above, remains the baseline for assessing the proposed development. The scheme has already been assessed by officers as being acceptable in terms of visual impacts and there would be no harm to the semi-rural character of Barton and there would be no other environmental harm. On the other hand, there would be a range of significant benefits arising from the scheme including up to 53 much-needed affordable units.

It remains the case that there is no harm that could significantly and demonstrably outweigh the benefits associated with the scheme for the purposes of paragraph 11(d) of the Framework. Officers and Members have already been through this planning balancing exercise through the resolution to grant planning permission a few months ago.

Proposed multi-purpose community facility

Further to the above, we have been asked to provide further clarification on the nature of the community building to be provided:

- We enclose elevation and floor plans of the multi-purpose facility envisaged and this includes a multi-use activity hall, changing rooms, office, meeting room and toilets.
- The multi-purpose facility referred to would 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.
- The plans enclosed show a building circa. 3,500sqft floorspace in size, although this could be increased or reduced subject to the further discussions with the Council.
- It is intended that the developer would build out the multi-use facility at a certain trigger point through the construction phase (the UU requires this to be constructed and available prior to the 75 dwelling being occupied).
- The intention would then be 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.

There have been a significant number of developments granted planning permission by the Council for new residential development in Barton. Over the coming years, the southern part of Barton will accommodate a substantial number of new residents alongside existing ones. The multi-use facility, alongside the play facilities and opportunities provided through the expansive green infrastructure provided (e.g. pedestrian trail), has the potential to act as a hub for the community. The only other such facility within Barton is located to the northern part of the village and some distance away offering facilities that need not be replicated through our client's development.

Completed Unilateral Undertaking and deliverability

Our client's solicitor recently lodged a completed Unilateral Undertaking (UU) with the Council and receipt of this has now been acknowledged by the Council's Legal Section. The completed UU follows on from extensive discussions regarding the form of the initially drafted S106 legal agreement and reflects the significant comments/changes made as various drafts progressed between the parties. We understand that the completed UU now reflects changes/suggestions made by the Council's Legal Section and it is in an agreed form.

With a completed UU having been lodged and acknowledged by the Council, a decision notice could be issued on the same day of the Planning Committee meeting, or immediately thereafter, if a resolution to grant planning permission is passed. Furthermore, this site is under option to Wainhomes (NW) Ltd. As you will be aware, Wainhomes is a national housebuilder with a proven track record in terms of the delivery of new homes within the Preston area. Our client is currently on-site implementing planning consents granted for various sites across the wider area, including within Barton itself. There is no requirement for the site to be marketed subsequent to the grant of planning permission, and Wainhomes would be under an obligation to progress a reserved matters application quickly.

Subject to the grant of planning permission, a reserved matters application could be lodged quickly with development commencing within the short-term. A completed UU has been lodged with the Council and Wainhomes (NW) Ltd have a proven track record and an interest in progressing quickly in terms of construction works and the delivery of new housing.

Arrangements for the principal vehicular access to the site

Finally, it is important to recognise that Phase 1 land already benefits from the grant of planning permission for up to 55 dwellings (LPA ref: 06/2018/0238). During the debate when this planning application was presented to Members in April 2018, several Members expressed their preference for the principal access point into the site being taken off the A6 rather than via Woodlands Way notwithstanding their resolution to approve. Our client took these views into account through the lodged scheme for Phase 2. The proposed development would allow for a change to the vehicular access arrangements for Phase 1 such that no vehicular access into the site would be provided via Woodlands Way.

Although Members prefer vehicular access via the A6 only, the fallback position is that Phase 1 progresses based on the approved scheme.

Summary on site specifics

We summarise the position as follows with regard to site-specific impacts:

- The development has been assessed as introducing no harm to the semi-rural character of Barton and it would comprise an extension of the existing built form.
- There would be benefits in terms of the delivery of affordable housing, market housing, a multi-purpose facility for the community, green infrastructure (inc. a pedestrian trail and childrens play facilities available for the community) alongside biodiversity enhancements.
- There would be no site-specific harm in terms of the local road network, highways safety, residential amenity, ground conditions, air quality, flood risk and drainage, education provision, energy efficiency and waste management.
- A completed UU has been lodged with the Council and planning permission could be issued on the same day, or immediately thereafter, the Planning Committee meeting.
- The site is in the control of Wainhomes (NW) Ltd who have a proven track record in terms of the delivery of new housing across the region.

Conclusions

The proposal comprise sustainable development and there are no adverse impacts that would significantly and demonstrably outweigh the benefits of the proposal have been identified. With the extant consent for Phase 1, then the Council has accepted this to be a sustainable location for development. Approving this application can facilitate the additional community facilities for the village and we are committed to continuing the dialogue with the Parish Council on changes to the access arrangements for Phase 1, which can only be facilitated by the grant of this application.

For the above reasons we consider the application should be approved as the material considerations for applying Policy 4 in Preston are clear and if the application is refused we consider this would be unreasonable and would have to be tested through a public inquiry.

Should you require any further information at this stage please do not hesitate to contact us.

Yours sincerely
Emery Planning

Stephen Harris BSc (Hons), MRTPI
Director

Enc:
EP1 – Indicative community building plans.