

**APPEAL BY LEE HOUGH & CO LIMITED**

**LAND ADJACENT TO BLAINSCOUGH HALL, BLAINSCOUGH LANE, COPPULL**

**Outline planning application for the erection of up to 123 dwellings (including 30% affordable housing) with public open space provision, structural planting and landscaping, and vehicular access points from Grange Drive. All matters reserved save for access.**

**PINS REF: APP/D2320/W/21/3275691**

**LPA REF: 20/01399/OUTMAJ**

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**CLOSING SUBMISSIONS ON BEHALF OF  
THE LOCAL PLANNING AUTHORITY**

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**Introduction**

1. There is no dispute between the parties that the appeal scheme is in breach of the Development Plan<sup>1</sup>. The fourth of the 4 main issues identified for determination at the outset of the inquiry recognises that fact by, in effect, asking whether or not there are material considerations that overcome that breach.

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<sup>1</sup> Whilst Mr Saunders notes that only one policy is breached, he accepts that that simple numerical fact does not mean that the Appeal Scheme accords with the Development Plan as a whole.

2. Before turning to the first 2 main issue (relevant to the question of the five year housing land supply (“5YHLS”)), it is worth re-stating the following points, all of which are uncontentious;
  - (i) this appeal is to be determined in accordance with the Development Plan unless material factors indicate otherwise,
  - (ii) the undisputed conflict with the Development Plan (Policy BNE3 of the Local Plan) arises out of the fact that both appeals comprise the permanent development of safeguarded land during the currency of the Plan period (to 2026), and,
  - (iii) both appeals also generate conflict with up to date national policy in respect of the protection of safeguarded land (at §143(d) of the Framework).
3. As to that last point, and noting that we deal with the planning balance at the conclusion of these submissions, we record the fact that the Appellant’s evidence (the proofs of Mr Saunders) fails to record at all the fact that the Appeal Scheme generates a significant breach of national policy. Mr Saunders accepts that national policy (the Framework) attracts significant weight, as does its breach. However, the significant breach of national policy generated by the Appeal Scheme is simply missing from his assessment<sup>2</sup>.
4. The concept of safeguarded land is long-established. It is an important tool in maintaining one of the 2 essential characteristics of the Green Belt, namely its permanence<sup>3</sup>. The Council’s Local Plan recognises that fact, and confirms that the purpose of its safeguarded land (and associated policy protection) is to ensure that its Green Belt boundaries are long-lasting<sup>4</sup>.

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<sup>2</sup> The suggestion that it is implicit (because he accepts a breach of Policy BNE3) is inadequate.

<sup>3</sup> The other essential characteristic being its openness (§137 of the Framework).

<sup>4</sup> at §7.16 of the Local Plan (CD6.2).

5. The expectation of national policy is clear, when Green Belt boundaries are defined in a development plan (as they are in the Council's Local Plan), there is an expectation that those boundaries will not require alteration at the end of that plan period<sup>5</sup>.
6. As a matter of generality (and we return to the specific circumstances in Chorley below), the less safeguarded land that is available when a plan is reviewed, the more likely it is that Green Belt boundaries will have to be reviewed in order to accommodate new development.
7. It is in the interests of Green Belt permanence that safeguarded land policy (at both national and local level) is unequivocal, and contains a clear prohibition against its development during the Plan period. Accordingly, as a matter of principle, it is right that a clear and significant breach of local and national safeguarded land policy should attract significant weight in the determination of this appeal.
8. There is no basis for reducing that weight because a particular site is a potential candidate for housing allocation in an emerging local plan. That appears to be the underlying theme throughout the Appellant's case.
9. The Appellant assumes that the Appeal Site will benefit from an allocation in the next Local Plan. The following proposition has been repeatedly advanced during the course of the inquiry; that come the next Local Plan, the site will either be an allocation with planning permission (if the appeal is allowed) or an allocation without planning permission (if the appeal is dismissed), and on that basis no harm flows from the grant of consent.
10. That approach;
  - (i) is directly contrary to national and local policy for safeguarded land,

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<sup>5</sup> at §143(e) of the Framework.

- (ii) subverts the Plan-led system<sup>6</sup>,
- (iii) is obviously misconceived. The emerging Local Plan in Central Lancashire is at a very early stage and can attract only limited weight. There is no certainty whatsoever attaching to the allocation of this site (or any other site) in the next local plan.

11. Likewise, the fact that the Appeal Site faces no technical constraint in respect of its development (if it did, it would not have been designated as safeguarded land) is not a reason to grant planning permission for development. Self-evidently, that approach renders the policy protection given to safeguarded land entirely worthless.

### **Housing Land Supply**

12. The central dispute between the parties in this appeal and in respect of housing land supply concerns the proper identification of the requirement against which supply should be assessed. There is a much narrower dispute as to the level of supply (the difference is 127 dwellings in respect of a handful of sites). The Council's up to date assessment amounts to 1504 dwellings, and the Appellant's, 1,377. Whilst we address the contested sites below, we do so briefly since the difference has no material effect on the outcome of the appeals as far as the main parties are concerned<sup>7</sup>.

