PINS Ref: APP/N2345/W/20/3258889

AN APPEAL IN RESPECT OF PROPOSED RESIDENTIAL DEVELOPMENT OF LAND AT CARDWELL FARM, BARTON, PRESTON.

CLOSING SUBMISSIONS OF THE LOCAL PLANNING AUTHORITY

1. These submissions are structured so as to deal with the main issues identified by the Inspector.

Whether the proposal would accord with the development plan strategy for the area.

2. The appeal scheme would not accord with the development plan strategy for the area. That is not in dispute.

3. Central Lancashire Core Strategy ("CLCS") policy 1[1] establishes a hierarchy of settlements and land types and a locational strategy for accommodating development. The policy requires growth and investment to be focussed on well-located brownfield sites, the Central Preston Strategic Location, the Key Service Centres of Chorley and Leyland and the other main urban areas in South Ribble. An "appropriate" level of growth will be encouraged in identified Local Service Centres. The appeal site is located in none of these areas. Part (f) of the policy deals with "other places" including smaller villages such as Barton. In those places, the policy provides that development will typically be small scale

[1] CD A1, part 1, plan page 50.

unless there are exceptional reasons for larger scale redevelopment schemes. The Appellant accepts that the appeal scheme is not small scale and that there are no exceptional circumstances to justify development of the proposed scale. The Appellant accepts that the appeal scheme conflicts with policy 1 of the CLCS. As the Inspector who examined the CLCS concluded[2], there is little point in encouraging significant growth in places where services are limited . Such growth would be better invested where it would do more good, especially for the purposes of regeneration.

4. The strategy is built upon by policies in the Preston Local Plan ("PLP"). Policy AD1(b)[3] of the PLP deals with development in existing villages. Paragraph 4.25 of the PLP identifies Barton as a village within the scope of the policy. Policy AD1(b) is permissive of development within Barton, provided it is small scale. The appeal scheme breaches this policy as it is (a) the vast majority of the site is not within the settlement boundary and (b) it is not small scale. Again, the Appellant accepts that the proposal breaches policy AD1(b).

5. Policy EN1 of the PLP[4] provides the development management test for development proposals located beyond settlement boundaries and thus in the open countryside, restricting permissible development to that within certain classifications, none of which apply to the appeal scheme. The Appellant accepts that the proposal would be in breach of policy EN1.

[2] CD A17, paragraph 27.
[3] CD A2 plan page 42
[4] CD A2 plan page 95

6. These three policies provide the appropriate decision making framework for testing the acceptability of the appeal scheme in locational terms. In relation to those policies, the appeal scheme is in breach of the development strategy contained in the development plan and is unacceptably located.

The effect of the proposal on the character and appearance of the area.

7. The Council has no objection to the appeal scheme by reason of any effect it might have on the character and appearance of the area.

Whether the Council can demonstrate a five year supply of deliverable housing sites, having particular regard to the housing need or requirement for Preston.

8. The answer to this question is "yes".

9. Although a lot of time has been spent on this issue at the inquiry, it is a single issue debate and relates solely to which figures ought to be used to arrive at a five year requirement. There is agreement about all of the other components of the rival calculations, as spelt out in the Council's Opening, and need not be repeated. The short point is that the competing land supply figures are 4.95 years, if the requirement in CLCS policy 4 is used, and a supply of 13.6 years if local housing need ("LHN") is used.

10. CLCS policy 4 sets a housing requirement for Preston, of 507 units per annum for the plan period of 2010 to 2026, but the plan provides that shortfalls accruing against the former RS requirement and its 2003 base date should be accounted for.

11. The requirement in policy 4 was taken from the RS, as it had to be. The demography underpinning it had a base date of 2003, nearly 18 years ago. The demographic evidence underpinning the RS was therefore prior to the economic downturn and was itself rejected as an appropriate means of planning for development, given the Coalition Government's decision to abolish Regional Strategies.

12. Notwithstanding those matters (and others which I shall come to), the Appellant considers that CLCS policy 4 is not out of date (despite the general SoCG saying that it is). That argument is put on the basis that the CLCS figures were the subject of a review under what is now footnote 37 of the NPPF and found to be suitable for continued use.

