

North of Jepps Lane Barton, Preston

Outline planning application seeking approval for access only for residential development of up to 125no. dwellings (all other matters reserved)
(resubmission of 06/2019/0866)

Application Reference 06/2020/1002

APPELLANT'S STATEMENT OF CASE

June 2021

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APPENDIX C Decision Notice for Planning Application Ref: 06/2020/1002, dated 3rd December 2020

APPENDIX D Advanced notice of request for Public Inquiry

/1 INTRODUCTION

- 1.1. PWA Planning is instructed by Story Homes ('the appellant') to lodge an appeal against the refusal by Preston City Council ('the council') of planning application ref. 06/2020/1002 which sought outline permission for up to 125 no. dwellings with access (all other matters reserved) to the north of Jepps Lane, Barton, Preston ('the site').
- 1.2. The application for outline planning permission was validated by the council on 17th September 2020 and was accompanied by appropriate plans and supporting information. Planning permission was refused at the meeting of the council's planning committee on 3rd December 2020. The decision notice contains a single reason for refusal. A copy of the officer report (Appendix A) and the decision notice (Appendix C) are attached with this statement.
- 1.3. This **Statement of Case** is provided in support of the appeal being made under Section 78 of the Town and Country Planning Act 1990 and has been prepared in accordance with annexe J of the latest Procedural Guide¹. It should be read in conjunction with the draft Statement of Common Ground which includes a draft list of Core Documents, and which will be added to as necessary in advance of the Inquiry by both principal parties.
- 1.4. The appellant considers that a public inquiry is the appropriate forum in which to consider the evidence which will need to be advanced in support of the proposed development. Advanced notice of the request for a public inquiry was provided in advance of the appeal being lodged in accordance with the relevant guidance and a copy of the notification document (Appendix D) is attached with this statement. A full justification for the request for an Inquiry is set out later in this document.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/980250/Procedural_Guide_Planning_appeals_version_14.pdf

/2 PROPOSED DEVELOPMENT & BACKGROUND

- 2.1. The site is located on the edge of the village of Barton, which is a village lying some 4km to the north of the Preston urban area and approximately 9km to the north of Preston city centre. It is entirely within the boundaries of Preston City and Barton Parish Councils.
- 2.2. The site extends to approximately 5ha in size, is located immediately north of Jepps Lane, to the north east and outside of the local plan defined settlement boundary.
- 2.3. The site is currently agricultural land and comprises a single field. The site is broadly flat with a gradual fall from south to north. There are no existing buildings on site. There are several existing mature trees and hawthorn hedgerow which form the boundaries, in part, to each side of the site. Most of the trees within the site are subject to a tree preservation order (though they will not be impacted by the proposal). The site is substantially enclosed by existing housing and hedges.
- 2.4. Built form surrounds the site to the north, south and west. Directly to the north is the farmstead, known as Hoole Fold, two residential properties and a track, which is also a Public Right of Way (PROW) (6-3-FP 1). The site adjoins the existing settlement boundary of Barton to the west and south. The western boundary is formed by existing fences to the rear gardens of the properties at Long Croft, St Lawrence's Avenue, South Grove and Green Drive. Jepps Lane runs to the south of the site. Beyond Jepps Lane are properties at Jepps Avenue, Holmeswood Crescent and Forest Grove.
- 2.5. Within the wider area, the village of Barton extends south from the site, following the north-south alignment of the A6, with most of the development located to the east of the A6, on the same side as the appeal site. The village has grown along this road corridor, along with further developments generally along east-west roads feeding from the A6 corridor.