#### **(a) The Housing Requirement**

##### **(i) Relevant National Policy and Guidance**

13. The agreed starting point for the identification of the requirement for the assessment of 5YHLS is §74 of the Framework. It provides 2 options;

- (i) the housing requirement set out in adopted strategic policies, or,
- (ii) the local housing need figure where the strategic policies are more than five years old.

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<sup>6</sup> At one point during the course of his evidence, Mr Saunders suggested that granting planning permission now, in breach of Policy BNE3 actually strengthens the Plan-led system. Respectfully, that is irrational, and in any event, is not borne out by 3<sup>rd</sup> parties, almost all of whom confirmed that their faith in the plan-led system is being seriously undermined by applications for development of safeguarded land, such as the Appeal Scheme.

<sup>7</sup> Whichever requirement is applied, the difference in terms of years worth of supply is marginal.

14. Option (ii) comes with an important caveat in (what is now) footnote 39;

“Unless these strategic policies have been reviewed and found not to require updating.”

15. The Government’s Planning Practice Guidance (“PPG”) provides more detail<sup>8</sup>;

“Housing requirement figures identified in adopted strategic housing policies should be used for calculating the 5 year housing land supply figure where:

- the plan was adopted in the last 5 years, or
- the strategic housing policies have been reviewed within the last 5 years and found not to need updating.

In other circumstances the 5 year housing land supply will be measured against the area’s local housing need calculated using the standard method.”<sup>9</sup>

16. The PPG is clear (as accepted by Mr Saunders). Where strategic policies are more than 5 years old, but have been reviewed in the last 5 years and found not to need updating, the housing requirement figures in those strategic policies should be used.

17. National policy and guidance contains no caveat to the effect that the approach should be modified where the review of strategic policies has been followed by introduction of the standard method. If Government considered that such a caveat should have been introduced, then it could have done so.

18. Moreover, and as accepted by Mr Saunders, it is obvious that the provisions of the PPG (referred to above) will include reviews that pre-date the introduction of the standard method in 2018<sup>10</sup>.

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<sup>8</sup> at CD5.5

<sup>9</sup> Paragraph: 005 Reference ID: 68-005-20190722.

<sup>10</sup> The fact that housing requirements in strategic policies are to be applied where reviews have been conducted in the last 5 years demonstrates that fact. For example, the current version of the PPG shows that it was last revised in 2019, i.e. covering reviews that took place as long ago as 2014 when that current version was introduced. At the present time, reviews dating back to 2016 are included.

19. Accordingly, the undeniable outcome of the application of national policy and guidance is that in circumstances where a review of strategic policies has occurred within the last 5 years, and those policies have been found not to require updating, the housing requirement to be used in the calculation of 5YHLS is that within the strategic policies.
20. The Council accepts, that as a matter of judgment, there may be material factors that mean individual decision-makers in particular local authority areas may choose to apply a local housing need figure (calculated by reference to the standard method) notwithstanding the fact that a review of strategic policies has taken place within the last 5 years<sup>11</sup>. However, there is no dispute that national policy and guidance are material considerations that attract significant weight (accepted by Mr Saunders). As such, there should be cogent reasons to depart from their terms.

**(ii) Has there been a Footnote 39 Review?**

21. It is agreed in this appeal that the Central Lancashire Authorities<sup>12</sup> conducted a review of strategic policies in 2017<sup>13</sup>. They did so by commissioning a strategic housing market assessment (“the SHMA”), and producing the 2017 Memorandum of Understanding (“MOU1”). The review found that the housing requirement within the strategic policies of the Development Plan (in particular, Policy 4 of the Core Strategy) did not need to be updated.
22. Agreement that MOU1 comprised a review of strategic policies in accordance with §74 of the Framework<sup>14</sup> is consistent with the 2 most recent and relevant appeal decisions for schemes in Central Lancashire;

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<sup>11</sup> as was the case in South Ribble in the Chain House Lane decision. At §16 of the Chain House Lane decision letter (J10) the inspector agreed with the proposition that the effect of using the standard method housing figure was a matter to be determined in the course of decision-making in each of the other (i.e. Preston and Chorley) Central Lancashire areas.

<sup>12</sup> The Councils of Preston, Chorley and South Ribble.

<sup>13</sup> See e.g. Mr Saunders HLS proof at §5.44.

<sup>14</sup> previously §73 in the 2018 and 2019 revisions of the Framework.

- (i) in the Cardwell Farm appeal decision<sup>15</sup>, both parties agreed that MOU1 comprised such a review as did the inspector<sup>16</sup>, and,
- (ii) in the Chain House Lane (re-determined) appeal decision<sup>17</sup>, again, both parties and the Inspector agreed that MOU1 comprised a review within the terms of (then) §73 of the Framework.

23. By contrast, the Pear Tree Lane appeal decision<sup>18</sup> did not proceed on the basis that MOU1 comprised a review of strategic policies for the purposes of §74 (then §73) of the Framework. However;

- the parties in the Pear Tree Lane appeal did not present the inspector with an agreement that MOU1 comprised such a review,
- the reason for that is clear since at that time, the Council (in common with the 2 other Central Lancashire Authorities) was relying on the second Memorandum of Understanding (“MOU2”) for its housing requirement figure,
- the Pear Tree Lane inspector was presented with a binary choice in terms of housing requirement, namely the “solus” standard method figure for Chorley, or the “re-distributed” standard method figure in MOU2<sup>19</sup>, and,
- as a result, the Pear Tree Lane inspector was not asked to determine whether or not MOU1 comprised a review (and unsurprisingly, did not reach any such determination).