13. The foundation of the Appellant's point is an unrealistic interpretation and/or application of paragraph 73 of the NPPF, footnote 37 and the accompanying guidance in the PPG. Paragraph 73 and the footnote lead to four possible permutations of situations as regards housing requirement figures:

    a. If the strategic policies of the development plan were adopted less than five years ago, then they should be used to determine housing requirement;

    b. If the strategic policies are over five years old, and

        i. Have not been subject of a review, then LHN should be used to calculate requirement;

ii. Have been the subject of a review and found not to require updating, then the strategic policies should be used; and

iii. Have been the subject of a review and found to require updating, then LHN should be used.

14. Further points should be noted:

a. The NPPF and PPG do not give any assistance on what a footnote 37 review ought to comprise or how it ought to be done;

b. The NPPF and PPG imply that the decision whether strategic policies require updating is for the LPA alone to make and it is not for a decision maker on appeal to conduct a footnote 37 review; and

c. The only outcome is to decide whether the strategic policies require updating. If they do, there is no need to decide what an alternative figure should be, let alone justify that alternative figure.

15. The Appellant says that the upshot is that where, as here, the policies are more than five years old, have been reviewed and found not to require updating, then the only means of departing from those strategic policies which are more than five years old is to adopt a new plan. The LPA has "one shot" at the review. The Appellant's position is that there is no scope for a second review of the old strategic policies ("a review of a review", as Mr Fraser put it).

16. The supposed inability to revisit the question of the fitness for purpose of the Core Strategy figures once they have been reviewed creates absurdity, as this appeal shows. It also interprets the NPPF as if it were a statute. The Court of Appeal has recently warned, yet again, against such an approach: see the *Gladman* case cited below, at paragraph 32(1) of that judgment. Further, the High Court has warned that the PPG has to be treated with considerable caution when arguments about its interpretation are made, given that changes to it are not consulted upon, subject to no external scrutiny, changes without warning and not checked for inconsistencies or tensions within it: *Solo Retail Limited v Torridge DC* [2019] EWHC 489 (Admin)[5] at [33].

17. The NPPF does not provide that a review within the scope of footnote 37 has to have taken place after the footnote was inserted into the NPPF (alongside other significant changes to the approach to calculating housing land requirement and supply) in July 2018.

18. In this case, it is accepted that the process of arriving at, and entering into, the first Memorandum of Understanding ("MoU1") between PCC, SRBC and CBC in 2017 was a footnote 37 review. That review took place because the three councils were aware that the CLCS was approaching the fifth anniversary of its adoption and they were becoming concerned about the reliability of the CLCS policy 4 figures. The Councils therefore commissioned GL Hearn to prepare a SHMA, which they duly did. When that work was done, completed and considered by the Councils, national policy was that set out in the 2012 version of the NPPF which required LPAs to determine the Objectively Assessed Need for the relevant Housing Market Area, looking at demographic change, market

[5] CD R3.

signals and other factors. The outcome of that exercise, carried out in that policy context, was that the aggregated OAN figure for the three authorities was not significantly different from the CLCS policy 4 figures for the three authorities. It is critical to note that the comparison was between the CLCS figures and need calculated in accordance with the 2012 NPPF.

19. As a result, the three Councils entered into MoU1 which recorded their agreement to the continued use of the CLCS figures. The agreement was to use those figures for the purpose of testing housing land supply within each of the three authorities.

20. When that decision was taken and recorded in MoU1 in October 2017, proposals to revise the NPPF to include a standard method for calculating housing need had just been issued for consultation on 14th September 2017[6]. Those proposals were controversial and, being for consultation, were not acted upon by the Councils when considering whether the CLCS figures needed updating. They were liable to change.

21. The revised NPPF was issued in July 2018. It contained significant changes, including:

    a. The introduction of the standard method, which was to be used as the means of calculating the minimum housing requirement unless exceptional circumstances justified a different approach[7];

[6] See the chronology in Mr Pycroft's Appendix BP1.
[7] Paragraph 60.

b. Referred the calculation of that minimum requirement to the Council's administrative area[8] and not the Housing Market Area; and

c. The requirement to calculate housing land supply using strategic policies or local housing need in accordance with paragraph 73 and footnote 37.

22. It can immediately be seen that the point put to Mr Blackburn in cross-examination that the introduction of the concept of the footnote 37 review could not be a change of circumstances because the review had been undertaken overlooks other significant changes that the 2018 NPPF introduced.

