



## Appeal Decision

Inquiry Held on 13-16; 19-23; 26-30 April & 17 & 18 May 2021

Site visit made on 6 May 2021

**by S R G Baird BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 3<sup>rd</sup> February 2022**

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**Appeal Ref: APP/N2345/W/20/3257357**

**Land to the North of Old Rib Farmhouse, 55 Halfpenny Lane, Longridge, Lancashire PR3 2EA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by the Community Gateway Association against the decision of Preston City Council.
  - The application Ref 06/2019/0050, dated 11 January 2019, was refused by notice dated 7 February 2020.
  - The development proposed is the erection of 50 dwellings and associated works.
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### Preliminary Matters

1. The application was submitted in outline with all matters other than access reserved for the erection of 50 dwellings. The refusal notice, the appeal form and the appellant's evidence refer to the erection of 45 dwellings. The application was accompanied by an illustrative Development Framework Plan (Masterplan). Other than showing the point of access to the highway, no detail was submitted. Having regard to The Town and Country Planning (Development Management Procedure) Order 2015 and the adjusted number of dwellings, this appeal is determined based on a refusal to grant outline planning permission with all matters reserved for the erection of 45 dwellings.
2. A S106 Agreement was submitted providing for: affordable housing (AH), open space and financial contributions for additional Primary and Secondary School places.
3. This appeal was heard in conjunction with 6 others, 3258890, 3258894 & 3267524 - land north and south of Whittingham Lane, 3258896 and 3258898 - land at Swainson Farm and 3258912 - land at Bushells Farm, Goosnargh. These appeals are the subject of separate decisions.
4. In July 2021, a revised National Planning Policy Framework (Framework) was issued. Although paragraph numbers changed, the revisions were not material and the parties were not asked for comment. Two further matters arose, which were material and comment was sought. These were, an appeal decision in relation to residential development on land to the south of Chain House Lane, Preston issued on the 24 June 2021, and an updated Housing Land Position Statement (HLPS) as of 31 March 2021. Briefly, the HLPS concludes that based on the development plan housing requirement, the Ipa can show a 15.3-year supply of housing land or, based on local housing need (LHN) based on the Standard Method (SM) there would be a 6.1-year supply. Responses have been taken into consideration.

## Decision

5. The appeal is dismissed.

## Main Issues

6. These are:
- (1) the implications for the living conditions of prospective residents with reference to odour;
  - (2) whether the proposal conflicts with the development plan;
  - (3) whether the development plan policies most important for determining these appeals are out-of-date, with reference to (a) whether the lpa can show a 5-year supply of deliverable housing sites and (b) consistency with the National Planning Policy Framework (Framework); and
  - (4) whether the conclusions on matters 2a and 2b or any other material consideration would justify allowing the appeals.

## Reasons

### Development Plan and Most Important Policies

7. The development plan includes the *Central Lancashire Adopted Core Strategy July 2012* prepared as a joint Core Strategy (JCS) for the authorities of Preston, South Ribble and Chorley and the *Preston Local Plan 2012-26* (LP) adopted in July 2015.
8. Of the various JCS and LP policies listed as being relevant, JCS Policy 1 – Locating Growth, JCS Policy 4 – Housing Delivery, JCS Policy 17 – Design of New Buildings and LP Policy EN1 – Development in the Open Countryside are agreed to be the most important policies for determining this appeal.

### Issue 1

9. Criterion (d) of JCS Policy 17 seeks to ensure that the living conditions of the prospective occupiers of new development will not be adversely affected by activities carried out by neighbouring uses. This objective is consistent with Framework paragraph 187, which says that decisions should ensure that new development can be integrated effectively with existing businesses, which should not have unreasonable restrictions placed on them because of development permitted after they were established. Where the operation of an existing business could have a significant adverse effect on new development, the “agent of change” should be required to provide suitable mitigation.
10. The site immediately adjoins Belmont Farm (BF) a family-run indoor and outdoor pig rearing business supplying the catering industry, local butchers, and hog roast operations. BF currently operates with one building, but has planning permission for 3 more, all of which are in various stages of construction. Two are specifically designed for pig rearing and the third, although designed for calf/beef rearing, could, with simple modification, be used for pig rearing. It is BF's intention to use all the buildings for pig rearing. During the summer months pigs are reared outdoors in a field, extending to some 6969 sq. m.