24. The Pear Tree Lane inspector rejected MOU2 as a proper basis for establishing the housing requirement for Chorley on the basis that any exercise of re-distribution of local housing

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<sup>15</sup> CD9.4  
<sup>16</sup> at §31 of the decision letter.  
<sup>17</sup> CD9.3  
<sup>18</sup> CD9.1  
<sup>19</sup> at §19 of the decision letter.

need (calculated according to the standard method) is a matter for the emerging local plan as opposed to development management. MOU2 was given limited weight by that inspector<sup>20</sup>.

25. Given that conclusion, the debate has moved on since the Pear Tree Lane decision. In particular;

- (i) in light of the Pear Tree Lane decision, Chorley quite properly does not place reliance on MOU2 as the basis for calculating its housing land supply<sup>21</sup>,
- (ii) as is clear from the 2 subsequent appeal decisions (Cardwell Farm and Chain House Lane), all parties (and inspectors) now accept MOU1 to have comprised a review in accordance with national policy.

**(iii) The Appellant's Reasons for Supplanting the Review**

26. Thus far it is clear (and agreed) that;

- (i) national policy and guidance confirms that the housing requirement in strategic policies should be used for the calculation of 5YHLS where those policies are more than 5 years old, but have been reviewed in the last 5 years, and,
- (ii) a review in accordance with §74 and footnote 39 of the Framework took place in 2017 (MOU1 is dated September 2017), and therefore within the last 5 years.

27. Mr Saunders expressly agreed<sup>22</sup> that a straightforward application of PPG means that the Policy 4 figure should be used as the housing requirement for calculation of the 5YHLS.

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<sup>20</sup> at §32 of the decision letter.

<sup>21</sup> and neither do the 2 other Central Lancashire Authorities. MOU2 is properly described as “defunct”. That description does not emanate from the Council. It appears in Mr Saunders evidence (§5.68 of his HLS proof).

<sup>22</sup> not in his proofs, but in cross-examination.

28. In those circumstances, it is for the Appellant to demonstrate that there are clear reasons to depart from the application of national policy and guidance.

29. The Appellant's reasons appear to be as follows;

- (i) MOU1 had a shelf-life of 3 years,
- (ii) MOU2 and the 2020 Central Lancashire Housing Study states that the Policy 4 requirements are out of date,
- (iii) the Policy 4 housing requirements are based on an out of date evidence base and Regional Strategy,
- (iv) the introduction (in 2018) of the standard method in national policy as the means for identifying housing requirements within emerging plans can produce materially different housing requirements (and distribution) when compared with existing development plan policies, and,
- (v) there is a 'direction of travel' towards the standard method in Central Lancashire.

30. We address those contentions as follows.

31. First, there is nothing in MOU1 to the effect that it expires after 3 years. Its provisions are clear;

"To continue until the adoption of a replacement local plan to apply the housing requirements set out in the Joint Central Lancashire Core Strategy Policy 4..."<sup>23</sup>

32. Accordingly, insofar as MOU1 has a shelf-life, it is until the adoption of a new Local Plan. That position has not yet been reached.

33. Paragraph 7.1 of MOU1 states that the document will be reviewed no less than every 3 years, and will be reviewed when new evidence that renders it out of date emerges.

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<sup>23</sup> at §6.1(a) of MOU1 (CD6.9). Similarly, at its §3.1, MOU1 confirms that it sets out the agreed approach to the distribution of housing, "prior to the adoption of a new plan".

34. That provision (together with the fact that MOU1 is now more than 3 years old) does not render the review (and MOU1) out of date. The Council makes the following points;

- (i) neither the Cardwell Farm inspector nor the Chain House Lane inspector concluded that MOU1 should be considered out of date because it is more than 3 years old,
- (ii) the Central Lancashire Authorities conducted a review of MOU1 in 2020 and produced MOU2. However, as already addressed, it is MOU2 that has been confirmed as attracting limited weight (in the Pear Tree Lane decision), and is no longer relied upon by the Council (or the 2 other Central Lancashire Authorities) for the purposes of assessing the 5YHLS, and,
- (iii) whether or not the emergence of the standard method housing requirement since 2017 comprises new evidence that renders MOU1 out of date is addressed below. It is sufficient to note at this stage that;
  - the Council points to specific factors in Chorley which mean that is not the case, and,
  - the Cardwell Farm inspector did not consider that the emergence of the standard method housing requirement in Preston rendered MOU1 (and continued application of the Policy 4 housing requirement) out of date.

35. Secondly, it is accepted that MOU2 and the 2020 Housing Study states that application of the Policy 4 housing requirements is out of date<sup>24</sup>. However;

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<sup>24</sup> at its §2.4 (CD6.30).