23. Yet on the Appellant's argument, the only legitimate response the Councils could make to that change of circumstances since MoU1 was entered into was to adopt a new plan. That highlights the absurdity of the Appellant's argument. To say that the only response, outside of Development Plan preparation, to a major shift in national policy which actually spells out how to calculate requirement when an adopted plan is old is to adhere to the outcome of a review conducted under the old policy framework is not an outcome which the NPPF mandates at all and makes no sense.

24. Further, the Appellant's argument overlooks significant facts. MoU1 expressly stated at paragraph 7.1 that it would be reviewed no less than every three years and that it "will be" reviewed when new evidence that renders MoU1 out of date emerged. The Appellant ignores this provision. It was not dealt with in cross-examination of Mr Blackburn and Mr Pycroft only dealt with it when forced to in cross-examination. But it is a crucial provision

[8] Leaving out of account for present purposes the complex position of National Parks and The Broads.

of MoU1. It was never intended to stand unrevisited for more than three years. Nor was it intended to remain in place until a new Development Plan Document was adopted, if that took more than three years. The Appellant's argument emasculates, without justification, the express terms of the outcome of the footnote 37 review process.

25. The Councils were, of course, well aware of that provision in MoU1. As a result they commissioned Iceni Projects to prepare an updated assessment. The report to the Central Lancashire Strategic Planning Joint Advisory Committee of 4th June 2019[9] made it clear that one of the purposes of the Iceni work was:

"informing the review of the existing Memorandum of Understanding (MOU) between the three Councils and the future policy for housing distribution."

26. The Iceni report itself, when finalised[10], recorded that one of its purposes was to:

"Advise on the scale of housing need and the interim distribution of housing across Central Lancashire to inform a revised Joint Memorandum of Understanding".

27. The point about the report informing a revision of the MoU was repeated at paragraphs 1.4 and 1.5.

28. The Iceni report did not use the Core Strategy requirement as the starting point for considering supply. It used the standard method, in accordance with paragraph 60 of the

[9] Appendix BP8 to Mr Pycroft's evidence.
[10] CD A11.

revised NPPF which it noted at paragraph 2.12. Section 3 then used the standard method to assess the minimum need. The report then considered whether the LHN figures for each authority ought to be redistributed within the joint plan area. Having considered various methods of redistribution, it settled on a proportionate split recorded in the bottom row of Table 4.14 of the report.

29. Mr Fraser observed during cross-examination of Mr Blackburn, by reference to paragraph 2.14 of the Iceni report, that the report set out the view that there had not been a review of the CLCS requirement figure. This led him to make the point that one could not have a "review of a review' without knowing that there had been a "review" in the first place. That is to play with labels. The *substance* of the process of arriving at MoU2 was certainly conscious of the fact that it was contributing to a review of MoU1. As MoU1 was a review for the purposes of footnote 37, then the process of arriving at MoU2 was a reconsideration of a footnote 37 review. Further still, it was clearly an exercise which determined that CLCS policy 4 required updating and that LHN, not CLCS policy 4, should be used to assess requirement. The Appellant ultimately has to fall back on the argument that the process envisaged by footnote 37 can only happen once.

30. One outcome of the Iceni work was the decision to enter into MoU2[11]. Whatever else that document did, it did not conclude that CLCS policy 4 remained the appropriate basis for assessing requirement. Even though the outcome did not prove robust (as addressed below), the outcome was that the CLCS policy 4 figures required updating. That is implicit in the whole approach of the document.

[11] CD A12.

31. The upshot is that MoU2 was a further consideration of whether the CLCS policy 4 figures required updating. It found they did.

32. The agreement recorded in MoU2 came under scrutiny in the Pear Tree Lane decision[12]. It is true that neither principal party at that inquiry sought to rely upon the CLCS policy 4 figures as the basis for housing requirement. The Appellant relied upon the solus LHN figure for Chorley. CBC relied upon the redistributed figures in MoU2.

33. The Inspector concluded that it was not appropriate to seek to redistribute the solus LHN figures within the Joint Plan Area as that was a matter for the development plan preparation process to undertake. That was the forum to resolve the controversy which the redistribution had provoked. As a result, he afforded the redistributed figures little weight and used the solus LHN figures instead.

