

**CARDWELL FARM,
BARTON, PRESTON**

APPELLANT’S CLOSING STATEMENT

Overview

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 2012, 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 area. 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

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

to provide a minimum of five years' worth of housing against the housing requirement 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 5 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 obligation being completed.
7. 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 planning permission should

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

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 the 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. CB sought to argue that the matter was referred back to the committee and/or the Council took its decision for other reasons in addition to the Chain House Lane decision, but there is no evidence to support this, and all of the available evidence shows this not to be the case. The report to committee of the 13th February 2020¹⁵ is very clear on this issue. Section 3 of that report reminds the committee of its decision to approve the application in October 2019 and then refers to the Chain House Lane decision as finding that there had not been a review of CS policy in 2017 and that the standard method of calculating local housing need should be used for calculating five year supply. It then goes on to say that in view of this the committee should reconsider the matter. The only reason identified for referring the matter back and changing the conclusion reached in October 2019 is the Chain House Lane decision; no other reason is identified.

¹³ CD F2

¹⁴ CD D3

¹⁵ CD D3

11. After the Council refused this application it entered into a Memorandum of Understanding (“MOU2”) with the other CLA¹⁶. 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 appeal¹⁷. 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.
12. 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 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.
13. 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.
14. 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.

¹⁶ CD A12

¹⁷ See Pear Tree Lane CD F1

15. 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.
16. 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.

Effect of the proposal on the character and appearance of the area

17. The appeal site comprises six fields approximately 9.5ha in size. The fields are currently grassland enclosed by hedgerow, trees and fencing. The site is directly adjacent to the existing village boundary of Barton with built development to the north and west.¹⁸
18. There will inevitably be an impact upon the character and appearance of the site with a change from open grassland to one with built development upon it, and this will have a limited impact upon the immediate environs of the site. However, no issue is taken with the impact upon the character and appearance of the area in the reason for refusal or the Council's case.
19. The site is unremarkable in landscape terms. It is relatively flat with limited tree coverage. There are no public rights of way extending through it¹⁹. The proposed development would relate well to the existing settlement boundaries of Barton and the surrounding built form²⁰, and this was acknowledged in the committee report²¹. It should furthermore be noted that the character and appearance of the surrounding area is subject to further growth from extant planning permissions²².
20. It is common ground that a sensitively planned and designed scheme with carefully implemented landscaping could provide an appropriate transition from the built development to the open countryside including compensatory landscaping to offset the loss of any existing hedging and trees. Matters relating to layout scale appearance and

¹⁸ SCG paras 2.2 and 2.3, and Committee report CD D3 p310

¹⁹ SH para 5.25

²⁰ SH para 5.26

²¹ SH para 5.28

²² SH para 5.29

landscaping would be determined at the reserved matters stage. It is agreed that the quantum of residential development applied could be accommodated in terms of density with due regard for the character of the surrounding area. Subject to detailed matters being agreed at reserved matters stage there would be no conflict with the relevant policies in the development plan which concern design character and appearance²³.

Five year housing supply

21. The five year housing land supply is to be calculated in accordance with paragraph 73 of NPPF. This provides that a five year housing land supply is to be calculated against development plan strategic figures unless they are over five years old and have not been subject to a review. That is consistent with the emphasis upon the primacy of the development plan. This was all agreed by CB in XX.
22. In this case the relevant policy is CS policy 4. It is common ground that this policy is more than five years old but that it was subject to review in 2017. This was again agreed by CB in XX. He furthermore agreed that on the face of it applying NPPF paragraph 73 and footnote 37 one would conclude that the CS policy 4 figure should be used for calculating five year housing supply and that the onus would be on any person seeking to use some different figure to show why that should be the case. CB accepted that there was no other policy or guidance which should have been referred to on this particular matter. He also had to accept that there was nothing in any policy which supported the approach which he sought to take of using the standard method to calculate the relevant figure in this case. He contended that NPPF could not be expected to have addressed every situation, but this was merely a way of conceding that in calculating five year house supply he was not following or applying the policy in NPPF or the guidance in PPG.
23. The position applying NPPF paragraph 73 and footnote 37 is clear, given that CS policy 4 was reviewed and found not to require updating the five year requirement should be calculated using CS policy 4.
24. CB said that he had reluctantly to accept that there had been a review but that this was a “bitter pill” to swallow. This is a surprising statement, given that it was the consistent position of the Council from the issue of the replacement NPPF in July 2018 until

²³ SCG paras 5.7 and 5.8

January 2020²⁴ and it was set out in the Council’s 2019 Housing Land Supply Position Statement²⁵.

25. Although the Council accepts that the policy was subject to review in 2017 which concluded that the CS policy 4 figures remained up to date, it now seeks to argue that policy 4 is out of date for the reasons summarised in CB paragraph 2.38 namely –

- i) CS policy 4 was adopted in 2012.
- ii) The housing requirement contained within CS policy 4 corresponds to that set out in the RS based on household growth projections from 2003.
- iii) The RS was adopted in 2008, prior to the economic downturn, and abolished in 2013.
- iv) The revised NPPF published in July 2018 introduced the standard methodology into national policy which represents a significant change in circumstance and is the means by which the Government seeks to boost the supply of housing across the country.
- v) MOU1 was reviewed and replaced by MOU2 in April 2020.
- vi) The council withdrew from MOU2 in November 2020 and from that time it was disregarded for the purposes of decision-making.