- (i) MOU2 has been found to attract limited weight<sup>25</sup>, and accordingly, is not relied on by the Council (or the 2 other Central Lancashire Authorities) in calculating the 5YHLS,
- (ii) even if MOU2 attracts more than limited weight (and there is no cogent reason why it should given the findings of previous inspectors and the position of the Central Lancashire Authorities), there is nothing within its provisions that suggests the use of “solus” standard method figures for each of the local authority areas in the event the Policy 4 figures are not applied,
- (iii) notwithstanding the statements in MOU2 and the 2020 Housing Study, the Cardwell Farm inspector did not conclude that application in Preston of the Policy 4 requirement was out of date, and,
- (iv) the Chain House Lane inspector did not conclude that application in South Ribble of the Policy 4 requirement was out of date simply because MOU2 and the 2020 Housing Study stated so.

36. Thirdly, the Appellant’s contention that application of the Policy 4 housing requirement is out of date (and MOU1 cannot be relied upon) because of an out of date evidence base (and reliance on RS) is obviously misplaced.

37. We repeat the fact that it is agreed that MOU1 comprised a Footnote 37 (now 39) review. It was based on an up to date assessment of housing need contained within the SHMA<sup>26</sup>. Whatever the age of the evidence base that informed the original identification of the requirement (and, in turn, the RS and then Policy 4), the 2017 SHMA comprehensively updated that evidence base.

38. Accordingly, the review of strategic policies that culminated in MOU1 was not based on out of date evidence, or an out of date RS. As we have already recorded, the

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<sup>25</sup> §32 of the Pear Tree Lane decision letter (J7), and §36 of the Cardwell Farm decision letter (J2).  
<sup>26</sup> CD6.20.

Government's PPG anticipates that such reviews (based on up to date evidence) should last for 5 years.

39. The last 2 of the 5 reasons (at §29 above) appear to comprise the Appellant's central contentions. They are addressed as follows.
40. There is no dispute that the introduction of the standard method as the basis for establishing a housing requirement as the starting point for identifying development needs in an emerging plan is relevant in deciding what housing requirement should be applied in the calculation of the 5YHLS<sup>27</sup>.
41. There is also no dispute that the "direction of travel" (in terms of housing need) for the Central Lancashire Authorities in the preparation of their emerging Local Plan starts with local housing need calculated by reference to the standard method. That is no surprise. Paragraph 61 of the Framework states that strategic policies should be informed by a local housing need assessment using the standard method.
42. Central Lancashire's emerging Local Plan confirms that its starting point in terms of housing need are the figures generated by the standard method<sup>28</sup>. The emerging Local Plan is equally clear that the 3 Authorities will work together in order to achieve an agreed distribution of those figures, "taking account of things like investment in roads and employment sites, and locations where new jobs can be created."<sup>29</sup>
43. The fact that new local housing need requirements (calculated in accordance with the standard method) are to be the subject of distribution is equally of no surprise. The Central Lancashire Housing Study (March 2020)<sup>30</sup> identified the local housing need figures for each of the 3 Authorities<sup>31</sup>. It then proceeded to consider an appropriate distribution of that need by reference to a variety of factors including the distribution of population,

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<sup>27</sup> It has never formed part of the Council's case that the introduction of the standard method for calculating local housing need is irrelevant.

<sup>28</sup> Page 17 of the Issues and Options consultation document (CD6.5).

<sup>29</sup> at page 18 of CD6.5.

<sup>30</sup> CD6.21.

<sup>31</sup> at Table 3.2 on p10.

workforce, jobs, relative affordability of housing, and environmental constraints (including prevalence of Green Belt).

44. The distribution of each of those factors (summarised at Table 4.14 of the 2020 Study<sup>32</sup>) is markedly different from the distribution of housing need if solely the standard method figures for each of the 3 Central Lancashire Authorities is applied. As a result, the 2020 Study comes up with a recommended distribution of local housing need (by taking into account all factors) that looks very different from simple application of the solus standard method figures for each of the Authorities<sup>33</sup>.

45. Accordingly, whilst the direction of travel for Central Lancashire in its emerging plan (in accordance with §61 of the Framework) is the use of the standard method to calculate local housing need, there is no evidence to suggest that the likely destination is application of the solus standard method figures for each of the 3 Authorities. On the contrary, the evidence (contained in the 2020 Housing Study) demonstrates the likely destination to be a significant re-distribution of that local housing need.

#### **(iv) Additional Reasons for Upholding Policy 4/MOU1 in Chorley**

46. The Appellant has failed to demonstrate why the Policy 4 requirement (endorsed by the review in MOU1), the use of which conforms with national policy and the PPG, should be supplanted by the standard method in calculating 5YHLS.

47. In addition, it is clear that there are reasons specific to Chorley that support the continued use of the Policy 4 housing requirement.

48. We have already referred to the fact that simple application of the solus standard method figures gives rise to a distribution of housing across Central Lancashire that fails to reflect the distribution of population, workforce, jobs, relative affordability and environmental

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<sup>32</sup> p32 of CD6.21.

<sup>33</sup> Chorley – 27.5%, Preston – 40%, South Ribble – 32.5%, as compared with the “solus” standard method distribution of 57%, 23% and 20% respectively.

constraints (as well as other factors referred to in the 2020 Housing Study). At the time when the 2020 Housing Study was prepared, the solus standard method figures were<sup>34</sup>;

- Chorley – 579dpa,
- Preston – 251dpa,
- South Ribble – 206dpa.