34. It is true that he did not consider the question of whether there had been a footnote 37 review. But that does not assist the Appellant on the substantive question of whether the CLCS policy 4 figures required updating. That is because he assessed the question of whether policy 4 of the CLCS was out of date. He clearly concluded that it was. In DL45 he considered that the policy was out of date because:

    a. Policy 4 had been overtaken by a change of national policy;

    b. CLCS policy 4 was derived from the former RS, which in turn relied upon 2003-based household projections;

[12] CD F1.

c. Of the introduction of the standard method in the NPPF in 2018; and

d. The use of 2014-based household projections in the standard method.

35. All of those points hold good. The only basis on which the Appellant can avoid the important consequences of this finding is to assert that it is erroneous because once a footnote 37 review has been undertaken, it cannot be reversed except by adopting a new plan. As explained above, where the review took place prior to that significant change in national policy, such an argument produces absurdity. There is no reason why more than one footnote 37 review cannot be carried out. There is nothing in the NPPF or PPG which even addresses this issue, let alone advises against it. Mr Pycroft took the point that the reliance placed upon the age and demographic base of the CLCS figures was addressed in MoU1. So it was, but that was at a time before national policy underwent major changes in 2018.

36. Combined with that finding, the Inspector also concluded that:

a. At the time of the earlier decision on that same appeal site in 2017, national policy on the calculation of housing supply was "very different, in that it predated the 2018 Framework and the introduction of the standard method": DL34; and

b. The use of the LHN was entirely consistent with the Framework and the PPG: DL33. The Inspector was plainly entitled to reach that conclusion.

37. The decision at the Pear Tree Lane appeal caused the Council to reconsider the usefulness of MoU2. Its decision was to withdraw from it. The recorded reasons for the decision reached by the Council's cabinet on 4th November 2020[13] record that it was clear that the MoU was only likely to attract limited weight in decision-taking, the Council could place little reliance upon it and it would not serve the purpose for which it was intended. That is clearly a reference to the Inspector's conclusions about the redistributed LHN figures. It cannot be a reference to the use of LHN in principle, given that was what the inspector had found to be the appropriate figure to use. There is thus no logic in contending that withdrawing from MoU2 means that the Council ought to revert to the position in MoU1. The decision to use solus LHN accords entirely with what the Inspector at Pear Tree Lane concluded. Indeed, if the CLCS policy 4 requirement were to be used, this would create inconsistency between the approaches taken in Chorley and Preston to assessing housing requirement.

38. The City Deal does not inform the issue of what figure to use for housing requirement. It is not referenced in the NPPF as a factor in deciding whether to continue to use strategic policies which are more than five years old. It is not used as a factor in testing housing land supply against any housing requirement. Further, Mr Pycroft's reference to current performance against the City Deal aspirations for growth is irrelevant to his case given it being the Appellant's case that once a footnote 37 review has been undertaken, the only way to revisit requirement is through the Development Plan process. There is no means by which the up to date position on the performance against the City Deal's expectations can be shoe-horned into the approach which the Appellants themselves argue should be the

[13] Appendix BP3 to Mr Pycroft's evidence at page 017.

one used to determine what requirement figure to use. They are arguing that the decision maker in this case is bound to act on the fact that a review in 2017 found the CLCS figures were appropriate to use. Mr Pycroft could not cogently explain why *current* performance against the City Deal aspirations was relevant to the decision as to which requirement figure to use, given that his case is that (i) the Council gets one shot at reviewing the strategic policies, (ii) that chance was taken in 2017 and (iii) cannot be revisited. Looking at up to date performance in respect of the choice of housing requirement is completely at odds with the approach the Appellant invites the Inspector to take to interpreting paragraph 73 and footnote 37 of the NPPF.

39. Further, if it is permissible to consider performance against the City Deal, then it must also be relevant to consider the Council's performance against the Housing Delivery Test. Preston is joint 8th best performing authority, with an HDT score of 339%.

40. It is also now clear that the Appellants do not rely upon the Council's recent record on affordable housing delivery as a reason to continue to use the CLCS figures. Again, that would not make sense in the light of the way the Appellant's argument on requirement is put.

41. In cross-examination Mr Blackburn was asked about the six factors he lists in paragraph 2.38 of his proof. He was asked about them individually. There are two points:

    a. That misses the point. Mr Blackburn plainly relies upon them as a combination of points. The fact that the first three points were taken into account when MoU1 was entered into provides no reason for concluding CLCS policy 4 is still up to

date given that that consideration took place before the 2018 NPPF was issued; and

b. The cross-examination glossed over the fourth bullet – the introduction of the standard method. Reliance was placed on what had been asked earlier in the cross-examination about the introduction of the concept of the footnote 37 review and how its introduction could not b relied upon because the review had already taken place. That does not grapple with what Mr Blackburn's fourth bullet actually says.