26. None of those reasons either alone or in combination provide any support for the approach now taken by the Council.

27. At the outset it can be observed that once it is accepted that there was a review in 2017 the first four reasons logically fall away, and cannot provide reasons for calling the review into question. The first three reasons are all concerned with matters which occurred before the review which concluded that as of 2017 the policy 4 figure remained up to date. NPPF as published in July 2018 provided for reviews and therefore did not call the review into question. When this was put to CB his answer was “yes and no”. When asked what could provide grounds to say “no” he argued that there was a “level of simplicity” in the proposition. That is usually the case with matters of logic and CB was unable to provide any reason for disagreeing with these conclusions. Indeed his efforts to try to preserve any argument with respect to the

²⁴ See BP2 committee reports.

²⁵ See CD A9 para 1.9

publication of the revised NPPF as a reason for concluding that the review was out of date or had been overtaken by events merely served to emphasise the complete absence of any reason in the Council's position. It was the very introduction of paragraph 73 and footnote 37 which introduced the significance of a review of strategic policies more than 5 years old because it provided that if there were such a review they would remain in place. To try to interpret the NPPF as a basis for concluding that the review had been overtaken by events would render footnote 37 a nonsense.

28. The review in 2017 was triggered by the CLA report of the 27th June 2016²⁶, which recommended the need to carry out an assessment of FOAN and the need for a SHMA²⁷. It explained that this had become necessary because the CS would soon be 5 years old²⁸, that the policy 4 figures were derived from RS with a base date of 2003 and that this was leading to questions being asked as to whether the figures remained up to date for use in calculating housing requirements²⁹. The report concluded that it was timely to look at the housing requirement figures to review the housing requirement figures³⁰. It can be seen that the first three reasons identified by CB were the very reason why a review was undertaken in 2017, as CB accepted in XX and he accepted that they were addressed in the review.
29. The outcome of the assessment commissioned in 2016 was reported to the CLA in March 2017³¹. The report explained that the FOAN had been calculated using up to date guidance³² and the outcome was summarised in the table in paragraph 15 which showed that for Preston the OAN provided an annual requirement of 523 which could be compared with the policy 4 requirement of 507. It was very clear that as of 2017 the policy 4 figures remained up to date. Again this was accepted by CB.
30. In the circumstances there is no need to go back to consider the position in 2012. However, it can be noted that in considering the appropriate housing requirement the CS acknowledged the age of the RS figures and observed that later ONS projections suggested higher figures might be appropriate³³; it recognised the subsequent

²⁶ BP4

²⁷ Para 1

²⁸ Paras 6 & 7

²⁹ Para 8

³⁰ Paras 11 & 13

³¹ BP5

³² Para 12

³³ CD A1 para 8.7

economic downturn³⁴; it noted the intention to revoke RS³⁵; and it took into account the publication of NPPF in 2012.

31. Turning to the 4th reason advanced by CB. The introduction of the replacement NPPF in 2018 cannot affect the position because this is the very document which provided for the continued use of strategic policies that were more than 5 years old if they had been subject to review and found not to require updating. That much was recognised by the Council in its decisions on planning applications³⁶, and was expressly addressed in the 2019 Housing Land Supply Position Statement. The statement explained that although policy 4 was almost seven years old it still continued to be applied in accordance with the NPPF because it had been subject to a review³⁷. As the NPPF both in its 2018 and 2019 versions provide for the retention of strategic policy which is more than five years old if it has been subject to review, the introduction of the NPPF cannot of itself provide any reason for departing from the conclusion of and reliance on the review. CB argued that this was too “simplistic” an approach. BP explained that the whole point of the change brought about in paragraph 73 was to provide for a simple approach to this issue to avoid the arguments previously had at inquiry about the calculation of housing requirements. In reality CB’s complaint that this was “simplistic” was just another way of arguing that the appeal should be determined other than in accordance with paragraph 73.

32. In his rebuttal CB took issue with BP arguing that he placed too much reliance upon PPG. This is a misreading of BP’s evidence. He simply drew attention to the relevant passages in both the NPPF and PPG, which accords with his duty to the inquiry. It can be observed that there is nothing in PPG which departs from the provision in NPPF. The important point is that there is no support anywhere either in NPPF or PPG for the approach taken by the Council. CB complains that BP’s approach is too simplistic, but it is the approach specifically set out in the NPPF. As BP explained that the whole point of the change brought about in paragraph 73 was to provide for a simple approach to this issue to avoid the arguments previously had at inquiry about the calculation of housing requirements. This reaffirms that CB’s complaint that this was “simplistic”

³⁴ Para 8.4

³⁵ Para 2.5

³⁶ BP2

³⁷ CD A9 paras 1.8 and 1.9

was just another way of arguing that the appeal should be determined other than in accordance with paragraph 73.