11. BF operates on a mixed system, where, boars, dry/farrowing sows, weaners and finishing pigs are housed together. The building is partitioned to accommodate the needs of the pigs at various stages of their life. The site plan submitted for the calf/beef rearing building shows that at least 2 of the other buildings would be used for separate stages of the rearing process. Current plans are to continue to use all the buildings on the combined system. A final decision on whether to continue with the combined system or change to a separate stocking regime would be made when the buildings are ready for use.
12. BF indicated that, during 2019 there were, at any one time, around 1000 pigs within the building. During 2020, when the market, particularly the catering and hog roast sectors, was affected by the pandemic, stocking levels were in the region of 800 to 900 pigs. BF indicates that the market sectors it serves are beginning to recover. I have no reason to doubt these figures.
13. Given the permitted buildings are in various stages of construction, this suggests that BF's intention to grow is being realised, albeit slowly. The increase in the scale of the operation from one building to 4 would be significant step change in the business. However, other than assertions made, albeit by a farm management consultant with experience of pig farming, but who has not been onto BF or is aware of its assets or liabilities, the appellant has little knowledge of the capability BF to develop the business along the lines anticipated. The combined system, whilst it may not be widely practised on industrial scale pig farms, seems to work for BF, who operate the holding to a high standard. The existing building is modern, clean, and logically subdivided with spacious pens. The animals appear healthy, well cared for and content. How the owners of BF run their business and what level of return on their investment they are happy with is a matter for them.
14. The appropriateness of using the 98<sup>th</sup> percentile odour impact standard of 3 ou<sub>E</sub>/m<sup>3</sup> as the threshold between acceptable and unacceptable levels of odour exposure in a residential area; Atmospheric Dispersion Modelling Software and site-specific Numerical Weather Prediction (NWP) meteorological data is agreed. The appellant provided a veritable blizzard of impact scenarios, with those preferred based on stocking levels using RSPCA welfare standards and stocking advice from its farm management consultant. That said, many of the scenarios are based on meteorological data from Manchester Airport, which, given the above agreement, are no longer relevant.
15. The appellant recommends Model Scenario 16R<sup>1</sup> based on a RSPCA maximum number of 966 indoor pigs, with pig types inside assigned buildings over the meteorological years 2014 to 2018. Based on this scenario, some 66% of the site would fall below the 3 ou<sub>E</sub>/m<sup>3</sup> threshold and potentially be suitable for the scale of residential development proposed.
16. The appellant's scenarios need to be viewed with considerable caution. Despite BF indicating that material numbers of pigs have been kept outdoors and the intention is to continue the practice of combined stocking, the appellant's preferred scenario excludes outdoor pigs. I heard nothing that would suggest that continuing to rear outdoors was unrealistic.
17. Relying on stocking levels based on RSPCA welfare standards ignores the fact that compliance is voluntary, and BF has no intention of operating, and more

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<sup>1</sup> Appendix A - Rebuttal Proof of Ms Horan.

importantly cannot operate, to RSPCA standards. The RSPCA standard requires solid floors, whereas the existing building has, and the new buildings will have, slatted floors. Moreover, there is no indication that the markets that BF serve require or are likely to require BF to operate a standard of welfare beyond that required by DEFRA and EU Directive 2008/120/EC. In addition, the appellant's total stock figure of 966 pigs is spread over 4 buildings, whereas BF has indicated that it has operated with more than that in one building. Whilst managing 4 buildings would be a significant step change, I heard or saw nothing to lead me to the view that BF could not carry out an operation with materially higher stock numbers.

18. The lpa's case is based on 6 scenarios. Scenarios 1 to 3 are based on, a modified version of BF's stocking regime, with 1000 pigs per building and no outdoor pigs (Scenario 1) and 1000 pigs and either 400 (Scenario 2) or 750 (Scenario 3) outdoor pigs. In all these scenarios, the whole of the site would be subject to odour levels above the  $3 \text{ ou}_E/\text{m}^3$  threshold. I recognise that the increase in the scale of the operation would be a significant step change in the business. Whilst that is BF's stated intention, and it is not impossible, it would be prudent to test the potential impact of lower stock levels.
19. The lpa's final 3 scenarios are based on an ADAS stocking regime of 513 pigs of different ages in each building using the DEFRA/EU space standards (ADAS Scenario 1) and either 400 (ADAS Scenario 2) or 535 (ADAS Scenario 3) outdoor pigs. The appellant acknowledges that 513 pigs per building and up to 535 outdoor pigs is not an unrealistic scenario. On this basis, given the inappropriateness of using stock levels based on the RSPCA space standards and no outdoor pigs, the ADAS Scenarios 2 and 3 are, in my view, a reasonable basis to assess the impact of BF on the appeal site.
20. Based on ADAS Scenario 2, only a tiny part of the site in the south-west corner would fall below the agreed  $3 \text{ ou}_E/\text{m}^3$  threshold for acceptability and based on ADAS Scenario 3 no part of the site would fall below the agreed threshold. If I am wrong to include an allowance for outdoor pigs, both the appellant's Scenario 15R and the ADAS Scenario 1, which model circa 2000 indoor pigs show that only a small area in the south-west corner of the site would fall below the  $3 \text{ ou}_E/\text{m}^3$  threshold. That said, this area would be incapable of accommodating anywhere near the scale of development proposed. Looking to the requirements of Framework paragraph 187, mitigation measures are, generally, best placed to be the most effective at the source of the concern. Other than a passing reference to potential mitigation measures, no specific proposals were made or had their efficacy tested.
21. The agreed position that the planning system should proceed on the basis that other statutory regimes will work. Thus, if BF expanded even on the restricted ADAS Scenario 3, the degree of odour experienced by existing residents on Inglewhite Road and Halfpenny Lane could result in BF being subjected to nuisance proceedings by the lpa or through a private action. This could result in the issue of an abatement notice.
22. In an appeal against such a notice, the fact that BF has planning permission to expand would not be a defence. Whilst planning permission does not authorise BF to act in a way that creates a nuisance, the appellant acknowledges that the odour threshold for a statutory nuisance to exist is higher than that for assessing an impact on living conditions as part of a planning application.