42. In summary, the Council invites the following conclusions:

a. The process of arriving at MoU1 was a footnote 37 review;

b. MoU1 was never intended to endure for more than 3 years without being revisited and could be revisited sooner if new evidence emerged;

c. MoU1 was revisited within three years and new evidence, in the form of a change to national policy had also emerged;

d. The process of arriving at MoU2 was a further exercise in assessing whether CLCS policy 4's figures needed updating;

e. That process led to the conclusions (i) the strategic policies did need updating and (ii) that update should produce the outcome of utilising the redistributed LHN figures for the three authorities when assessing housing land supply;

f. The Pear Tree Lane Inspector disagreed with the appropriateness of the exercise that led to conclusion (ii) above but expressly agreed with conclusion (i) by dint of concluding that CLCS policy 4 was out of date and that LHN should be used;

g. It is therefore clear that the Councils have found that CLCS requires updating;

h. It would be wrong to conclude that the Council's withdrawal from MoU2 means that it must be concluded that CLCS policy 4 figures do not need updating. There is no reason to revert to MoU1 because of the failure of the redistributed LHN approach to find favour with an Inspector on appeal;

i. CLCS policy 4 is out of date because the requirement figures do not accord with national policy and have been overtaken by it;

j. LHN should be used to calculate housing requirement and to test supply in Preston;

k. As the review that led to MoU1 pre-dated the revised NPPF, the Council was at liberty to revisit the question of whether CLCS policy 4's figures needed updating after the revised NPPF was issued; and so

l. LHN is the proper basis for establishing a five year requirement in Preston and on that basis the Council has a deliverable supply of 13.6 years.

Whether paragraph 11(d)(ii) of the NPPF (the tilted balance) is engaged either by reason of a lack of a five year supply or because the most important policies for determining the appeal are out of date.

43. For the reasons set out above, the tilted balance is not triggered by the absence of a deliverable five year supply.

44. Nor is the tilted balance triggered by reason of the most important policies for determining the appeal being out of date by reason of them being inconsistent with the NPPF.

45. It is common ground that there are four most important policies:

a. CLCS policy 1;

b. CLCS policy 4;

c. PLP policy Ad1(b); and

d. PLP policy EN1.

46. Consistent with its case on establishing housing requirement, the Council accepts that CLCS policy 4 is out of date as it is no longer consistent with the NPPF.

47. None of the other policies are inconsistent with the NPPF and are thus not out of date.

48. CLCS policy 1 has been summarised earlier. Mr Harris was taken through the various aspects of the policy and agreed that:

    a. The appeal scheme breaches the policy, as Barton is at the bottom of the hierarchy where only small scale development within the settlement is permissible;

    b. The policy was consistent with the 2012 version of the NPPF;

    c. The CLCS Inspector found the policy to be sound: see paragraphs 26, 27 and 38 of his report[14] in the light of the 2012 NPPF;

    d. Nothing had changed in the current version of the NPPF that made policy 1 inconsistent with it;

    e. And so, by that test, the policy is not out of date.

49. Policy 1 does not fix settlement boundaries. Nor does it direct specific amounts of growth to differing levels of the hierarchy.

[14] CD A17.

50. The Pear Tree Lane Inspector[15] addressed the question of whether CLCS policy 1 was out of date. Having noted that policy 4 was out of date in DL45, the Inspector went on to conclude that that did not mean that policy 1 was out of date. Policy 1 still provided a growth strategy for Chorley. The same is true for Preston. As it did not define settlement boundaries and as there was no evidence that Chorley could not meet what was, for it, a LHN figure which was higher than the CLCS requirement, there was no evidence that policy 1 would constrain growth. If that is true for Chorley, the same conclusion must apply with still greater force for Preston, where the LHN figure is lower than the CLCS requirement. Mr Harris eventually accepted that in cross-examination. He also accepted that the Appellant had no evidence to show that Preston could not meet LHN whilst adhering to the strategy in CLCS policy 1. The policy will not constrain housing delivery in Preston, if LHN is the housing requirement. There is thus no reason to find it inconsistent with the NPPF.