49. Those figures compare with the Policy 4 requirements of 417, 507 and 417dpa respectively.

50. The answer to why the standard method skews need so heavily in the direction of Chorley is clear, and is confirmed in the 2020 Housing Study<sup>35</sup>. The calculation of local housing need using the standard method is informed by the 2014-based population projections, that in turn, are particularly influenced by the level of development achieved during the period from 2009 to 2014.

51. The figures for housing completions for that period across the 3 Central Lancashire Authority areas are stark;

- Chorley – 2,739 (60%),
- Preston – 741 (16%), and,
- South Ribble – 1,076 (24%)<sup>36</sup>.

52. The fact that Chorley was able to deliver 60% of Central Lancashire’s new housing from 2009 to 2014 is not a good reason for requiring Chorley to deliver 57% of Central Lancashire’s new housing from 2021 to 2026<sup>37</sup>.

53. That point is given even greater force when it is recognised that the strategy of the Development Plan anticipated strong early delivery of housing in Chorley with diminishing

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<sup>34</sup> at Table 4.15 on p33 of CD6.21.

<sup>35</sup> see §’s 4.13 and 4.14 of CD6.21.

<sup>36</sup> see Table 4.5 on p22 of CD6.21.

<sup>37</sup> the effect of imposing the solus standard method figures.

levels of delivery as the Plan period progresses, and as housing completions in other parts of Central Lancashire increase<sup>38</sup>.

54. The Local Plan<sup>39</sup> confirms that, “The trajectory shows that projected completions are set to exceed the target significantly in the early years of the plan period, but that completions are set to decrease in the later years of the plan period.”<sup>40</sup>

55. Recorded housing completions in Chorley<sup>41</sup> are broadly consistent with the projected trajectory the Local Plan<sup>42</sup>. In other words, the strong early delivery in Chorley as anticipated in the Development Plan has been realised.

56. By contrast, the Core Strategy anticipated that delivery at other strategic sites and locations would increase during the course of the Plan period. For example, at North West Preston (a strategic location identified in Core Strategy Policy 1), delivery was anticipated to increase from 600 dwellings (2010 to 2016) to 1,000 dwellings (2021 to 2026)<sup>43</sup>.

57. The reasons are clear. Buckshaw Village was an active development site at the beginning of the Plan period and delivering dwellings in 2010. By contrast, other strategic sites and locations were greenfield, and awaiting the delivery of substantial infrastructure before any housing development could start<sup>44</sup>.

58. In other words;

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<sup>38</sup> For example, that includes the delivery of housing at Buckshaw Village, one of the Core Strategy’s Strategic Sites as identified in Policy 1, and lying predominantly within Chorley. When the Core Strategy was adopted in 2012, Buckshaw Village was projected to deliver 1,500 houses in the period from 2010 to 2016, 500 houses from 2016 to 2021, and 300 houses from 2021 to 2026 (see Table 1 on p42 of the Core Strategy).

<sup>39</sup> CD6.2

<sup>40</sup> at p5.14 on p17.

<sup>41</sup> shown in Table 1 (p1) of the latest 5YHLS statement (CD6.15).

<sup>42</sup> see pages 18 and 19 of CD6.2.

<sup>43</sup> Again, at Table 1 on page 42 of the Core Strategy (CD6.1).

<sup>44</sup> Substantial public funds have been secured in order to deliver that substantial infrastructure. The City Deal has been the mechanism whereby those funds have been secured. Preston and South Ribble Councils are parties to the City Deal. Chorley is not.

- (i) the spatial strategy of the Development Plan, including the anticipated timing of the delivery of housing, reflected and continues to reflect, the early delivery of housing in Chorley with diminishing completions in the later parts of the Plan period, and,
- (ii) all of those factors identified in MOU1 as supporting the continued use of the Policy 4 requirements remain of relevance to the question of housing delivery in Chorley<sup>45</sup>, and in particular, an apportionment of housing need that reflects the spatial pattern of development set out in Policy 1 of the Core Strategy (agreed by the Appellant to remain up to date).

59. The last factor that supports continued use of the Policy 4 figure for Chorley concerns the need to protect safeguarded land from development during the Plan period. We have already noted that;

- (i) the solus standard method figure for Chorley is higher than the Policy 4 requirement. By contrast, the solus standard method figures for Preston and South Ribble are significantly lower than their Policy 4 figures, and,
- (ii) Chorley is significantly more constrained, including by Green Belt, than either Preston or South Ribble.

60. As a result, there is a significant risk that arises in Chorley through use of the standard method figure that does not arise in Preston and South Ribble, namely, the prospect of there being no 5YHLS with an associated risk to safeguarded land.

61. That risk is apparent in the raft of planning applications for the residential development of safeguarded land since issue of the Pear Tree Lane appeal decision. Although the Council requested that the Secretary of State call-in all applications (in July 2021) in order

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<sup>45</sup> at §5.10 of MOU1 (CD6.9).

to take a comprehensive view of the consequences generated by those applications, that request was met with silence. The danger now faced by the Council is a series of individual decisions in which each of the applicants/appellants maintains that the release of its site poses no real risk.