Moreover, BF's defence could proceed based on (a) there was no statutory nuisance or (b) that Best Practicable Means (BPM) were being employed to prevent or counteract the effects of odour.

23. It is acknowledged that if BPM were employed, as opposed to all possible means, then even if there was a nuisance the action would fail. In the above circumstances, to develop a site that would be vulnerable to nuisance because extant development might also be affected would be at odds with the objective of Framework paragraph 187, which seeks to avoid conflict arising in the first place.
24. Drawing the above together, prospective residents would be subject to unacceptable levels of odour contrary to the objectives of JCS Policy 17.

## Issue 2

25. The appeal site is located close to the eastern boundary of the JCS area and the administrative boundary between Preston and Ribble Valley Borough Council (RVBC). JCS Policy 1 seeks to concentrate growth and investment in a hierarchy of 6 broad locations starting with: (a) the Preston/South Ribble Urban Area; (b) Key Service Centres (KSC); (c) Strategic Sites; (d) Urban Local Service Centres; (e) Rural Local Service Centres and finally (f) Other Places. This is a spatial strategy that seeks to direct development to more sustainable higher order centres and minimise development at the lower order centres, whilst recognising that some greenfield development will be required on the fringes of the main urban areas.
26. Although Longridge is located within the administrative boundary of RVBC and is not a JCS partner, JCS Policy 1 (b) (iii) refers to Longridge as a KSC, where *"...land within Central Lancashire may be required to support the development of this Key Service Centre in Ribble Valley"*. LP Policy HS1.14 allocates some 19.6ha of land north and south of Whittingham Road and contiguous with the administrative boundary for some 488 dwellings. Albeit some of this land had the benefit of planning permission for residential development, the LP allocation increased the number of dwellings from 90 to 488. The LP Inspector's report noted that the additional allocation would satisfy concerns raised by RVBC and help reduce development pressure.
27. One area of dispute is whether the proposal should be tested against JCS Policy 1 (b) (iii) as a KSC or JCS 1 (f) – Other Places. However, it is unnecessary for me to adjudicate on this, given the parties agreement that the proposal does not accord with either of the provisions. As to JCS Policy 1 (b) (iii), whilst the allocation via LP Policy HS1.14 was designed to support the development of Longridge at that time, that is not a bar to further development that might be required. That said, the appellant accepts that no evidence is produced to show, as the policy requires, that the proposal is, *"...required to support the development of this Key Service Centre..."*. Similarly, whilst the Planning Committee report acknowledges, *"... the site is small scale compared to Longridge..."* the proposal fails to accord with the remaining criteria within JCS Policy 1(f). The proposal conflicts with JCS Policy 1.
28. JCS Policy 4 – Housing Delivery is a statement of the minimum annual requirement the JCS seeks to achieve.



29. For the reasons set out at paragraphs 9 to 23 above, the proposal would not accord with JCS Policy 17 criterion (d).
30. The site is in open countryside and LP Policy EN1 says that development, other than for specific categories, will not be permitted. The appellant accepts that this proposal does not accord with LP Policy EN1.
31. Drawing the above together, the proposal does not accord with the most important policies of the development plan. Accordingly, there is conflict with the development plan when read as a whole.

### Issue 3

#### Housing Land Supply

32. A 5-year housing land supply (HLS) has 2 elements, the requirement, and the supply. At the close of the inquiry, whilst the supply was agreed, the requirement and how to calculate it was not. The appellant's position is that the JCS Policy 4 requirement should be used, which then showed a 4.95-year supply. The lpa says that the requirement should be based on Local Housing Need (LHN) calculated by using the Standard Method (SM), which then showed a 13.6-year supply. The updated HLPS using the JCS Policy 4 requirement shows a 15.3-year supply of housing land or, based on LHN shows a 6.1-year supply.
33. Framework Paragraph 74 requires the lpa to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 5-years' worth of housing against the housing requirement set out in adopted strategic policies, or against LHN where the strategic policies are more than 5 years old. Adopted in 2012, the plan is more than 5 years old and as such Footnote 39 applies. This says, *"...unless these strategic policies have been reviewed and found not to require updating"*. Paragraph 005 of the Housing Supply and Delivery chapter of Planning Practice Guidance<sup>2</sup> (PPG) reiterates that position adding *"...or the strategic housing policies have been reviewed within the last 5 years and found not to need updating"*. Where strategic policies are more than 5 years old or have been reviewed and found in need of updating, LHN calculated using the SM should be used in place of the strategic requirement.
34. Demonstrating a 5-year HLS is a key feature of national planning policy and the application of Framework paragraph 11 (d) in decision-making. Commonly referred to as the "tilted balance", paragraph 11 (d) says that where the most important policies for deciding a proposal are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole. Framework Footnote 8 confirms that where a lpa cannot show a 5-year HLS, the most important policies will be considered out-of-date.
35. JCS Policy 4 lists the minimum housing requirement for Preston as 507 dwellings per annum (dpa). The balance of the policy deals with delivery performance and ensuring a continuous forward looking 5-year supply in line with the spatial strategy.
36. In 2017, the JCS authorities, informed by a Strategic Housing Market Assessment, agreed a Joint Memorandum of Understanding and Statement of