51. PLP policies AD1(b) and EN1 can be taken together. The Appellant accepts that the appeal scheme breaches both of them. They too were described earlier. There is nothing to suggest that policies which provide a restrictive approach to development in the countryside, i.e. beyond settlement limits, is inconsistent with the NPPF and therefore out of date. The policies do restrict development, but were found sound for the purpose of delivering the CLCS policy 4 requirement. It follows that, if LHN is used, those policies would not operate to constrain housing delivery so that LHN could be met. Again, the Appellant produces no evidence that they would.

[15] CD F1

52. That is a significant difference from the position at Pear Tree Lane. The relevant Chorley-specific Local Plan policy in that case was BNE3, which was a safeguarded land policy. It restricted development during the plan period. The allocation was next to the settlement boundary of Euxton. In finding that policy to be out of date, the Inspector expressly took into account that the policy constrained the ability to meet housing need[16]. Again, that is because Chorley's LHN was higher than the CLCS requirement. That is a critical difference between the position between Chorley and Preston. Mr Harris also accepted that policies AD1(b) and EN1 would not constrain the ability to meet LHN and he had no evidence showing that they would.

53. Mr Harris' attempted answer to this was his "radical redistribution" point. Mr Blackburn accepted that the proportionate change to the three Council's requirement figures was significant as between CLCS policy 4 and solus LHN. But it is also relevant to note that the absolute numbers across the joint plan area reduce in aggregate too. Mr Harris' point is that this redistribution renders policy 1 of the CLCS and the two PLP policies out of date. That conclusion simply does not follow, for reasons connected to the absence of constraining effect on housing delivery. Mr Harris accepted that his proposition based on the redistribution of requirement is really an aspect of his proposition that related to plan policies being out of date even if there was a five year supply. But policy 1 is not out of date because it does not constrain delivery anywhere in the joint plan area, even in Chorley. The PLP policies are not out of date because they do not constrain delivery in Preston if LHN is he requirement. The continual attempted refuge that Mr Harris sought in the point that this is a joint plan area takes him absolutely nowhere if using LHN in Preston means

[16] CD F1, DL49

that policy 1 does not constrain growth across the CLCS area and policies AD1(b) and EN1 do not constrain growth in Preston.

54. Mr Harris also sought to rely upon Dove J's judgment in the Chain House Lane s288 challenge. He can derive no support from that. Whatever observations Dove J may have made about the relevant Local Plan policy in that case[17], his reasons for quashing that decision were *not* that the Inspector reached a legally erroneous conclusion, i.e. one that was not open to her, but that she had, in two respects failed to give adequate reasons for her decision: see paragraph 38 of the judgment as regards ground 5[18] and paragraph 39 as regards ground 1[19], the two grounds which succeeded.

55. The judgment in the Chain House Lane provides some support for the Council's approach at this appeal, as Mr Blackburn points out at paragraph 2.26 of his proof. Ground 3 of the challenge, which failed, was that the Inspector had erred in finding that there had been a significant change since the strategic policies had been adopted. Plainly, the judgment should be read as a whole, but Dove J dealt with that argument at paragraphs [42] to [43], where the Learned Judge said:

"42.Turning to ground 3, it needs to be borne in mind that the passage from the PPG in relation to the need to review plans when there has been a significant change arose in the context of the arguments about whether or not Core Strategy Policy 4(a) was out of date and, in particular, was relied upon in paragraph 37 of the decision as one of the reasons for the Inspector's conclusion that Core Strategy Policy 4(a) was out of date.

[17] CD G1, paragraph 37
[18] The ground on the issue of whether the relevant SRBC LP policy was out of date.
[19] The ground that the Inspector erred in concluding that MoU1 was not a footnote 37 review.

"42. Whilst it is fair to observe that the only significant change specifically instanced in the PPG is where a housing requirement is found to be significantly below the number generated using the standard method, in my view this passage of the PPG needs to be read purposefully and as a whole. The third paragraph of the passage of guidance makes clear that a plan will continue to be treated as up to date "unless there have been significant changes as outlined below". The following paragraph provides some examples where there may have been significant change but, as Mr Cannock points out, the question of whether or not there has been a significant change warranting a review of the plan on the basis that it is not up to date is not curtailed or circumscribed by the contents of the final paragraph.