62. In summary, and in addition to the clear requirement of national policy and the PPG to use the Policy 4 figures (as endorsed by the MOU1 review), the Council points to the following factors;

- (i) application of the solus standard method for Chorley means that it is expected to accommodate nearly 60% of Central Lancashire's housing for the next 5 years. That level of provision fails to reflect any relevant factor in respect of the distribution of housing need (e.g. the existing distribution of population, workforce, jobs, affordability or environmental constraints),
- (ii) the standard method figures are largely a product of housing delivery in 2009 to 2014 during which period delivery in Chorley was particularly strong (as compared with Preston and South Ribble). The fact that Chorley delivered around 60% of Central Lancashire's housing from 2009 to 2014 provides no rational justification for requiring Chorley to deliver almost 60% of Central Lancashire's housing from 2021 to 2026,
- (iii) that is particularly so in light of the fact that strong delivery in the early part of the Plan period with decreasing delivery in the later part of the Plan period was precisely what was anticipated in the Development Plan,
- (iv) application of the solus standard method figure for Chorley fails to reflect the spatial strategy of the Development Plan (including the timing of its delivery). Policy 1 of the Core Strategy is agreed to be up to date, and,
- (v) application of the solus standard method figure for Chorley generates a significant risk to safeguarded land.

63. Having concluded that the Policy 4 requirement should apply to Chorley, the next question to arise concerns the treatment of oversupply from previous years.

**(v) Over-Supply**

64. The question of whether or not previous years over-supply should be taken into account in setting the requirement for a 5YHLS assessment is not unique to Chorley. It has arisen in other local planning authority areas and is the subject of several appeal decisions.

65. It is common ground that neither national policy nor guidance contains advice on this issue. As succinctly expressed by the Middleton Cheney inspector<sup>46</sup>;

“...while the PPG allows shortfalls against requirements from previous years it is silent on whether it is possible to set them against future years and therefore the facts of the matter need to be examined on a case by case basis.”<sup>47</sup>

66. Accordingly, the Appellant accepts that it is a question of judgment as to whether or not the 5YHLS requirement is adjusted to take account of previous years over-supply. We address the factors that arising in Chorley that mean the over-supply should be taken into account.

67. Before doing so, we note 2 important aspects of the Appellant’s case on this point.

68. First, Mr Saunders adopts the position that the lack of national policy or guidance means that Central Government agrees with him that oversupply should never be discounted. With respect, that argument is completely misconceived. If Central Government agreed with Mr Saunders’ approach then it would have amended its Guidance to that effect. The absence of policy or guidance confirms that Central Government is content that a judgment is to be reached by individual decision-makers.

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<sup>46</sup> CD9.10.

<sup>47</sup> at §46 of the decision letter.

69. Secondly, Mr Saunders adopts the position that the national policy objective of achieving a significant boost in HLS means that over-supply should never be off-set against the 5 year requirement. If that is right, then there is no planning judgment to be reached in any local planning authority area in England. Self-evidently, that is wrong.
70. We next turn to the factors which justify the taking into account of over-supply in Chorley.
71. First, Chorley's housing requirement for the Plan period (from 2010 to 2026) is at least 6,834 dwellings<sup>48</sup>. In the period from 2010 to 2021, Chorley achieved 6,316 completions<sup>49</sup>. In the 5 remaining years of the Plan period, the deliverable supply of housing is either 1,504 (the Council) or 1,377 (the Appellant). In either case, by the end of the Plan period the minimum requirement of 6,834 dwellings will have been significantly exceeded<sup>50</sup>.
72. Moreover, the Local Plan requirement of 6,834 dwellings was endorsed against the requirements of the Framework (2012) including the need to achieve a significant boost in land for housing<sup>51</sup>. Accordingly, delivery of 6,834 dwellings in Chorley over the Plan period will represent a significant boost. It goes without saying that delivery of well over 7,500 dwellings in that period will likewise represent a significant boost in housing land supply in Chorley.
73. It is no answer to say that because paragraph (a) of Policy 4 is expressed as an annual figure, then the 5YHLS supply should be measured against that annual figure.
74. First, the need for housing in Chorley identified in the Development Plan is a need that arises over the Plan period. For Chorley, it amounts to 6,834 dwellings. Self-evidently, it is not a need that arises on an annual basis at a steady rate of 417 dwellings.
75. If, over the Plan period, at least 6,834 dwellings are provided, then Chorley's need will have been met (even if, in some years, delivery was less than 417 dwellings). Equally, if a position of under-supply emerged from previous years, then everyone would be expecting

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<sup>48</sup> see §5.9 of the Local Plan (CD6.2).

<sup>49</sup> §6 and Table 1 in CD6.15.

<sup>50</sup> either 7,820 dwellings (Council) or 7,693 dwellings (Appellant).

<sup>51</sup> at §49 of the Core Strategy Inspector's Report (CD6.19).

the Council to make that up in future years (as opposed to rigidly sticking to an annual delivery rate of 417 dwellings). The reason for that is obvious, the fundamental need to be met is the Plan period housing requirement.

76. It is for that reason that the Appellant's reliance on the housing delivery test ("HDT") is misplaced. We note the following;

- (i) the HDT looks back over only the last 3 year. It tells you nothing about delivery of the Plan period housing requirement over the Plan period, and,
- (ii) not a single inspector who has grappled with the issue of what to do with over-supply (in the 5YHLS assessment) has suggested that the HDT provides the answer (or is even material to the debate).