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<sup>2</sup> Housing Supply & Delivery, Paragraph 005 Reference ID: 68-005-20190722.

Co-operation relating to the Provision of Housing Land (MOU 1). The purpose of MOU1 was to confirm an agreed approach to the distribution of housing prior to the adoption of a new plan. MOU1 set out that, (a) the JCS Policy 4 housing requirement did not need to be updated and should continue to be used until a replacement plan was adopted and (b) the MOU was to be reviewed no less than every 3 years and when new evidence renders it out-of-date.

37. Up until early 2020, to underpin decisions on housing applications, the lpa used the JCS Policy 4 requirement. On this basis a 5-year HLS could not be shown and JCS Policies 1 and 4 were considered out-of-date and the tilted balance was engaged. The lpa's approach changed following a December 2019 appeal decision<sup>3</sup> in South Ribble. There, the Inspector concluded that, (a) MOU1 was not a review for the purposes of the Framework and (b) the introduction of the SM to calculate LHN was a significant change which, justified its use to determine the housing requirement. Following this appeal decision, the lpa reconsidered the appellant's proposals and concluded that, (a) using the SM, a 5-year HLS existed, (b) the tilted balance was not engaged, and (c) there was conflict with an up-to-date development plan.
38. The above appeal decision was subject to a High Court Challenge and a judgement<sup>4</sup> by Mr Justice Dove (MJD) in August 2020. The judgement identified that, (a) the Inspector's reasoning that MOU1 was not a Review for the purposes of the Framework was inadequate and (b) a conclusion as to whether there had been a significant change following the introduction of the SM was a planning judgement reasonably open to her, albeit with the rider that *"...other conclusions might reasonably be reached by other Inspectors"*. Although they came to different conclusions on how to determine the requirement figure, this is, in my view, what the Inspectors in the Cardwell Farm<sup>5</sup> and the redetermined land South of Chain Lane appeal decisions did based on the evidence before them.
39. The parties agree that MOU1 is a Framework paragraph 74/Footnote 39 review. The appellant submits that neither Framework paragraph 74, Footnote 39, nor Planning Practice Guidance<sup>6</sup> (PPG) advice on what housing requirement should be used to calculate the supply, refer to significant change. Thus, having been reviewed in the last 5 years, the JCS Policy 4 requirement should be used until a new plan has been adopted. Simply put, the lpa's case is that the introduction of the SM and the implications for the housing requirement is a significant change. On this basis, it is appropriate to apply LHN to calculate the housing requirement for Preston.
40. The Cardwell Farm Inspector applied the JCS Policy 4 requirement, albeit at paragraph 33 of the decision letter (DL) said there may be a justification to revert to LHN but that a decision to depart from the outcome of a Framework paragraph 74/Footnote 39 review would need to be supported by a robust process. At DL 41, he concluded that Preston's decision to withdraw from a revised MOU<sup>7</sup> and revert to using LHN did not constitute a Framework Review. The Inspector in the redetermined land south of Chain House Lane decision concluded that it was appropriate to calculate the housing requirement against

<sup>3</sup> APP/F2360/W/19/3234070 – Land to the South of Chain House Lane, Whitestake, Preston.

<sup>4</sup> Wainhomes (North-West) Limited & Secretary of State for Housing Communities & Local Government & South Ribble Borough Council [2020] EWHC 2294 (Admin).

<sup>5</sup> APP/N2345/W/20/3258889.

<sup>6</sup> Reference ID 68-005-20190722.

<sup>7</sup> MOU adopted in April 2020.

LHN using the SM. This conclusion was based on the difference between the LHN figure and JCS Policy 4 amounting to a significant change in circumstances. Both decisions are currently the subject of challenges.

