

**CARDWELL FARM,
BARTON, PRESTON**

APPELLANT’S OPENING STATEMENT

1. The appeal proposals seek outline planning permission for the erection of up to 151 dwellings and a community building on land at Cardwell Farm in Barton¹. There is an extant planning permission for 55 dwellings on part of the site so in practice this proposal would provide for a net increase of up to 96 dwellings².
2. The development plan for the purposes of this appeal is agreed to comprise the Central Lancashire Joint Core Strategy³ (“CS”) which was adopted in 2015, and the Preston Local Plan (Site Allocations and Development Management Policies)⁴ (“PLP”) adopted in 2015. A neighbourhood plan for the area within which the site is located is under preparation, but it is agreed that it has not reached a stage where it would attract weight in the decision making process⁵.
3. The CS covers the areas of the three Central Lancashire authorities (“CLA”) of Preston, South Ribble and Chorley. In part this reflects the fact that the three areas form one housing market area and that it is necessary to plan for housing across the whole CLA area in a co-ordinated manner. The CLA are proposing to produce a new local plan which will replace the CS and the existing local plans in their areas. There was an issues and options consultation at the end of 2019⁶ but it is not suggested that this has any material impact upon this appeal.
4. The net effect of NPPF paragraph 73 read with footnote 37 is that the Council is required to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing against the housing requirement

¹ SCG para 1.1

² SH para 2.1

³ CD A1

⁴ CD A2

⁵ SCG para 4.4

⁶ See CD A16

set out in its adopted strategic plan, unless that plan is over 5 years old and it has not been reviewed and found not to require updating. The relevant strategic policy in this case is CS policy 4. It is common ground that the policy is over five years old but that it was subject to a review in 2017 and found not to require updating⁷. This position was consistently held by the Council from the original publication of the replacement NPPF in July 2018 until the end of 2019. This can be seen in the 24 committee reports summarised in BP Appendix 2 and was also stated in the Council's 2019 Housing Land Position Statement⁸.

5. NPPF para 73 is clear. As CS policy 4 was reviewed in 2017 and found not to require updating it should be used for the purposes of calculating 5 year housing land. It is common ground that if CS policy 4 is used the Council is unable to demonstrate a 5 year housing land supply⁹.
6. The appeal proposal has a somewhat unusual history. It was originally reported to committee on 3rd October 2019 with a recommendation to approve¹⁰. The report recognised that the five year housing requirement was to be calculated in accordance with CS policy 4 and that accordingly the Council could not demonstrate a 5 year housing land supply which meant that the tilted planning balance applied under NPPF paragraph 11(d)¹¹. Having examined the proposal in detail, including the policies now relied upon by the Council, the report concluded that those policies were out of date and that there were no adverse impacts of approving the development that would significantly and demonstrably outweigh the benefits of the proposal. This recommendation was accepted by the committee which resolved to grant planning permission subject to a section 106 being completed.
7. It is understood that the Council accepts that if 5 year housing supply is to continue to be assessed against CS policy 4 that position would remain and that planning permission should be granted¹². As the Council accepts that the policy was reviewed in 2017 the only logical conclusion can be that the tilted balance applies and that

⁷ Housing supply SCG para 2.4

⁸ CD A9

⁹ Housing supply SCG para 2.11

¹⁰ CD D1

¹¹ CD D1 11th page section Housing provision

¹² See RM para 9.7

planning permission should be granted. There is no support in NPPF or any other policy for the approach that the Council now seeks to take.

8. The Council's position in reality relies upon a decision in a decision letter which has now been quashed and an agreement between the CLA which is itself the subject of a judicial challenge and which the Council now maintains that it does not rely upon.
9. After the Council's original resolution to grant planning permission in this case, but before the section 106 obligation was completed, an appeal decision was issued with respect to a site known as Chain House Lane in South Ribble¹³ in which it was mistakenly concluded that there had not been a review of CS policy 4 in 2017. Although that decision was subject to a legal challenge which the Secretary of State indicated he was not going to defend, it led to the Council reconsidering this (and a number of other applications) in February 2020¹⁴ on the basis that CS policy 4 had not been reviewed and accordingly 5 year housing supply should be assessed using the standard method. That decision letter has been quashed and the relevant appeal is due to be redetermined next month. The basis upon which the Council changed its position with respect to this application is no more.
10. After the Council refused this application it entered into a Memorandum of Understanding ("MOU2") with the other CLA¹⁵. In essence MOU2 sought to aggregate the standard method requirement figures for each of the authorities and then redistribute the aggregate figure across the CLA in a different manner to that which would be provided by simple application of the standard method figures. There is no support in policy for what was done in MOU2 (which is subject to an undetermined legal challenge) and it has been given no weight at appeal¹⁶. The Council has now resolved not to rely upon MOU2. In the circumstances it cannot provide the Council with a basis for any change of position from that reached in October 2019 or for departing from policy.
11. This is all sufficient to conclude that in accordance with the analysis undertaken in October 2019 planning permission should be granted for this proposal. However, if one were to accept the Council's argument that 5 year housing land should be

¹³ CD F2

¹⁴ CD D3

¹⁵ CD A12

¹⁶ See Pear Tree Lane CD F1

calculated using the standard method there are other important consequences which have to be considered which in turn would result in the tilted balance applying in any event.

12. The consequence of accepting the Council's argument is that CS policy 4 is out of date. CS policy MP which is part of the development plan provides that in such circumstances the tilted balance applies as part of the development plan itself. Faced with that consequence the Council seeks to argue that policy MP is out of date. If anything such an argument merely highlights the difficulties in which the Council finds itself.
13. It is important to remember that the housing market area is the whole CLA area. The strategy in the CS is based upon addressing this market area and this is seen in the distribution of housing in the CS which in turn impacts upon where settlement boundaries were drawn within the development plan. The policies which the Council rely upon in this case are inextricably linked to CS policy 4. Once it is concluded that CS policy 4 is out of date it follows that these policies are likewise out of date. In the circumstances the tilted balance applies in any event under NPPF.
14. In short, however, this matter is approached the tilted balance applies. The position remains as it was found to be in October 2019 and planning permission should be granted for the application.
15. Even if the tilted balance were not to apply it does not follow that planning permission should be withheld in this case. There are significant benefits arising in this case particularly from the provision of general housing and the provision of affordable housing. Those benefits are sufficient in this case to outweigh any harm considered to be caused by the proposal even if one does not apply the titled balance.
16. These issues are all considered in greater detail in the appellant's proofs of evidence, and doubtless will be considered at this inquiry. In the circumstances we invite you to allow this appeal having heard the evidence.

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