77. Likewise, whilst Policy 4(c) requires the maintenance of a 5YHLS (consistent with national policy), it is silent on the calculation of the housing requirement (and how the consideration of over-supply fits into the assessment).

78. Secondly, as already addressed, the spatial strategy for Chorley, and Chorley's Local Plan expressly anticipates strong early delivery in Chorley (as compared with Preston and South Ribble) with the level of housing delivery decreasing in the later parts of the Plan Period. The Local Plan was endorsed (and adopted in 2015) on the basis of a trajectory that showed by 2021 there would not be delivery of at least 417dpa (because of strong early delivery). There is no suggestion that the Local Plan inspector was dissatisfied with that approach or considered it to be inconsistent with the Core Strategy<sup>52</sup>.

79. Thirdly, as recognised generally by the Middleton Cheney inspector, a failure to take into account previous years over-supply could lead to an artificial inflation of the housing land requirement, a lack of 5YHLS, engagement of the tilted balance and the provision of housing in inappropriate locations<sup>53</sup>. That is a real risk in Chorley (again, as addressed above) since unconstrained land for development is not readily available. In particular, as

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<sup>52</sup> and consistency with the Core Strategy was a requirement for soundness.

<sup>53</sup> at §47 of CD9.10.

is clear from the record of planning applications since the Pear Tree Lane decision, safeguarded land will become the target for proposed development.

80. Finally, as noted by the Middleton Cheney inspector, the artificial increase of the overall Plan period requirement undermines a proper, Plan-led approach to development control<sup>54</sup>. That is specifically the case in Chorley where the Development Plan expressly anticipated strong early delivery.

**(vi) Conclusion on Housing Land Requirement**

81. Application of the Core Strategy Policy 4 requirement, taking into account previous years over-supply, means that the 5YHLS requirement is 545 dwellings.

**(b) Supply**

82. Only a handful of sites within the Council's assessment of deliverable supply are in dispute;

(a) Cowling Farm: There is no dispute as to the principle of delivery. Both parties consider the site to be deliverable. The Council anticipates the start of house building to be July 2024 with first completions in January 2025. That corresponds with the Appellant's 'optimistic' timetable<sup>55</sup>. Thereafter, the only dispute is the rate of delivery. The Council relies on Homes England for its assessment. Given their experience, there is no reason to doubt that assessment.

(b) Fairclough House: This site comprises an existing office building with prior approval for its residential conversion. In effect, it benefits from a detailed planning permission. The Framework (Annex 2, Glossary) in its definition of "deliverable" confirms that detailed consents should be included in the deliverable supply unless there is clear evidence to the contrary. There is no such evidence.

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<sup>54</sup> At §48 of CD9.10.

<sup>55</sup> at §2.7 of its hearing statement.

(c) Small Sites: As for Fairclough House, these are sites benefitting from detailed consents, and in respect of which the Framework is clear, i.e. include in the 5YHLS unless there is cogent evidence showing that they will not deliver. Beyond saying that some of the consents are aged (but still extant), the Appellant adduces no cogent evidence to demonstrate that those units are undeliverable.

83. Quite apart from the level of housing land supply, the Appellant seeks to introduce doubt as to the adequacy of the quality of supply. That suggestion of doubt should not be accepted. Mr Saunders agrees that whatever the precise level of supply (1,377 or 1,504), those houses will contribute to meeting housing needs. There is no analysis (advanced by the Appellant or anyone else) to support any different conclusion<sup>56</sup>.

#### **Conclusions on 5YHLS**

84. In accordance with the Council's assessment, there exists 13.8 years worth of housing land supply.

#### **Whether the Most Important Policies are Up to Date**

85. The Council's position is clear. In circumstances where there is an adequate supply of land for housing (i.e. > 5YHLS), the tilted balance at §11d of the Framework is not engaged.

86. Mr Saunders contends that Policy BNE3 is out of date for 2 reasons<sup>57</sup>;

- (i) it is based on an out of date and constrained housing requirement derived from a revoked regional strategy, and,
- (ii) there is no 5YHLS.

87. He quite properly accepts (notwithstanding attempts to row back on that acceptance in re-examination) that if the Council is right in respect of the housing land supply arguments, i.e. that;

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<sup>56</sup> e.g. Mr Saunders has not interrogated the types of dwelling (e.g. size) within the supply with a view to showing that they do not meet need.

<sup>57</sup> at §6.53 of his Planning proof.

- (i) the Policy 4 figure (as reviewed in MOU1) is not supplanted by the standard method figure, and,
- (ii) the consideration of over-supply means that a 5YHLS exists,

then BNE3 is up to date<sup>58</sup>.

88. Accordingly, in circumstances where the Policy 4 requirement is applied, and the Council can demonstrate an adequate supply of housing, there is no dispute that the most important policies are up to date and the conventional balance should be applied in the determination of this appeal.

### **The Planning Balance**

89. The Council recognises that the Appeal Scheme will deliver benefits.

90. First, the provision of market housing represents a benefit. However, in circumstances where there is a plentiful supply of housing (well over 5 years worth), that benefit should attract limited weight. As accepted by Councillor Wilson, in circumstances where there is housing shortfall, significant weight attaches to the provision of market housing.