41. The appellant's approach treats sections of the Framework and PPG as silos to be applied in isolation. However, Framework, paragraph 3, reminds the decision-maker that, "*...the Framework should be read as a whole...*". To my mind, that approach must also apply to PPG.
42. Framework paragraph 74 and PPG paragraph 005 do not refer to significant change. However, it strikes me that without applying a holistic approach to the Framework and PPG, MJD could not have concluded as he did at paragraph 45 of his judgement. Here, he is, "*...satisfied that the conclusion reached ... that there had been a significant change pursuant to the PPG arising from the introduction of the standard method, was a planning judgement reasonably open to her based on a correct interpretation of the PPG...*" The PPG advice he refers to is that in the Plan-Making chapter. Moreover, PPG paragraph 062<sup>8</sup> notes, "*Where a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below*". This appears to me to be a clear reference back to PPG paragraph 005<sup>9</sup>. Thus, taking the Framework and PPG in the round, it is open to me to consider whether JCS Policy 4 is out-of-date based on whether circumstances have changed significantly.
43. JCS Policy 4 is based on a manual redistribution of the housing requirement set out in the Regional Strategy for the North West, adopted in 2008. The methodology used was derived from the then extant Planning Policy Guidance Note 3 - Housing and demographic trends between 1998 and 2003. Whilst the age of the policy is not, on its own, indicative of it being out-of-date, the base evidence is and the methodology for calculating LHN has materially changed.
44. Whilst the above in themselves could be regarded as significant changes, what is important is the practical implication of the change. Here, using the SM to calculate LHN almost halves Preston's annual requirement. PPG<sup>10</sup> indicates that LHN will be considered to have changed significantly in a situation where the plan was adopted prior to the SM being implemented based on a number significantly below that generated by the SM. This reference is an example and not, in my view, meant to prevent the converse position being considered a significant change in circumstances.
45. Having regard to the totality of the evidence, including the decisions in the Cardwell Farm and land South of Chain House Lane cases, the difference between the housing requirement in JCS Policy 4 and that generated by the SM is a significant change that renders this policy out-of-date.
46. However, if the above analysis is wrong and the appellant's submissions regarding Framework paragraph 74 and Footnote 39 are correct, the appellant does not dispute that based on the updated HLPS there is now a deliverable 5-year HLS<sup>11</sup> irrespective of whether this is based on the requirement in JCS

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<sup>8</sup> Plan making Chapter.

<sup>9</sup> Housing Supply & Delivery Chapter.

<sup>10</sup> Plan-Making, Paragraph 062.

<sup>11</sup> See paragraph 4 above.



Policy 4 or LHN using the SM. Therefore, for reasons associated with the HLS, the tilted balance is not engaged.

#### Consistency with the Framework

47. There are other routes that can engage the tilted balance i.e., whether policies are out-of-date<sup>12</sup>. The parties agree this is a 3-stage approach. Stage 1 identify the most important policies. Stage 2 assess each of the policies applying the Framework to determine whether they are out-of-date. Stage 3 assess all the most important policies to reach a conclusion as to whether taken overall they could be concluded to be out-of-date. Before undertaking this assessment, it is necessary to look at the context of these policies.
48. It is agreed that JCS Policies 1, 4 and 17 and LP Policy EN1 are the most important policies for determining this application. Before undertaking the above 3-stage assessment, particularly in relation to JCS Policies 1 and 4 and LP EN1 it is necessary to look at the context of these policies.
49. The Framework provides the context for the JCS indicating that the purpose of the planning system is to contribute to the achievement of sustainable development through 3 overarching, economic, social, and environmental objectives. These objectives are to be delivered through the preparation and implementation of development plans and the application of Framework policies. The foreword to the JCS sets out that it was prepared and adopted in the context of the Framework to provide, single strategy for Central Lancashire.

#### JCS Policy 1

50. JCS 1 seeks to concentrate growth and investment according to a hierarchy of established settlements and strategic sites. JCS Policy 4 is out-of-date. However, like the Inspector in the land at Pear Tree Lane, Chorley decision<sup>13</sup> I agree the fact that JCS Policy 4 is out-of-date does not, on its own, mean that the spatial strategy for the location of housing is out-of-date. The JCS plan period is 2010 to 2026 and the plan-making authority is required to keep its plan(s) under review at least once every 5 years (Framework paragraph 33). This is in recognition that, amongst other things, the housing requirement might change. Thus, whilst the numbers might change that does not necessarily mean that the spatial strategy is out-of-date. This is particularly so as JCS Policy 1 is not a fully-fledged development management policy, in that it does not define settlement boundaries or limit development to sites within settlements.
51. It is submitted that if JCS Policy 1 and the spatial distribution associated with it, is not fit for purpose in one authority it would be out-of-date for all. The basis for this point is the apparent inability of Chorley to meet its LHN within the scope of JCS Policy 1. This submission is supported by reference to Chorley's contribution to the Issues and Options (I&O) Consultation Paper November 2019 for the emerging Central Lancashire Local Plan (CLLP). There, to meet the housing requirement, some 15% of the sites identified by Chorley relate to JCS Policy 1(f) sites, the bottom of the hierarchy. I cannot agree with the appellant that, proposals put forward by Chorley in the I&O paper, demonstrates that JCS Policy 1 is out-of-date. The I&O process forms the very

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<sup>12</sup> Wavendon Properties Limited and Secretary of State of Housing Communities and Local Government and Milton Keynes Council [2019] EWHC1524 (Admin).