33. The fifth reason given by CB is that there was a review of MOU1 which was replaced by MOU2. It can be noted at the outset that it is merely MOU1 which is said to have been reviewed, there is no statement that that there was a review of the 2017 review. MOU1 was not the review – in reality it was the outcome of the review³⁸. There is no evidence that there was a review of the review, indeed all of the available evidence shows clearly that there was not.
34. The various CLA reports do not suggest that there was any review being undertaken. The first report on 29th January 2019³⁹ refers to drawing up a specification for a brief housing study update to look at specialist housing need, more detailed work on affordable need and to provide evidence to support the redistribution of housing need across Central Lancashire⁴⁰. There is no suggestion that the study was to look at what the housing requirement should be or that it would revisit the conclusions of the SHMA and no suggestion that it was to review the 2017 review. CB agreed in XX.
35. The report of the 4th June 2019 records that Icení had been commissioned to undertake an additional housing study providing necessary housing need analysis addressing the needs of specific groups and to provide robust evidence for an appropriate distribution of housing across the three local authorities⁴¹. CB drew attention to the reference in paragraph 12 to the draft report “informing the review of the existing Memorandum of Understanding (MOU) between the three councils and the future policy for housing distribution” as supporting a conclusion that Icení were being asked to undertake a “review of the review”, but that is not what the sentence says. The reference is to the Icení report being used to “inform” a review it is not suggesting that the report will be a review or even that it will consider the need for a review. The suggestion that the Icení report is some form of review is not supported by the September 2019 report⁴². There is no suggestion anywhere within these reports that there is a concern that CS policy 4 is out of date, still less any assessment as to whether there is any need to review the review or to consider whether CS policy 4 is out of date.

³⁸ Agreed by CB in XX and in any event set out in proof at para 2.39

³⁹ BP7

⁴⁰ BP7 para 16.

⁴¹ BP8 paras 10 and 12

⁴² BP9 paras 9 & 10

36. The Icen report explains that it was commissioned to update and develop elements of the 2017 SHMA⁴³. The report is not a replacement for the SHMA which remains part of the evidence base for the emerging local plan. The report does say that the introduction of the standard method means that MOU1 “needs to be revisited”⁴⁴ and that the Study has been prepared to provide a basis for the CLA to agree an updated level of need and distribution across the three areas⁴⁵. This is not a clear statement that the Study is a review of MOU1 or even the need for such a review. However, if it were to be read as such there would clearly need to be proper evidence and reasons given for this. None can be found within the Study as CB ultimately had to accept. Indeed CB stated that it was not within Icen’s remit to advise whether there should be a review or to advise on such a review. He also stated that Icen had not been commissioned to decide what figure should be used for calculating 5 year housing supply. In the circumstances the report cannot provide any grounds for departing from the use of the CS policy 4 figures.
37. Importantly the report confirms that Preston remains part of the CLA HMA⁴⁶.
38. The report refers to NPPF paragraph 73 and simply states that the circumstances where the CS figures could be relied upon do not apply⁴⁷. No explanation is given for this statement which is remarkable given that the CLA had accepted that there had been a review of the CS figures which satisfied NPPF paragraph 73. There is no consideration as to whether there had been a review for the purposes of paragraph 73 and no recognition of the fact that the CLA had accepted and been working on the basis that there had. Indeed in the light of that acceptance and in particular the Council’s acceptance at this inquiry that there had been a review, this statement by Icen is plainly wrong. In the absence of any explanation and justification by Icen the only conclusion one can reach is that Icen proceeded upon an erroneous and seriously flawed basis.
39. Icen provide no evidence for departing from the CS figures. Indeed the Council’s case is that Icen do not identify what the housing need is in Preston or the CLA and Preston is not stating what it might be.