43. There may be many material changes in the planning circumstances of a local authority's area which would properly render their existing plan policies out of date and in need of whole or partial review. I am unable to accept Mr Fraser's submission that it is impermissible to regard the emergence of a local housing need figure which is greatly reduced from that in an extant development plan policy as having the potential to amount to a significant change. Whilst he is entitled to point to the wider national planning policy context of boosting significantly the supply of housing land, as Mr Cannock points out in his submissions, the use of the standard method to derive local housing need is part and parcel of the Framework's policies to achieve that objective. Moreover, the question of whether or not any change in circumstances is significant is one which has to be taken on the basis of not only the salient facts of the case, but also other national and local planning policy considerations which may be involved. In short, in my view, the language of the PPG and its proper interpretation did not constrain the Inspector and preclude her from reaching the conclusion that she

did, namely that the significant difference between the housing requirement in Core Strategy Policy 4(a) and that generated by the standard method was capable of amounting to a significant change rendering Core Strategy Policy 4(a) out of date. That was a planning judgment which she was entitled to reach and was properly reasoned in her conclusions." [Emphasis added]

56. Nor does the case of *Oxton Farms Limited v Harrogate BC* [2020] EWCA Civ 805[20] assist the Appellant. In that case the adopted housing requirement was 390 dpa (Mr Harris' proof para 4.30). The Council's emerging Local Plan figure was 669 dpa (see Mr Harris' proof para 4.31. It was that higher figure that HBC was using as the starting point for its housing requirement: see paragraph 20 of the Court of Appeal's judgment. The case is an illustration of a situation where existing settlement boundaries constrained delivery compared to the Council's requirement figure: its analogous to the current Chorley position here, not the Preston one.

57. Then there is the strange case of policy MP of the CLCS. A late entrant on the scene, the Appellant's reference to it crumbled in cross-examination of Mr Harris:

    a. His explanation for not referring to it sooner was what he claimed was the Council's shifting position. But it was always Mr Harris' own case that, in some of his 'propositions', relevant policies were out of date. If so, policy MP was always relevant. He never satisfactorily grappled with or addressed that point in cross-examination;

[20] CD G2

b. He misinterprets the policy: a policy that refers to "relevant policies" being out of date does not mean if one such policy is out of date then its conditions for triggering the tilted balance are met;

c. The interpretation is absurd because it refers to "relevant" not "most important" policies. When the consequences of his view that one relevant policy being out of date (the open space policy was put as an example) was put to him, he shifted territory to say that that would not trigger the tilted balance. But that is what his stated interpretation logically demands;

d. He has used the wrong policy. PLP policy V1 post-dates policy MP and is different in respect to the triggering and consequences of the policies' approach to the tilted balance. As a result, s38(5) of the Planning and Compulsory Purchase Act 2004 requires the difference to be resolved by using the later-adopted policy;

e. The policies are in any event out of date because their trigger for the tilted balance is not consistent with that in the NPPF. If so, that inconsistency renders the policy out of date;

f. Mr Harris eventually pointed out that he himself had not developed the point because he was keen to point out that he had, in fact, used paragraph 11 of the NPPF as the test for triggering the tilted balance, which completely undermines his earlier reference to the policy; and so

g. He ultimately accepted that if the tilted balance in this case was triggered, it would be because of the application of the NPPF's test in paragraph 11.

58. The points on policy MP and, so far as mentioned, policy V1 were all but abandoned. They should never have been pursued as they were utterly hopeless.

59. The final point in closing on this issue is to turn Mr Harris' phrases back on him. However one cuts it, or whichever way he chooses to jump, Mr Harris can point to no route into the tilted balance.

Benefits and harm.

60. The appeal scheme would create benefits:

a. There would be more market housing. Mr Harris readily accepted in cross-examination that the weight to be afforded to the provision of market housing where there was a five year supply would vary according to how far above five years the supply stood. None of the cases which were put to Mr Major in cross-examination and gone through in his re-examination were cases where there was anything close to a 13.6 year supply. The weight to be afforded to the contribution towards the aspirations of the City Deal is insignificant, given that the City Deal did not envisage developing in breach of the Development Plan, and certainly not through large scale development in the countryside beyond the settlement limits of a settlement at the bottom of the development hierarchy, all

as Mr Harris accepted. Mr Major is therefore justified in affording moderate weight to this as a benefit;

b. The appeal scheme would provide affordable housing at the policy compliant rate of 35%. But the net increase has to take into account the affordable housing contribution from the extant permission that exists on the appeal site. There is unmet affordable housing need. Given that the debate between the parties is whether the weight given to this as a benefit is "significant" or "moderate to significant but closer to significant", these closing submissions will not be further lengthened by rehearsing the evidence on this point;