<sup>13</sup> APP/D2320/W/20/3247136.

early stages of the replacement plan for which there are a significant number of unknowns. These relate to, amongst other things, the shape of the spatial strategy and not least the extent of the housing requirement going forward. Thus, this early stage of the process cannot be used to retrofit a conclusion that the JCS spatial strategy is out of date.

52. Having reviewed all the evidence and submissions made regarding JCS Policy 1, the key question to ask is, does this policy constrain the ability of the lpa to deliver an adequate supply of housing such that further housing sites located at the lowest order settlements are required. The lpa can show a healthy HLS of some 15-years and in this context, JCS Policy 1 cannot be seen to be constraining the delivery of housing.
53. Drawing all this together, for the purpose of determining this appeal, JCS Policy 1 is not out-of-date or inconsistent with the Framework.

#### Local Plan Policy EN1

54. The development plan is to be read as a whole and LP Policy EN1 must be read with JCS Policy 1, LP Policies AD 1 a and b – Development within Villages and LP Policies HS4 and 5 - Rural Exception Housing. In this context, LP Policy EN1 is a spatial policy designed to deliver the spatial vision of the JCS to create sustainable patterns of development and minimise the scale development at lower order locations.
55. The submission that LP Policy EN1 is inconsistent with the Framework's approach to the protection afforded to the countryside relies on reading the policy and its supporting text in isolation. This approach leads to a conclusion, albeit a flawed conclusion, that the primary purpose of this policy is to protect the character and appearance of the countryside. I have no doubt that the appellant's conclusion was, in part, boosted by a similarly flawed approach and conclusion adopted by the planning officers in the various reports to the Planning Committee. The report says that LP Policy EN1, "*... seeks to protect areas of open countryside from unacceptable development which would harm its open and rural character and limits development to...*". Moreover, this flawed understanding was carried forward at the inquiry under cross-examination during the site-specific session for the Swainson Farm cases.
56. Whilst the supporting text highlights the importance of protecting the open and rural character of the countryside, there is nothing in the policy that requires the decision-maker to undertake an assessment of the landscape and visual impact of a proposal and exercise a judgement as to the influence a development would have on the openness and/or rural character of an area. This is the approach that the Inspector in the Cardwell Farm decision took, where although LP Policy EN1 was referred to as a relevant policy, it did not feature in his assessment of the effect on character and appearance. Rather, when dealing with character and appearance, his consideration was limited to testing the proposal against JCS Policy 21. Indeed, there is as, far as I can see, no LP policy that deals with landscape and visual impact. These matters are covered by JCS Policies 13 and 21. Whilst it is axiomatic that a restriction on built development in the open countryside would protect openness and character, it is not, in my view, the purpose of LP Policy EN1. The purpose of the policy is to support the spatial strategy of the JCS in directing development to more sustainable higher order centres.

57. Again, a key question is, does this policy in combination with JCS Policy 1 constrain the ability of the lpa to deliver an adequate supply of housing. Given the lpa can demonstrate a healthy HLS of some 15-years, LP Policy EN1 in combination with JCS Policy 1 cannot be seen to be constraining the delivery of housing. On this basis, LP Policy EN1 is neither inconsistent with the Framework nor is it out-of-date.

#### JCS Policy 17

58. Criterion (d) of JCS Policy 17 seeks to ensure that the living conditions of the prospective occupiers of new development will not be adversely affected by activities carried out by neighbouring uses. This objective is consistent with Framework paragraph 187, which says that decisions should ensure that new development can be integrated effectively with existing businesses, which should not have unreasonable restrictions placed on them because of development permitted after they were established. JCS Policy 17 is not out-of-date.
59. Drawing all the above together, JCS Policies 1, 4 and 17 and LP Policy EN1 are the most important policies for determining this appeal. Although, JCS Policy 4 is out-of-date, JCS Policy 1 and 17 and LP EN1 are not. Therefore, taking the suite of policies in the round, the most important policies are not out-of-date, and the tilted balance is not engaged.

#### Other Considerations

60. Vehicular access to the highway would be through a vacant site with planning permission for 11 dwellings. Subject to the imposition of conditions, neither the lpa nor the highway authority object on traffic generation or highway safety grounds. I have no reason to disagree.
61. I have no reason to disagree with the lpa's conclusion that the effect on landscape character would not conflict with the objectives of JCS Policies 13 and 21.
62. The site is within the settings of Old Rib Farmhouse (Dun Cow Rib Farmhouse) a Grade 2 Listed building and north-west of Ashes Farmhouse a Grade 2\* Listed Building. In both cases, given the degree of existing screening and separation, the lpa conclude that the proposal would not have an adverse impact on the settings of these listed buildings and there would be no conflict with the objectives of JCS Policy 16 and LP Policy EN8. I have no reason to disagree.
63. The application was accompanied by a Phase 1 Habitat Survey that identified the site comprised species poor improved grassland of limited ecological value. Whilst there are no water bodies on the site, there are ponds in the wider where the Great Crested Newt was observed. A precautionary approach has been adopted with the masterplan showing the creation of 3 waterbodies. Subject to the imposition of planning conditions relating to ecological management, the lpa concluded there would be no adverse impacts on protected species or conflict with JCS Policies 18 and 22 or LP Policies EN10 and 11. I have no reason to disagree.
64. Located almost immediately to the west of what will be the built-up edge of Longridge, the lpa acknowledges that the site is in a sustainable location in terms of accessibility to services and public transport. I do not disagree.