- 2.6. The M6 runs north-south approximately 800m to the east of the site. The west coast mainline railway also runs north to south approximately 250m west of the site beyond the A6. There are a number of existing amenities and services within walking distance of the site to the south, including a primary school, public house, hotel and church. To the north lies Barton Village Hall, which includes a club, sports pitches and community space. The site is also located close to the existing bus routes that operate along Garstang Road (A6) with stops located just south of its intersection with Jepps Lane. Regular bus services run throughout the day, with buses into Preston city centre taking approximately 15 minutes and Lancaster city centre in 35 minutes.
- 2.7. The proposed development would be accessed from Jepps Lane, with additional pedestrian linkages proposed to the north and north east corner of the site. The “Illustrative Framework and Landscape Plan” submitted with the application indicates that properties will be accessed from a new road layout designed with primary and secondary access arrangements with turning heads and parking facilities. Individual plots will have private or communal front and rear gardens with appropriate landscaping. Areas of open space and landscape infrastructure will be provided within the development and around the site margins linked by footpaths and cycle routes connected to the existing public footpath network. Existing vegetation will be substantially retained and enhanced with additional green infrastructure.
- 2.8. The “Illustrative Framework and Landscape Plan” also indicates large areas of open space within the proposed development, including four areas of green open space to each side of the site which as a minimum will be policy compliant, and potentially exceed the council’s requirements. A sustainable drainage system is proposed and will feed into water features to the north of the site.
- 2.9. It is proposed that the scheme will deliver 35% of the number of homes as affordable, equating to approximately 44 no. dwellings based on the upper limit of 125 proposed.

2.10. The application in question represents the resubmission of application 06/2019/0866 for a residential development of 125 no. dwellings. The recommendation for approval was accepted by the planning committee in December 2019 (following deferral in November 2019 to deal with a habitats regulation issue, which has now been resolved) and would have been approved had it been possible to resolve the associated S106 agreement. However, prior to the S106 agreement being resolved, the council shifted its position on its 5 year housing land supply and the application was taken back to planning committee in February 2020 with a revised recommendation for refusal and was subsequently refused on 6th March 2020. The application had one reason for refusal, which is comparable to the reason for refusal in the proposed scheme here.

2.11. Specifically, the November 2019 officer report to the original planning application (CD HA49) recommended the scheme for approval. In doing so the report:

- a) Identified no objections from statutory consultees;
- b) Considered there were no technical reasons for refusal;
- c) Identified breaches of CS Policy 1, Policy EN1 of the Preston Local Plan 2012-26 ("PLP"), Policy AD1(b) of the PLP;
- d) Recorded that *"The acceptability of the proposed development is therefore considered against material considerations which are discussed further within this report."*;
- e) Considered that the scheme would provide an opportunity for ecological enhancement;
- f) Accepted *"the proposal would make an important contribution to the supply of housing, providing market and affordable housing on the site, in accordance with the policy requirement"*;
- g) There was an absence of a 5 year housing land supply (HLS) and the NPPF tilted balance was engaged; and
- h) Concluded *"that there are no adverse impacts of approving the development that would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as whole"*.

- 2.12. The December 2019 officer report (CD HA50) for application 06/2019/0866 almost entirely mirrored the November report and again concluded *"there are no adverse impacts of approving the development that would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as whole."*
- 2.13. The February 2020 officer report (CD HA51) and associated update recommended refusal of application 06/2019/0866, for precisely the same reason as is noted for the appeal proposals. In so doing, the report:
- a) Acknowledged that the (now quashed) Chain House Lane Appeal Decision in South Ribble ("CHLAD") (CD HB2) had concluded that CS Policy 4 was out of date and that the council should now use the standard method for calculating housing need and against that measure the council could demonstrate a 5 year HLS;
 - b) Stated the council could now demonstrate a 5 year HLS and considered CS Policy 4 was up to date (for the purposes of Paragraph 73 of NPPF) as the housing figure exceeded the Local Housing Need figure;
 - c) Concluded that because there was a 5 year HLS *"the development plan policies which are most important for determining the application can be afforded full weight."*;
 - d) Considered that the scheme would provide an opportunity for ecological enhancement;
 - e) Considered the benefits of the scheme to be *"generic and no more than would be expected from any major housing development, and as such they attract limited positive weight"*; and
 - f) Concluded "the planning application conflicts with the council's up-to-date development plan, in such circumstances permission should not be granted."