c. Mr Harris accepted that Council Tax and New Homes Bonus were not material planning considerations. They deserve no positive weight;

d. As for the community building, Mr Harris' evidence presents this as a typical village hall type facility. His proof strangely omits to acknowledge the existence of the existing village hall, let alone explain what it would add to the existing offer from the present village hall. His proof even seeks to derive benefit from reducing travel – but this turned out to be the reduced travel to the existing village hall in Barton. It is clear that the Parish Council do not want to run it. Nor do the City Council. The Parish Council did not ask for it and Mr Harris' reliance on the emails produced on day 3 of the inquiry was completely misplaced if the intention was to show that the Parish Council sought a village hall in discussions. When these difficulties piled up for Mr Harris, he tried to convert the village hall into a dentist or other medical facility. That is not how

it is presented. Mr Major's view is that the building is not required to make it acceptable in planning terms. If that is accepted, then its provision via the planning obligation cannot be used as a reason to grant planning permission, given the tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010;

e. Other benefits are not the subject of serious dispute between the parties, namely economic, ecological and biodiversity benefits.

61. On the basis that the Council has a 13.6 year housing land supply, the appeal scheme would bring considerable harm. The appeal site is in the wrong location for growth of this scale, as CLCS policy 1 makes clear. The appeal scheme would amount to development the vast majority of which would take place in land treated as countryside. And all that would be in the context of a considerable land supply which meant that there was no pressing need for the proposal at all, let alone in a location which is in breach of the development plan's strategy.

62. Further, there is a significant legitimate interest in adhering to the plan-led system, which Mr Harris accepted. The Court of Appeal restated that as recently as 3rd February 2021 in the case of *Gladman Developments Limited v SoSHCLG* [2021] EWCA Civ 104[21] at paragraph 33(2):

"The policies in the NPPF are predicated on the primacy of the development plan in the "plan-led" system. It was pointed out by the Supreme Court in Hopkins Homes Ltd. (at

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paragraph 21), and by this court in East Staffordshire Borough Council (at paragraph 13), that the NPPF must be interpreted and applied – as it recognises itself – consistently with the statutory scheme, within which it takes its place as a material consideration."

63. Adhering to the plan-led system is all the more important if that strategy is delivering such a healthy land supply.

The Planning Balance.

64. Mr Harris accepted that the breach of CLCS policy 1 and of PLP policies AD1(b) and EN1 can be equated with breach of the Development Plan taken as a whole. Section 38(6) therefore requires the appeal to be dismissed unless material considerations indicate otherwise. There are none which are of such weight as to discharge that burden. On the basis that the tilted planning balance is not triggered for any reason, the appeal should be dismissed.

65. If the tilted planning balance is triggered for reasons not connected to the absence of a five year supply, then the appeal should still be dismissed. Mr Harris accepted in cross-examination that even when the tilted balance is triggered, a decision maker still has to decide how much weight to afford to development plan policies. That concession accords with the recent decision in the case of *Gladman Developments Limited v SoSHCLG* [2021] EWCA Civ 104[22], paragraph 47. Mr Harris also accepted that the weight to be afforded to development plan policies in the event that the tilted balance applied could well be

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different according to whether the trigger was (i) the absence of supply or (ii) the most important policies being out of date for reasons not connected to land supply. That must also be right. If Development plan policies constrain delivery to the point that adherence to them is not or would not provide a five year supply, then it is rational to afford those policies less weight than would be the case where the most important policies are inconsistent with the NPPF are out of date but do not, or would not, constrain delivery to the point where a five year supply does not exist.

66. In this case, if the tilted balance is engaged for non-supply reasons but there is a five year supply, the policies which protect the countryside as defined in the PLP can still be afforded significant weight. Adhering to the development plan strategy as encapsulated in CLCS policy 1 would also still be justified and important. Not allowing development to proceed beyond the settlement limits of a small village at the bottom of the settlement hierarchy should also be avoided. The harm caused by permitting development in such circumstances would, the Council submits, significantly and demonstrably outweigh the benefits.

67. For these reasons, the Council asks for the appeal to be dismissed.

MARTIN CARTER

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12th February 2021

Kings Chambers

Manchester – Leeds – Birmingham.