65. Given the expectation that development should not result in material harm, the outcome on, highway safety, landscape impact, heritage, biodiversity, and locational sustainability are matters attract neutral weight in the planning balance.
66. The scheme would deliver up to 45 dwellings of which 35%, (16 units), would be provided as AH. The scale of AH proposed is consistent with the requirement of JCS Policy 7. However, the lpa submits that the weight to be attached its provision should be tempered because the scheme is market led with AH in the minority. In this context, the weight in the planning balance would be somewhere near significant. Given, the lpa accepts there is a "*...clear and pressing need for more affordable housing...*", the housing requirement is a minimum figure and the Framework objective of "*...significantly boosting the supply of homes...*" the contribution the scheme would make in terms of the supply of market and affordable homes respectively attracts substantial weight in the planning balance.
67. As to economic benefits, the party's submissions agree that these should attract moderate weight in the planning balance. I can understand why the parties are cautious, given the economic benefits are unquantified. Framework paragraphs 81 and 84 indicate that significant weight should be placed on the need to support economic growth and supporting a prosperous rural economy through, amongst other things, contributing to the retention and development of accessible local services such as local shops and public houses. In this context, the economic benefits of these schemes attract significant weight.
68. The S106 Agreement provides for financial contributions towards the provision of primary and secondary school places. However, these contributions are to mitigate the impact of the development and as such attract neutral weight.
69. The illustrative masterplan shows a material amount of open space being provided for the development in 2 areas. One area within the centre of the proposed housing and a larger area to the north and west of the proposed houses. This latter area is largely provided to avoid those areas of the site the appellant considers would be affected by odour levels above 3 ou<sub>E</sub>/m<sup>3</sup>. Whilst layout is a reserved matter, this area is physically and functionally poorly related to the houses and adds little or no value as accessible open space. As such, I attach little weight to this matter.
70. Preston along with South Ribble, Lancashire County Council and the Lancashire Enterprise Partnership are partners in the Preston, South Ribble and Lancashire City Deal with the Government as a mechanism to drive forward growth by addressing infrastructure barriers to growth.
71. The City Deal was entered into after the JCS was adopted and before the adoption of the LP. It is not part of the development plan framework; it sits alongside it. As such, the City Deal is not planning policy, it does not contain a housing requirement nor is it a spatial policy. It recognises that the JCS provides the overarching development and planning framework and highlights the proportion of new homes allocated in the Preston and South Ribble areas.
72. The provision of high-quality housing in appropriate and sustainable locations underpins economic growth. However, the City Deal highlights those inadequacies in the highway network have prevented and would continue to prevent the delivery of homes and jobs. The City Deal commits the authorities

to “grant the necessary consents, in line with planning policy and commit to ensuring the delivery of the following housing units in the City Deal Area”. This statement is followed by list of units to be delivered in the years 2014/15 to 2023/24 totalling some 17401 units<sup>14</sup>. To address the infrastructure issues to enable the full development of significant housing and commercial development schemes the City Deal commits to 4 new roads, a motorway junction, and the necessary local community infrastructure required to support the scale of development in the JCS and LP.

73. Against that background, of the 4 major road schemes, 2 are complete, the third, the Preston Western Distributor will open in 2023 and a planning application has been made for the forth, the South Ribble Western Distributor. However, the number of housing units delivered has not kept pace with the City Deal commitments. In the period 2014/2021 there has been a shortfall of some 2805 units, which by the end of the City Deal period, 2023/2024 is forecast to rise to some 5487 units. I have no reason to disagree with the appellant’s figures. The lpa acknowledges the shortfall in delivery against the City Deal and points to ongoing discussions to obtain a 5-year extension to the agreement. Thus, the commitments could be met, albeit over a longer period than envisaged in 2013. Moreover, an extension, which I have no evidence to indicate will not be approved would take the City Deal up to 2029 beyond the existing plan period and into the new plan where, the spatial strategy and housing requirement may be different.
74. Whilst the lpa acknowledge the shortfall, which on a bare reading of the figures, is substantial, the lpa submits that the commitment is, “...grant the necessary consents...”, and that the lpa is dependent on developers to make applications consistent with the spatial strategy and build them out. Whilst that is true, the lpa’s submission omits the remainder of the sentence, which goes on to say, “...and commit to ensuring delivery of the following housing units...” That is a bold commitment, which considering the lpa’s submission, is something it cannot achieve. That said, the lpa has a healthy supply of housing land, the implementation of which would contribute to the achievement of the commitments made under the City Deal.
75. Drawing the above together, the City Deal is a material consideration to be weighed in the planning balance. The lpa in a Planning Committee report<sup>15</sup>, on an application for a significant number of houses on the rural fringe of Preston (Bartle) concluded there was a 13.6-year HLS and the proposal conflicted with JCS Policy 1 and LP Policy EN1. However, the report notes that the proposal, “...would support... the Council’s commitments under City Deal.”. In that case, although it clearly was a consideration, the lpa does not indicate the degree of weight it gave to this consideration. Given that the City Deal is not part of the spatial strategy and does not allocate land or identify a housing requirement and its term is likely to be extended, it attracts limited weight as a material consideration.