91. By contrast, Mr Saunders adopts an approach that takes little account of the relationship between an increasing level of housing supply, and the diminishing level of benefit associated with the delivery or even more housing. The appeal decisions relied on his proof of evidence provide him with no support<sup>59</sup>. In fact, they readily demonstrate that as housing supply increases, the weight to be given to the provision of more housing (quite properly) is reduced<sup>60</sup>.

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<sup>58</sup> He accepted that there was no other basis upon which it could be found out of date. Accordingly, whilst none of the evidence in respect of the source of the Policy 4 figures (being the RS and its evidence base) is disputed (and of course, neither are the legal principles in **Hunston** and **Bloor**), it is not determinative of the question of whether BNE3 is out of date. That issue is entirely determined by reference to the outcome of the housing land supply debate.

<sup>59</sup> at §8.22ff of his planning proof.

<sup>60</sup> see e.g. CD9.26.

92. Secondly, the provision of affordable housing represents a benefit. The difference between the parties as to the weight attaching to that benefit is marginal (the Council – significant, the Appellant – very significant), and on the evidence given for both parties, does not affect the outcome of the planning balance.
93. There is no doubt that, in common with many other local authority areas, there is a significant need for affordable housing in Chorley. In recognition of that fact, the Pear Tree Lane inspector attributed significant weight to the provision of affordable housing the respect of that appeal<sup>61</sup>.
94. Since issue of the Pear Tree Lane decision, the affordability of housing in Chorley has improved. That change is confirmed by reference to the clear pattern of improving affordability as demonstrated by the diminishing level of the calculated local housing need figure. The baseline (2014-based projections) for the calculation is constant. The affordability adjustment to the baseline varies (year on year). In Chorley, the affordability adjustment reduced from 2019 to 2020, and from 2020 to 2021. Mr Tatton’s proof of evidence fails to consider that issue. He accepts that it paints a picture of improving affordability of housing in Chorley.
95. It is accepted that the number of people on the housing register has increased substantially in the period since the Pear Tree Lane decision. The recent substantial increase appears to be associated with the pandemic. It cannot be concluded that the recent increase represents either a trend or even a persistent level of numbers on the register. In any event, the number of people on the housing register does not represent the need for affordable housing.
96. Accordingly, significant (as opposed to very significant weight) attaches to the provision of affordable housing.
97. There are economic benefits associated with construction of houses (of a temporary nature) and spending by future residents. Those benefits attract limited weight.

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<sup>61</sup> CD9.1 at §102.

98. Whilst the Council accepts that biodiversity net gains may be delivered as a result of the Appeal Scheme, the Appellant's evidence contains no biodiversity net gain calculator.
99. Accordingly, the potential for biodiversity net gain attracts only limited weight.
100. Similarly, it is accepted that open space within the Appeal Schemes may be used by the wider community. There is no clear evidence to demonstrate likely significant levels of such use (given an existing surplus within the local area), and accordingly, that benefit attracts limited weight.
101. In order to justify the grant of planning permission, those benefits must be sufficient to overcome the clear conflict generated by the Appeal Scheme with the Development Plan (BNE3) and national policy (§143(d) of the Framework). In the Council's view they fall short.
102. Conflict with the Development Plan and the Framework is not trivial. The release of safeguarded land on an ad hoc basis during the Plan period diminishes that resource, and undermines confidence in the Plan led system. It is no answer to suggest that no harm arises from the grant of consent because there is, in effect, no difference between an allocated site in the next local plan that has planning permission as compared with a site which does not. No party knows what Chorley's housing requirement will be in the next local plan, nor the scale of required release for allocation<sup>62</sup>, nor whether this site will be allocated.
103. In those circumstances there is clearly no justification for the release of safeguarded land in breach of the Development Plan and national policy. The suggestion that the provision of market housing in the face of a plentiful supply, and the provision of affordable housing in circumstances of significant, but not unusual need, are sufficient to overcome that policy breach is not credible. Such an approach would render national and local safeguarded land policies worthless.

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<sup>62</sup> The Council does not suggest that there will be no release of safeguarded land in the next Local Plan (and never has), but rather, in the absence of a known housing requirement, the scale of that release is unknown.

104. In circumstances where the tilted balance is engaged<sup>63</sup>, harm must significantly and demonstrably outweigh benefits to justify a refusal of consent. We have addressed the negative and positive impacts of both appeals<sup>64</sup>. It remains the Council's firm conclusion that both appeals generate harm (and policy conflict) that significantly outweighs benefits.

105. It is respectfully requested that this appeal is dismissed.

Ian Ponter,  
14 October 2021.

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<sup>63</sup> Either because over-supply is not taken into account when using the Policy 4 housing requirement, or because the standard method housing requirement is applied, and where Footnote 8 of the Framework directs that the most important policies are out of date.

<sup>64</sup> Where the tilted balance applies because of inadequate land supply, the only factor that registers a change in weight (when compared with the conventional balance) is the provision of housing. It attracts significant weight. The weight attaching to all other factors is unchanged, including the harm arising out of breach of safeguarded land policies.