2.14. Finally, the December 2020 officer report and the associated updates, which consider the scheme subject of this appeal, recommended refusal, as per the single reason noted on the decision. In doing so the report:

- a) Identified no objections from statutory consultees;
- b) Considered there were no technical reasons for refusal;
- c) Identified breaches of CS Policy 1 and Policy EN1 PLP;
- d) Recorded that *"The acceptability of the proposed development is therefore considered against material considerations which are discussed further within this report."*;
- e) Considered that the scheme would provide an opportunity for ecological enhancement;
- f) Identified CS Policy 1, CS Policy 4 and Policy EN1 PLP as the most important policies for determining the application;
- g) Identified CS Policy 4 to be out of date;
- h) Asserted that the council could demonstrate a 5 year HLS;
- i) Considered CS Policy 1 and Policy EN1 of the PLP to be up to date;
- j) Determined the 'tilted balance' was not engaged;
- k) When considering the benefits of the scheme stated *"the majority of these benefits are generic and no more than would be expected from any major housing development, and as such they attract limited positive weight in the balance against the conflict with the development plan."*;
- l) Altered the previous treatment of contribution to housing supply: *"The Council has drawn different conclusions now to the previous occasion it engaged the tilted balance on the same site in December 2019, because the overriding need to boost significantly the supply of housing no longer carries significant weight in the tilted balance like it did in December 2019, and is of the view that if all the most important policies for determining this application could be out of date and the tilted balance could be engaged, the planning application should still be refused."*;

- m) Considered both the 'tilted' and 'flat' balance and concluded that the application should be refused.

/3 RELEVANT PLANNING POLICY

3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

3.2 The Development Plan for the site comprises of:

- Central Lancashire Core Strategy (2012) (CS) (CD HA1)
- Preston Local Plan 2012-2026 (2015) (PLP) (CD HA2-4)
- Joint Lancashire Minerals and Waste Core Strategy and site allocations (2009 / 2013) (not of relevance to this appeal)

3.3 The latest officer report (Appendix A) identifies the following policies as relevant to the application:

Central Lancashire Core Strategy

- Policy 1: Locating Growth
- Policy 2: Infrastructure
- Policy 3: Travel
- Policy 4: Housing Delivery
- Policy 5: Housing Density
- Policy 7: Affordable Housing and Special Needs Housing
- Policy 14: Education
- Policy 16: Heritage Assets
- Policy 17: Design of New Buildings
- Policy 21: Landscape Character Areas
- Policy 22: Biodiversity and Geodiversity
- Policy 27: Sustainable Resources and New Developments
- Policy 29: Water Management
- Policy 31: Agricultural Land

Preston Local Plan 2012-2026 (Site Allocations & Development Management Policies)

- Policy HS1: Allocation of Housing Sites
- Policy HS3: Green Infrastructure in New Housing Developments
- Policy ST1: Parking Standards
- Policy ST2: General Transport Considerations
- Policy EN1: Development in the Open Countryside
- Policy EN7: Land Quality
- Policy EN8: Development and Heritage Assets
- Policy EN9: Design of New Development
- Policy EN10: Biodiversity and Nature Conservation
- Policy EN11: Species Protection

3.4 The decision notice directly refers to the following policies within the reason for refusal:

Core Strategy Policy 1: Locating Growth

3.5 This policy sets a hierarchy for development sites across the plan area. Part (f) of the policy relates to smaller villages, substantially built-up frontages and Major Developed Sites. Within these areas the policy states that development will “*typically be small scale and limited to appropriate infilling, conversion of buildings and proposals to meet local need unless there are exceptional reasons for larger scale redevelopment schemes.*”.