⁴³ CD A11 para 1.2

⁴⁴ Para 1.3

⁴⁵ Para 1.4

⁴⁶ Para 2.5

⁴⁷ Para 2.14

40. Icenii do appear erroneously to consider that once a new MOU had been consulted upon and endorsed by the CLA it could be relied upon to provide the housing requirement figure, relying upon comments made in the Chain House Lane decision. This merely underlines the error in approach. That decision has now been quashed and the Council accepts the approach is incorrect as it has resolved not to rely upon MOU2.
41. The Icenii report does not purport to be and cannot be said to be a review of the CS policy 4 figures or a review of the review. Furthermore it provides no evidence in support of any such review.
42. The Council relies upon MOU2 as reviewing and replacing MOU1. As already noted that in itself could not be said to be a review of the CS policy 4 figures or a review of the review – it would at most be a consideration of the outcome of the 2017 review. There are in any event a number of fundamental reasons why the Council cannot rely upon MOU2 to advance any departure from the CS policy 4 figures.
43. The first fundamental point is that it is necessary to consider what is provided in NPPF and PPG. There is no support for the approach taken by the CLA in MOU2. This is a major issue in the outstanding challenge to the lawfulness of MOU2 and it was in any event the finding by the inspector on appeal in the Pear Tree Lane inquiry.
44. Secondly in the face of the legal challenge and the Pear Tree Lane decision the Council has resolved not to rely upon MOU2 in development control decisions. That being the case the Council cannot rely upon MOU2 to argue that MOU1 has been replaced, still less that it reviewed the review.
45. Third MOU2 cannot alter the fact that there was a review in 2017.
46. Fourth if MOU2 were to amount to a review of the review it would have to be properly informed with appropriate evidence and would have to analyse the position properly. As already demonstrated there is no evidence to inform any such review of the review.
47. Finally when one turns to consider the terms of MOU2⁴⁸ it is plain that it does not amount to any meaningful review of the review and provides no grounds for departing from the CS policy 4 figures. MOU2 asserts at paragraph 2.4 that CS policy 4 is out of date but provides no reason for this assertion. On the contrary it recognises that the CS

⁴⁸ CD A12

policy 4 figures represented the OAN as recently as 2017⁴⁹ and explains that the policy 4 figures were retained because of the need to continue to support strategic sites and to help address out migration from Preston⁵⁰. There is no suggestion subsequently that any of this has changed. It is asserted at paragraph 5.2 that MOU2 was required as a result of a significant shift in national policy since 2017, but there is no identification or consideration of this claimed policy shift. If it were to be suggested that the shift is the NPPF, such an argument is completely unfounded and misconceived for the reasons already considered. Importantly there is no consideration of the status of the policy 4 figures in the light of the recognised review in 2017 and the application of NPPF footnote 37. It is stated that applying the standard method is significantly at odds with the distribution of people, jobs and services and would serve to undermine key principles of the City Deal⁵¹. Importantly CB confirmed that not only was this the Council's view in 2020 but it remains the Council's position. This cannot provide any reason for departing from the conclusions of the review in 2017, rather it provides a strong reason for retaining use of the CS policy 4 figures. It does confirm that use of the standard method results in a radical departure from the distribution in the CS which has significant implications for Preston.

48. CB had to concede the various points outlined with respect to MOU2 and stated that he and the Council were not relying upon MOU2 for the purpose of calculating 5 year housing supply or as a review of the 2017 review. He also had to accept that if, following the Pear Tree Lane decision, it were concluded that no real weight could be given to MOU2 it could not assist the Council even if it were to be relied upon.
49. MOU2 and the events leading up to it do not amount to a review of the review in 2017 and provide no reason for departing from it.
50. The final reason given by CB for concluding that CS policy 4 is out of date is that the Council has withdrawn from MOU2 and it is to be disregarded for the purposes of decision making. None of this touches on CS policy 4 or the review in 2017 and cannot provide a reason for departing from CS policy 4. It does, however, undermine any reliance the Council seeks to place upon MOU2 and is wholly inconsistent with the fifth reason it gives. The decision to abandon MOU2 was taken by the Council's

⁴⁹ Para 3.3

⁵⁰ Para 3.5

⁵¹ Para 6.7

Cabinet on the 4th November 2020. Remarkably the Council is not prepared to publish the report it considered in taking this decision. The only public information is limited to that which can be found in the minutes of the Cabinet meeting which is limited to observing that MOU2 carried little weight. The terms of the resolution are (a) that the Council is to withdraw immediately from MOU2 and (b) the Council will not rely upon MOU2. It has already been observed that any attempt to rely upon MOU2 as a review of the review or as having led to a change in the position following the 2017 review is contrary to the Council's resolution. It is also important to observe that the resolution does not address the basis upon which 5 year housing land supply is to be calculated.

51. None of the reasons identified by CB for departing from the outcome of the 2017 review and the use of the CS policy 4 figures could be sustained. Faced with these difficulties he sought to place emphasis upon the Pear Tree Lane decision, and the suggestion appeared to be made that if you were to use the CS policy 4 figures this would result in an inconsistent approach across the CLA. This appeal decision is of no assistance to the Council. At the outset it is important to recognise what the inspector was being asked to consider. In particular there was no recognition at that inquiry that there had been a review in 2017 – the question was not even considered, because both parties had chosen to argue their cases at that inquiry on different applications of the local housing need as calculated by the standard methodology⁵². It can be noted that at the very start of his consideration of this issue, the inspector recorded that CS policy 4 was more than five years old which would mean that it could not be relied upon unless there had been a review and that the “Council does not rely on such a review”⁵³. In the circumstances the inspector was not called on to consider the issues before this inquiry and in particular he was misinformed with respect to whether there had been a review. Through no fault of the inspector he proceeded on the basis of a misunderstanding with respect to whether the five year housing figures should be calculated using the CS or local housing need applying the standard method. Furthermore given that both parties agreed use of the standard method he was not required to and did not make any decision as to whether the CS policy 4 figure should be used. CB accepted that the decision letter cannot be read as making any decision on whether there had been a review, or whether there had been a review of the review, or whether the review had been

⁵² CD F1 para 19

⁵³ CD F1 para 15

superseded for some other reason. In the circumstances there is nothing in this decision letter which assists the Council or touches upon the issues which fall to be determined at this inquiry.