<sup>14</sup> This figure differs from the total contained in the appellant’s Additional Joint Submissions Relating to the Updated HLPs. There appears to be an error in the figure for 2021/22. The appellant shows 2814, whereas the City Deal shows 2849.

<sup>15</sup> 06/2020/0888



#### Issue 4

76. The planning acts require that an appeal is determined in accordance with the development plan unless material considerations indicate otherwise<sup>16</sup>. This is commonly referred to as the “flat balance”. The Framework is a material consideration in planning decisions. Framework paragraph 11 indicates that decisions should apply a presumption in favour of sustainable development. For decision-making, this requires that where the policies most important for determining the application are out-of-date permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole; the “tilted balance”.
77. My assessment of the suite of the most important policies for determining this appeal, is that although JCS Policy 4 is out-of-date, JCS Policies 1 and 17 and LP Policy EN1 are not. Thus, the development plan is up-to-date, and the “flat balance” applies.
78. The adverse impacts of this development are harm to the living conditions of prospective resident from odour and a fundamental conflict with the development plan spatial strategy for Central Lancashire. This strategy seeks to direct development to the most sustainable higher order centres and minimise development in the lower order centres. Whilst the spatial strategy recognises that some greenfield development will be required, this is caveated in that it would be on the fringe of main urban areas.
79. In terms of the other material considerations, the contribution to market and affordable housing attracts substantial weight and the economic benefits attract significant weight. However, when set against the harm to living conditions, the fundamental conflict with the spatial strategy and the very healthy supply of housing land, I conclude that cumulatively the benefits do not outweigh the conflict with JCS Policies 1 and 17 and LP EN1 and the development plan taken as a whole. In coming to this conclusion, I have had regard to the contents of the S106 Agreement. However, as I am dismissing this appeal for other reasons, they are not matters that I need to consider further.

#### Overall Conclusion

80. For the above reasons and taking all other matters into consideration, this appeal is dismissed.

*George Baird*

Inspector

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<sup>16</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

## **APPEARANCES**

### **FOR THE APPELLANT**

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### *Housing Land Supply & Cumulative Impact*

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They called:

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### *Strategic Policy*

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### *Affordable Housing*

Philip Robson of Counsel

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### **FOR THE LOCAL PLANNING AUTHORITY**

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**INTERESTED PERSONS**

Mr Pick.  
Mrs Davies.

**DOCUMENTS SUBMITTED DURING THE INQUIRY**

Whittingham Hospital, Statement of Community Involvement.  
Whittingham Hospital Affordable Housing Delivery Note.  
Whittingham Hospital Affordable Housing Delivery Note, lpa response.  
Whittingham Hospital Affordable Housing Delivery Note, appellants' response.  
Whittingham Hospital Affordable Housing Delivery Note, note by Mr Stacey.  
Public Transport Contributions, LCC Advice Note.  
Bartle Garden Village, Extract from Design & Access Statement.  
Land at Sandy Lane & Tabley Lane Planning Statement.  
Legal Submissions on behalf of the appellants.  
Letter dated 15 March 2021, re Hybrid planning application 06/2020/0888, Land west & east of Preston Western Distributor Road, Bartle.  
Plan showing North-West Preston Planning Approvals.  
CIL Compliance Statement.  
List of Suggested Conditions & Reasons.  
Odour, Statement of Common Ground.  
Pig numbers per each Scenario.  
Predicted odour concentrations, Scenarios 9, 11, 12, 13 & 14.  
Certified Copy of S106 Agreement.

**DOCUMENTS RECEIVED AFTER THE INQUIRY CLOSED**

Lpa comments dated 6 August 2021 on the Chain House Lane, Whitestake, Preston Appeal decision (APP/F2360/W/19/3234070).  
Appellants' comments dated 4 August 2021 on the Chain House Lane, Whitestake, Preston appeal decision (APP/F2360/W/19/3234070).  
Preston City Council Housing Land Position Statement 31 March 2021.  
Lpa submissions on the Housing Land Position Statement dated 8 September 2021.  
Appellants' submissions on the Housing Land Position Statement dated 30 September 2021.