Local Plan Policy EN1: Development in the Open Countryside

3.6 This policy relates to land designated as ‘Open Countryside’, as is the case for the appeal site. The policy indicates that development in such areas other than that permissible under policies HS4 and HS5 will be limited to:

- a) "that needed for purposes of agriculture or forestry or other uses appropriate to a rural area including uses which help to diversify the rural economy;*
- b) the re use or re habitation of existing buildings;*
- c) infilling within groups of buildings in smaller rural settlements."*

/4 OTHER MATERIAL CONSIDERATIONS

National Planning Policy Framework (NPPF)

- 4.1 The NPPF is an important material consideration in the determination of this appeal. The appellant will present evidence to demonstrate that the appeal proposal responds to the national policy aspirations to boost significantly the supply of both market and affordable housing and represents sustainable development as defined within the NPPF.

Sustainable Development

Economic role

- 4.2 Evidence will be presented to demonstrate the positive economic impacts of the appeal proposal. Delivery of new market and affordable homes now in Preston City, including within Barton is a key contributor to ensuring that economic growth is sustained.

Social role

- 4.3 Evidence will show that the appeal proposals will contribute to the delivery of new homes of the right type and mix, at the right place and at the right time to meet market and affordable housing need and can support the City Council growth aspirations, as well as the needs of existing and prospective residents.
- 4.4 Evidence has shown the site to be in an accessible location close to key services and facilities, and the development of more homes will further support the social and cultural wellbeing of Barton and the wider area.

Environmental role

- 4.5 It is acknowledged that the appeal proposals have no unacceptable adverse effects on environmental considerations and that the proposals offer the opportunity for ecological enhancement, so delivering a net gain to biodiversity.

Decision Taking

4.6 NPPF 11c and 11d set out what the presumption in favour of sustainable development means for decision-taking. In relation to decision marking, NPPF 213 states that due weight should be given to existing policies according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater weight that may be given). In this respect NPPF 170 is particular pertinent in considering the restrictive nature of PLP EN1.

Delivering a sufficient supply of homes

4.7 NPPF 59 restates the Government's objective of significantly boosting the supply of homes, whilst NPPF 73 requires that the LPA maintain a supply of deliverable sites sufficient to provide a minimum of five years' worth of housing.

Preston and South Ribble City Deal (CD HA15)

4.8 The Preston, South Ribble and Lancashire City Deal was signed between the three main councils serving the Preston/South Ribble urban area and the Government in September 2013. Under the deal the councils provided a commitment to facilitating delivery of 17,420 new homes between 1st April 2014 and 31st March 2024, against funding of infrastructure from government, including funding for roads which have direct benefit to existing and future residents in Barton (Broughton bypass).

4.9 Currently there remains a significant shortfall in the number of dwellings that would have been expected to have been completed at this stage in the deal programme. Evidence will be advanced to identify the level of shortfall and that this alongside the overarching intentions of the City Deal are material considerations of some significance.

Five Year Housing Land Supply

4.10 The supply of available and deliverable sites for housing in Preston is a material consideration in the determination of residential applications.

4.11 NPPF 73 states that:

local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old². The supply of specific deliverable sites should in addition include a buffer (moved forward from later in the plan period) of:

- a) 5% to ensure choice and competition in the market for land;*
- b) 10% where the local planning authority wishes to demonstrate a five year supply of deliverable sites through an annual position statement or recently adopted plan, to account for any fluctuations in the market during that year; or*
- c) 20% where there has been significant under delivery of housing over the previous three years, to improve the prospect of achieving the planned supply³.*

4.12 It is acknowledged that Preston's strategic policies are more than five years old as the Core Strategy was adopted in 2012. It is however now acknowledged that the 2017 Joint Memorandum of Understanding (CD HA18) represents a review for the purposes of NPPF 73. It will therefore be evidenced that the correct measure of housing requirement remains that set out in Core Strategy Policy 4 until such time as it is further reviewed through a local plan process.

4.13 Depending upon the position being adopted by the council at the time of the Inquiry (and up to that point), the appellant reserves the right to challenge the identified 5 year housing land supply. Where possible these matters will be agreed through the Statement of Common Ground.

² Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance.

³ From November 2018, this will be measured against the Housing Delivery Test, where this indicates that delivery was below 85% of the housing requirement.