52. In so far as it is suggested that there would be any inconsistency in decision making if the CS policy 4 figure were to be used the inconsistency would arise because of the failure in the Pear Tree Lane decision to acknowledge that there had been a review. Given the acceptance in this case that there had been a review, it cannot be suggested that we should follow the Pear Tree Lane decision to maintain consistency.
53. The agreed position is that although CS policy 4 is more than 5 years old it was subject to a review. NPPF 73 and footnote 37 are clear that in such circumstances five year housing land supply should continue to be calculated in accordance with the figures in CS policy 4.
54. It is accepted by CB that the onus is on him to show why this should not be the case. None of the reasons advanced by CB could be sustained as providing a ground for departing from use of the CS policy 4 figures. In reality CB seeks to disregard NPPF 73 in calculating 5 year housing supply.
55. CB's desire to use the standard method for calculating supply is surprising given the history of acceptance by the Council that CS policy 4 provides the correct basis for the calculation, and that is important that these figures are used because use of the standard method is significantly at odds with the distribution of people, jobs and services in the area and would undermine the key principles of the City Deal. It is all the more surprising given CB's repeated insistence that it was not being suggested that the figures produced by the standard method reflected the actual need for housing within Preston.
56. It is common ground that when assessed against CS policy 4 the Council does not have a 5 year housing land supply.

City Deal

57. The City Deal has been consistently identified in the Council's relevant housing and planning documents as an important consideration. It is for example referenced in the PLP, and of particular relevance to this area the Broughton By-pass is identified as one of the roads which will unlock future housing development boosting the local economy

and allowing Preston to grow and develop⁵⁴. City Deal is not limited to the Preston Western Distributor Road, as CB accepted. Its significance was highlighted in both MOU1⁵⁵ and MOU2⁵⁶. Importantly the matters raised with respect to City Deal in MOU2 paragraph 6.7 are said by CB to continue to apply irrespective of the decision to abandon MOU2.

58. City Deal covers both Preston and South Ribble it is therefore important to understand that the figures for housing to be provided are not limited to Preston alone. However, BP explained that over the next 4 years Preston and South Ribble are committed under City Deal to ensuring the delivery of 9,640 new homes, and yet their combined deliverable housing land supply (accepting their figures) is only 6,245⁵⁷. This is in a context where there is in addition extant under-delivery of some 1,358 houses⁵⁸. CB conceded that there had been under-performance on the City Deal and that the 10 year delivery target will not be met.

59. Although CB sought to downplay the importance of City Deal he accepted that it was a material consideration to take into account in determining this appeal. Given the references above it is a material consideration of some importance.

60. Given the position of the Council as expressed in MOU2 paragraph 6.7, and CB's own position that the standard method did not provide for the full level of need in Preston, it would be important to provide for additional housing even if there were a five year supply in Preston. It is clear that the housing supply identified by Preston is inadequate in the light of City Deal.

Affordable Housing

61. CB's position with respect to affordable housing was truly remarkable. The Council has commissioned a substantial body of work from independent consultants with respect to affordable housing over the last 3-4 years in the form of the SHMA and the Icen report, which form the evidence base for the purposes of the emerging local plan. Despite that evidence base CB seeks to argue that the Council does not have the evidence to establish the level of affordable housing need and that it will have to simply

⁵⁴ See CD A2 para 1.20

⁵⁵ See for example CD A14 5.9

⁵⁶ See in particular CD A12 paras 6.7 & 6.8

⁵⁷ BP paras 12.4 & 12.5

⁵⁸ BP para 12.3

use the relative affordability input into the standard methodology calculation as its figure for affordable housing need.

62. CB's position is untenable. It is clear that the relative affordability input is not to be taken as a proxy for affordable housing need. The government's position is clearly set out in PPG 2a-018 and onwards which requires a calculation of affordable housing need quite separate from the standard method calculation. He had to accept that a failure to undertake such an assessment could be expected to result in a finding that the local plan was unsound.
63. CB's criticism of the extant evidence base is also unfounded and unfair. The SHMA contained a detailed assessment of affordable housing need over 27 pages⁵⁹. It explained that the assessment had been carried out in accord with NPPF and PPG⁶⁰. CB's complaint was that the assessment was drawn from secondary data but the SHMA explains (a) that the use of secondary data is provided for in the PPG⁶¹ and importantly (b) that in addition to the secondary data a range of survey based methods had been employed⁶².
64. The SHMA identified an affordable housing need for Preston of 239 per annum⁶³. Significantly, given CB attempt to use relative affordability as a proxy this need was identified even though the SHMA found that Preston was one of the most affordable locations in the country⁶⁴.
65. The Icen report provides further substantial evidence with respect to affordable housing need. It provides an analysis of affordable need addressing the definition set out in the NPPF⁶⁵, compares this with the findings in the SHMA⁶⁶, and concludes that both demonstrate a substantial need and the Council should seek to maximise delivery⁶⁷.
66. Although CB drew attention to the improved level of affordable housing completions since 2016, it is clear from BP's Table 13.2⁶⁸ that affordable housing completions have

⁵⁹ CD A10 pp106-33

⁶⁰ CD A10 paras 6.35 and 6.39

⁶¹ CD A10 para 6.39

⁶² CD A10 para 6.38

⁶³ CD A10 Table 59 p121

⁶⁴ CD A10 para 11.26

⁶⁵ CD A11 para 5.1

⁶⁶ CD A11 para 5.21

⁶⁷ CD A11 para 5.22

⁶⁸ BP p44

failed to match need in any year by a substantial amount. Furthermore the deliverable supply over the next five year period will not be sufficient to meet the identified affordable housing need for the next five years⁶⁹. CB also made the point that many sites would not deliver a full percentage of affordable housing for various reasons, but this merely serves to emphasise the importance of those sites such as the appeal site which would deliver a full proportion of affordable housing.

Development plan strategy for the area

67. The appeal site is currently shown as outside the settlement boundary in the PLP and as such is within the Open Countryside for the purposes of the relevant development plan policies, albeit as discussed above the site is on the edge of and relates well to the settlement.
68. The site's location in the Open Countryside means that the proposal does not conform with PLP policy EN1, nor can the proposal come within PLP policy AD1(b)⁷⁰. In addition CS policy 1 provides a hierarchy of centres and the proposed development does not comply with the provisions made in this policy⁷¹.
69. However, it is important to keep in mind that the development plan strategy is closely tied to CS policy 4 which distributes provision to meet needs across the whole of the CLA. The boundaries drawn up in the PLP flow from this strategy and this has important implications for the application of these policies to this appeal.
70. If the Council cannot identify a five year supply of housing land it is common ground that the tilted balance will apply and that under that the benefits of the proposal would outweigh any conflict with the development plan so that planning permission should be granted. Furthermore the policies would be out of date.
71. However, if the Council is correct and five year housing supply should be calculated on the basis of the standard method this would lead to a radical distribution of housing within the CLA area as CB acknowledges⁷². The result would be that the relevant policies are out of date. This is considered below.

Tilted balance

⁶⁹ BP para 13.10 and BP11

⁷⁰ SH para 3.15

⁷¹ SH para 3.6

⁷² See for example CB para 3.43

72. It is common ground that if CS policy 4 is used for calculating 5 year housing supply the tilted balance is engaged as a result of NPPF 11(d) and footnote 7. It is furthermore agreed that in such circumstances the position would be as it was in October 2019 when the Council resolved to grant planning permission, and that the appeal should be allowed. However, it does not follow that this is the only basis upon which the tilted balance would apply in this case.
73. If it is concluded that CS policy 4 is not to be used for calculating 5 year housing supply it will follow that CS policy 4 is out of date – indeed that is the Council’s case. In such circumstances consideration needs to be given to CS policy MP and PLP policy V1. There is a difference in the wording of these policies and given that PLP V1 is the later of these policies and provides somewhat more than CS MP it easiest to deal principally with this policy. PLP V1 provides that where relevant policies are out of date at the time of making the decision the Council will grant permission unless material considerations indicate otherwise taking into account whether (a) any adverse impacts of granting permissions would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole and those contained in the CS or (b) specific policies in the NPPF indicate that development should be restricted. Apart from minor changes in wording the main difference between this policy and policy CS MP is that policy CS MP limits consideration to policies in the NPPF.
74. The Council make the point that the wording of these policies reflects that in the 2012 NPPF rather than the current NPPF and argue that given the 2012 NPPF has been replaced no consideration should be given to these policies which are said to be out of date. The point is furthermore made that incorporating this type of policy into development plans is no longer considered to be appropriate and was done when the NPPF was “new”. This all misses the point that these are policies in the development plan and consideration has to be given to them. Indeed disregarding these policies is not consistent with the primacy given to the development plan. It can be noted furthermore that the NPPF was not “new” at the time of the PLP in 2015 and the Council clearly thought it appropriate to incorporate V1 into the PLP even though there was already a similar policy in the CS in the form of CS MP.