Other Material Considerations

Legal and planning decisions

- 4.14 The appellant may refer to other legal decisions, appeal decisions and council decisions which are considered to be of relevance to the appeal proceedings. Where possible these will be agreed with the council and provided as core documents.

Barton Village Neighbourhood Plan (pre-submission) (CD HA48)

- 4.15 At this point there is no stated timescale for the examination of the Barton Village Neighbourhood Plan and as a result it should only be afforded the most limited weight.

Emerging Central Lancashire Local Plan

- 4.16 The three Central Lancashire Authorities are currently undertaking a review of the development plan(s) for the area and are working towards the preparation of a Joint Local Plan for Central Lancashire. This will be a single planning document containing the council's vision and objectives. This is at a very early stage of production with the stage 1 consultation on Issues & Options (I&O19) having closed in February 2020 (CD HA13). The stage 2 Preferred Options is expected to be published for consultation in summer 2021. The submission to the Planning Inspectorate for examination is not expected until March 2023, with its adoption anticipated in November / December 2023. This review is too early in its production to be given any weight.

/5 **RESPONSE TO THE REASON FOR REFUSAL**

5.1 The sole reason for refusal states

The application site is located in the open countryside as shown on the policies map of the Preston Local Plan 2012-2026 (Site Allocations and Development Management Policies). The proposed development would be contrary to the hierarchy of locations for focussing growth and investment at urban, brownfield and allocated sites, within key service centres and other defined places. It fails to accord with the management of growth and investment set out in Policy 1 of the Central Lancashire Core Strategy and consequently it would lead to the unplanned expansion of a rural village. Furthermore the proposed development is not the type of development deemed permissible in the open countryside under Policy EN1 of the Preston Local Plan 2012-2026 (Site Allocations and Development Management Policies), hence the loss of open countryside for the development proposed is contrary to that policy. The proposed development is contrary to Policy 1 of the Central Lancashire Core Strategy and Policy EN1 of the Preston Local Plan 2012- 26 (Site Allocations and Development Management Policies).

5.2 It is acknowledged that the appeal proposals conflict with CS Policy 1 and PLP EN1 in that the site is located outside of a defined settlement boundary in the Open Countryside.

5.3 However, evidence will be advanced which will demonstrate that these policies should be afforded reduced weight by virtue of being out of date, either on their face due to datedness and inconsistency with NPPF or by virtue of the council's inability to demonstrate a five-year housing land supply or both.

- 5.4 It is noted that no other indication of harm is identified in the reason for refusal and that the harm identified is one of pure policy conflict and harm through conflict with the development plan.

/6 THE PLANNING BALANCE

- 6.1 It is acknowledged that the appeal proposals conflict with two specific development plan policies, as indicated in the decision notice. It is however the appellant's contention that these same policies are out of date.
- 6.2 Further, the appellant contends that the relevant basket⁴ of most important policies are out of date and the council have failed to demonstrate a five-year housing land supply. In either or both scenarios the tilted balance set out at NPPF Paragraph 11(d) is engaged.
- 6.3 It will be demonstrated that the appeal proposals would provide for appropriate and sustainable development, the adverse impacts of which would be limited to policy conflicts alone and which by any measure would not significantly and demonstrably outweigh the benefits. The appeal proposals would result in no land use harm.
- 6.4 In this respect the development proposals would result in several key benefits which are deemed relevant to the determination of the application, namely: -
- Provision of high-quality new homes which can be provided in a manner which would round-off and consolidate the settlement of Barton, avoiding any landscape or other visual harm.
 - 35% affordable homes which will make a valuable contribution the provision of affordable homes in the council area.
 - Ecological enhancements which will result in biodiversity net gain on completion of the development.
 - Open space proposals which will likely achieve a level and quality which exceed minimum requirements.