75. In the circumstances a proper application of these development plan policies leads to the conclusion that the tilted balance is engaged in this case once the standard method is used to calculate housing land supply.
76. Use of the standard method results in the application of the tilted balance in any event applying paragraph 11(d) of the current NPPF.
77. The most important policies for determining the application have been identified as CS policies 1 and 4 and PLP policies EN1 and AD1(b). It is common ground that use of the standard method means CS policy 4 is out of date. That policy set out housing figures for the 3 CLA areas, not simply for Preston. The figures were founded in a common strategy to address the needs of the HMA which covered the 3 CLA areas, and not just Preston. The distribution of housing across the area was tied into this strategy which in turn fed into the strategy in CS policy 1 and the settlement boundaries for the purposes of PLP policies EN1 and AD1(b)⁷³. This is clear from the Foreword to the CS which emphasises that the CS is a single strategy for the CLA and the Councils are committed to applying the policies consistently.
78. It is agreed that the application of the standard method individually for each of the CLA areas results in a radically different distribution of housing across the CLA HMA⁷⁴. As SH explains the consequence of this is that CS Policy 1 is inevitably rendered out of date because the distribution in Policy 1 is drawn from the distribution shown in Table 1 of the CS⁷⁵. As SH demonstrates this distribution cannot be maintained with the use of the standard method for calculating housing requirements⁷⁶. The settlement boundaries relied upon for the application of PLP policies EN1 and AD1(b) are in turn derived from this and are likewise out of date. This conclusion is supported by the judgment in the Chain House Lane judicial challenge⁷⁷ and the conclusions in the Pear Tree Lane appeal decision⁷⁸.
79. The fact that the CLA thought it necessary and appropriate to enter into MOU2 further illustrates and confirms SH's point. MOU2 confirms that applying the standard method to individual authorities would be significantly at odds with the distribution of people,

⁷³ SH 4.16

⁷⁴ CB para 3.43 and Table 4 and SH para 4.17 and Figure 1.

⁷⁵ CD A1 p42

⁷⁶ SH paras 4.18 – 4.20

⁷⁷ See passages set out and discussed in SH para 4.26-4.28

⁷⁸ See CD F1 paras 48 and 49 and SH paras 4.39

jobs and services and would serve to undermine key principles of the City Deal⁷⁹, and CB stated this remained the position even with the abandonment of MOU2, and he agreed that the use of the standard method in individual areas did not serve the area well⁸⁰. This is the clearest possible statement that use of the standard method in individual authorities results in a radical redistribution of housing which is at odds with the strategy in the CS which then informs the individual local plans.

80. CB accepts that use of the standard method for individual authorities represents a material or significant shift but suggest it does not matter for two reasons⁸¹.

81. The first reason given is that use of the standard method is an interim position at it is not claimed that the figure represents its housing requirement⁸². Far from assisting CB this merely reinforces the point made by SH. What is being said is that for an uncertain period of time Preston will not be meeting its housing requirement (and will not even say what that requirement is). This does not address the implications of the change in distribution but does support the conclusions reached in paragraph 6.7 of MOU2.

82. The second reason given is that the aggregated growth across the CLA areas using the standard method is below the aggregated CS policy 4 requirement. This does not assist CB as he had to accept that it does not address the issue of distribution of housing and therefore cannot be a reason for concluding that the radical redistribution was of no consequence⁸³.

83. Ultimately CB's contention with respect to CS policy 1 and PLP policies EN1 and AD1(b) was that they should not be considered to be out of date because in a situation where it was concluded that there was a 5 year housing land supply they could not be said to be constraining the ability to meet its standard methodology local housing need⁸⁴. This approach is flawed and should not be confused with the question whether these policies are constraining the ability to meet the housing needs within the area. The flaw arises precisely because the impact of the radical redistribution of housing is ignored. The approach ignores the fact that the development plan policies are founded upon a strategy which is to be applied across the whole of the CLA area, applied

⁷⁹ CD A12 para 6.7

⁸⁰ CB XX

⁸¹ CB para 3.43

⁸² CB para 3.44

⁸³ CB XX

⁸⁴ CB XX and see CB paras 3.36, 3.40, 3.43 and 4.11

consistently across the area, and is to provide for the needs of the whole area as CB conceded. The fact that this approach is flawed is underlined and confirmed by the fact, repeatedly emphasised by CB, that the standard method figure does not reflect the actual needs and requirement of the area⁸⁵. This is all reinforced by the statement in MOU2 paragraph 6.7 which continues to hold true irrespective of the status of MOU2.

84. Use of the standard method in the manner proposed by the Council results in a radical redistribution of housing which in turn renders the most important policies for determining the appeal out of date. The tilted balance is engaged.

Benefits of the proposal

85. The proposal would provide a high quality development in a sustainable location which would deliver a range of social, economic and environmental benefits in accordance with NPPF paragraph 8.

86. The delivery of housing is a clear benefit arising from this proposal which should be given significant weight given the importance attached to boosting the supply of housing in national and local policy⁸⁶. This accords with the findings and conclusions in numerous appeal decisions such as that of the Secretary of State in the Stapeley decision⁸⁷, and the inspector in the Pear Tree Lane appeal⁸⁸.

87. On the basis that the Council can demonstrate a 5 year supply RM would only give this benefit moderate weight⁸⁹, although he conceded that if there were not a 5 year supply it should be given significant weight⁹⁰.