⁴ **Wavendon Properties Ltd and SoS for Housing Communities and Local Government and Milton Keynes Council [2019] EWHC 1534 Admin (CD HC2).**

- In addition the scheme will contribute to the local economy, through direct and indirect employment, and will also help to secure other economic, social and environmental benefits, which invariably arise from the development of new market and affordable homes in an area which needs additional homes.
- 6.5 It is accepted and confirmed through statutory responses where appropriate, that all relevant technical matters, such as landscape, ecology, highways, drainage, noise, odour, heritage, and archaeology create no harmful impacts, or such impacts are capable of being controlled by an appropriately worded planning conditions and planning obligations. Indeed, this was and appears to remain the position of the council in its determination of the application and those earlier versions of the same.
- 6.6 It will be strongly contended that where the **tilted balance** is engaged, the benefits of the proposed development clearly and convincingly outweigh any identified harms. This is a proposition previously accepted by the council in recommending the original application for approval. The corollary of this is that the presumption in favour of sustainable development should prevail and the appeal should be allowed, and planning permission granted.
- 6.7 Similarly, even in the **flat balance** scenario, i.e., where the tilted balance is not engaged, it will be contended that the balance remains in favour of the proposed development. It will be contended that even where increased or even full weight would be afforded to the relevant policies, the lack of any other technical harm allied with the range of other material considerations which weigh in favour of the proposed development are such as to indicate that the determination should be made other than in accordance with the development plan.
- 6.8 Accordingly the appellant will invite the inspector to conclude that the appeal should be allowed and outline planning permission granted for the proposed development.

/7 CONDITIONS & LEGAL AGREEMENT

7.1 Government advice on the imposition of conditions in planning permissions is to be found in NPPF Paragraph 206 and expanded upon in PPG: Use of Planning Conditions. The guidance states that conditions should only be imposed where they are:

- Necessary.
- Relevant to planning.
- Relevant to the development to be permitted.
- Enforceable.
- Precise.
- Reasonable in all other respects.

7.2 The application was previously approved by planning committee in January 2019 subject to resolving a S106 agreement. The Officer's Report to that committee meeting including a set of planning conditions, which the appellant accepts subject to suitable trigger points being included, i.e., avoidance of pre-commencement conditions wherever possible.

7.3 A full list of updated conditions will be agreed with the council where possible and included in the Statement of Common Ground.

7.4 A legal agreement to deal with relevant planning contributions and other matters will be concluded and provided to the Inspector at the earliest opportunity and well in advance of the inquiry.

/8 JUSTIFICATION FOR PUBLIC INQUIRY

8.1 With reference to Annexe K of The Procedural Guide : Planning Appeals – England (March 2021), the appellant has made a request that the procedure to determine the appeal is a public inquiry. The reasons for this request are as follows:

Need for evidence to be tested through formal questioning by an advocate

8.2 The matters in relation to planning policy are contested between the council and the appellant. The effect of other recent decisions and case law in relation to the interpretation of national policy means detailed legal submissions will be necessary.

Complexity of Issues

8.3 There are very likely to be matters of such complexity that cross examination of witnesses is the only suitable method by which the Inspector could ensure that the matters are properly understood.

8.4 Such matters will include the datedness of policies, weight to be afforded to policies and whether in fact the tilted balance is engaged and if so by what means. It is also possible that the five year housing supply may be at issue at the time of the Inquiry.

Substantial Local Interest

8.5 There was significant local public interest in the application, this will likely continue throughout the appeal process.

Length of Inquiry

8.6 It considered that around 4 days will be required to complete the inquiry, and this may be extended further in the event that there is detailed debate about five year supply. Again taking account of the guidance, this suggests that a public inquiry is necessary.

Other Matters

- 8.7 Similar appeals raising similar issues were dealt with by way of Public Inquiry, e.g. Cardwells Farm, Barton (APP/325889) (CD HB3) and Goosnargh conjoined inquiries (APP/3267524). Given that this appeal raises very similar issues and is of a similar scale in a similar location, there would be no logical reason to depart from the view that a public inquiry is warranted.

Summary

- 8.8 For the above reasons, the appellant considers a public inquiry is the only appropriate procedure in this case.



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