88. RM argued that the Stapeley decision is not comparable to the current situation for 3 reasons⁹¹, none of which provided any ground for distinguishing it. The first was that it was a mixed use development and the third was that it was located to the south of a preferred location for development. Neither of these issues could be said to have any bearing upon the weight to give to the benefit of the delivery of housing. The second reason given was that in the Stapeley decision the identified supply of housing was in the range of 5.7 – 6.6 years which he compared with the Council's claimed figure of

⁸⁵ CB XX and see for example CB para 2.45

⁸⁶ SH para 6.2

⁸⁷ CD F5 para 28

⁸⁸ CD F1 para 105

⁸⁹ RM para 8.5

⁹⁰ RM XX

⁹¹ RM para 8.30

13.6 years. However, the Secretary of State’s decision was that the benefit should be given significant weight despite the Council’s ability to demonstrate a 5 year housing supply because “*nationally it is a government policy imperative to boost the supply of housing*”⁹². The weight was driven by the national need for housing it was not dependent upon the level of supply in the particular area.

89. RM referred to a number of other decisions he considered to be more relevant in which he claimed the inspectors had all given similar weight to the benefits of the proposals as he did. Analysis of the decisions establishes that RM is wrong. In the Wiswell decision the inspector gave significant weight both to the provision of housing and the provision of affordable housing⁹³ – the same as SH. In the East of Fleetwood Road⁹⁴ and Clitheroe Golf Club⁹⁵ decisions the inspectors do not state what weight they gave to the benefits, they merely state that the benefits are not sufficient to outweigh the identified harm in those particular cases. The only appeal decision to give less than substantial weight to the provision of housing is that as Wrea Green⁹⁶. Although this involved four separate decision letters they concerned four appeals heard before the same inspector at the same inquiry, in reality this is one decision rather than the four as presented by RM. In that case the inspector explained that he only gave moderate weight to the provision of housing because of the modest size of the proposal⁹⁷. The proposals in that case were for 50 or fewer houses – significantly smaller than the current proposal and accordingly the decision provides no assistance to RM.

90. The provision of affordable housing is a further benefit which should be given significant weight⁹⁸. That approach again accords with that of the Secretary of State at Stapeley and the decisions at Wiswell and Pear Tree Lane. Given the local position with respect to affordable housing discussed above it is surprising that RM only attributes significant/moderate weight to this benefit.

⁹² CD F5 para 28

⁹³ CD F8 para 37

⁹⁴ CD F6

⁹⁵ CD F7

⁹⁶ CDs F9-12

⁹⁷ See for example CD F10 para 50

⁹⁸ SH para 6.2

91. The community building is to be provided to provide a focal point with scope to provide a range of facilities in the centre of the village as SH explained. It is a benefit to which moderate weight should be given⁹⁹.
92. There are in addition a range of benefits which attract limited weight, including the economic benefits arising from the actual construction of the buildings and the increased spending from the new residents, and the biodiversity benefits provided¹⁰⁰.

The balancing exercise

93. The decision in this case ultimately involves a balancing exercise where the benefits are weighed against the harm arising from this proposal. That remains the case whether the tilted balance applies or the case is determined on the standard or “flat” balance.
94. In this case the harm arises from the conflict with the development, there is not claimed to be any other harm to go in the balance against the proposal. The weight to give to the harm arising from conflict with the development plan will be influenced by the conclusion reached as to whether any of the relevant policies are out of date. SH explained that whether or not the policies were out of date the harm in this case was limited given the nature of the conflict with the relevant policies and the absence of any other harm arising from this, but that even if greater weight were to be given to this harm it would still not outweigh the benefits of the proposal¹⁰¹.
95. Interestingly RM explained that if significant weight is given to the benefits of providing housing he would agree that the benefits would outweigh the harm and that planning permission should be granted. This was not limited to the situation of absence of a 5 year supply¹⁰². This confirms the limited nature of the harm. Furthermore given that RM is plainly wrong with respect to the weight to give to the benefit of providing housing, his evidence confirms that the appeal should be allowed in this case.
96. For the reasons set out above we would invite you to conclude that the correct approach in this case is to conclude that the Council is unable to demonstrate a 5 year supply of housing land, that the tilted balance applies, and as the Council agrees in that situation, the appeal should be allowed.

⁹⁹ SH para 6.2

¹⁰⁰ SH para 6.2

¹⁰¹ See for example SH para 6.4

¹⁰² RM XX and ReX

97. If it is concluded that the 5 year supply should be calculated using the standard method, the tilted balance would still apply for the reasons discussed and the adverse impacts of granting permission would not significantly outweigh the benefits.
98. Even if the tilted balance were not to apply the benefits in this case would still outweigh the harm. Indeed the Council has granted planning permission for development of this nature despite similar conflict with the development plan even though it considered it had a 13 year housing supply¹⁰³. Appeal decisions also demonstrate the importance attached to providing housing even with a 5 year housing supply¹⁰⁴.
99. Irrespective of whether the tilted balance is applied the benefits of this proposal outweigh the conflict with the development plan. In the circumstances we would invite you to allow the appeal.

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12th February 2021
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36, Young Street,
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¹⁰³ See SH paras 6.9 – 6.13 and CD F13

¹⁰⁴ SH paras 6.6-6.8 and 6.14-6.15 and CD F5 and F1