



## Appeal Decision

Inquiry Held on 22-26 June and 1-2 July 2020

Site visit made on 30 June 2020

by Mike Hayden BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11<sup>th</sup> August 2020

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Appeal Ref: APP/D2320/W/20/3247136

Land at Pear Tree Lane, Euxton, Chorley

- 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 Gladman Developments Limited against the decision of Chorley Borough Council.
  - The application Ref 19/00654/OUTMAJ, dated 26 June 2019, was refused by notice dated 13 November 2019.
  - The development proposed is the erection of up to 180 dwellings including 30% affordable housing, with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access points from School Lane.
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### Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 180 dwellings including 30% affordable housing, with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access points from School Lane on land at Pear Tree Lane, Euxton, Chorley in accordance with the terms of the application, Ref 19/00654/OUTMAJ, dated 26 June 2019, subject to the conditions set out in the schedule at the end of this Decision.

### Application for costs

2. At the Inquiry an application for costs was made by Gladman Developments Limited against Chorley Borough Council, which is the subject of a separate Decision.

### Procedural Matters

3. The planning application was submitted in outline with matters relating to layout, scale, appearance and landscaping reserved for subsequent approval. Access was the only detailed matter fixed for determination as part of the appeal. I have dealt with the appeal on this basis.
4. A development framework plan<sup>1</sup> was submitted with the appeal, which the appellant confirmed was for illustrative purposes. I have taken this plan into account in so far as it indicates the broad extent of the proposed built development, public open space and landscaping and informs my assessment of the visual, landscape and heritage impacts of the appeal proposal.

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<sup>1</sup> Plan no. 5219-L-02 Rev W

5. A unilateral undertaking (UU) under Section 106 of the 1990 Act was submitted by the appellant. It comprises obligations to secure the provision of affordable housing, self-build and custom housebuilding plots, amenity greenspace and play space and a sustainable drainage system on site, plus financial contributions for playing pitches and primary education school places off-site and travel plan monitoring. The UU was discussed with the main parties at the inquiry and amended to clarify affordable housing eligibility criteria. The signed and executed Deed was submitted after the close of the inquiry. I have had regard to the UU in my determination of this appeal.

#### Development Plan Context and Main Issues

6. The development plan for this appeal consists of the Central Lancashire Core Strategy (CLCS), a joint strategic plan covering the local authority areas of Chorley, Preston and South Ribble, which was adopted in July 2012; and the Chorley Local Plan Site Allocations and Development Management Policies Development Plan Document (CLP), adopted in July 2015.
7. The appeal site comprises 7.34 hectares of agricultural land to the east of Euxton, which is defined as an urban local service centre in Policy 1 of the CLCS. Most of the land outside of the urban areas in Chorley borough is designated as Green Belt in the CLCS and CLP, where there is a general presumption against inappropriate development. However, the appeal site is designated in Policy BNE3 of the CLP, as land between the current urban edge of Euxton along School Lane and the inner boundary of the Green Belt along Pear Tree Lane, to be safeguarded for future development needs beyond the plan period, which runs to 2026. Paragraph 139 of the National Planning Policy Framework (the Framework) states that planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development.
8. There is an emerging update to the development plan, the Central Lancashire Local Plan (CLLP), which is being prepared jointly by the Council, Preston City Council (PCC) and South Ribble Borough Council (SRBC), for the period 2021 to 2036. On adoption it **will replace the CLCS and the authorities' local plans**, including the CLP. The appeal site has been identified as a potential allocation for housing in the Issues and Options consultation draft of the CLLP. However, the emerging plan is at an early stage, with further consultation under Regulations 18 and 19 required before it can be submitted for examination. Furthermore, there are unresolved objections to the quantum, distribution and location of housing development, which would need to be considered as part of the examination process. Although paragraph 48 of the Framework allows weight to be given to relevant policies in emerging plans, given the early stage of preparation and the unresolved objections, the emerging CLLP can be afforded limited weight in this appeal.
9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. It is evident that the proposed development would conflict with **the appeal site's** designation as safeguarded land under Policy BNE3 of the CLP, a point accepted by the appellant<sup>2</sup>. However, the Framework provides other material considerations which are relevant in this case.

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<sup>2</sup> Paragraph 8.4.1 of Christien Lee's proof of evidence (PoE)

10. The presumption in favour of sustainable development in paragraph 11(d) of the Framework directs that, where the policies which are most important for determining the application are out-of-date, the **'tilted balance' applies**, whereby permission should be granted unless the policies of the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Paragraph 73 of the Framework also requires local planning authorities (LPAs) to maintain a supply of deliverable sites sufficient to **provide a minimum of 5 years' worth of** housing against their housing requirement or local housing need. Where an LPA cannot demonstrate a 5 year supply of deliverable sites, Footnote 7 of the Framework establishes that the policies of the development plan which are most important for determining the application are out-of-date.
11. In this case the main parties dispute whether or not the Council can demonstrate a deliverable 5 year supply of housing land, in terms of the appropriate housing requirement for Chorley and the deliverability of the land supply. Consequently, whether the most important policies of the development plan for determining the appeal, including Policy BNE3, are out-of-date is also in dispute. These are important material considerations to be assessed in this appeal in order for me to reach a determination under Section 38(6).
12. In view of this and **having regard to the Council's reason for refusal and** everything else I have read, heard and seen, the main issues in this appeal are:
  - a) Whether or not the Council can demonstrate a 5 year supply of deliverable housing land in Chorley borough, having particular regard to the development plan, relevant national policy and guidance, the housing need or requirement in Chorley and the deliverability of the housing land supply;
  - b) Whether or not the most important policies of the development plan for determining the appeal are out of date, having particular regard to the 5 year housing land supply position and relevant national policy; and
  - c) Whether this, or any other material consideration, would justify the proposed development on safeguarded land at this time.
13. The potential for the proposed development to cause adverse impacts on highway safety and capacity, landscape character, heritage assets, ecology and other local issues has been raised in representations by interested parties. These are matters of common ground between the Council and the appellant and do not form part of the reasons for refusal. Nevertheless, I consider below the effects of the proposal on the above factors, along with the benefits which would arise from the proposed development, before concluding the planning balance.

## Reasons

### *Five Year Housing Land Supply*

14. There are two main elements to consider in this appeal in determining whether the Council can demonstrate a 5 year supply of housing land, under the terms of paragraph 73 of the Framework. Firstly, what is the housing need or requirement against which the supply should be measured; and secondly whether the sites identified in the land supply can deliver the required number of homes within the next 5 years. I deal with each element in turn below before setting out my conclusions on this main issue.

Housing Need or Requirement

15. Policy 4 of the CLCS sets out the minimum housing requirement for Chorley of 417 dwellings per annum (dpa) to 2026. However, the CLCS was adopted in 2012. Paragraph 73 and footnote 37 of the Framework make clear that where strategic policies are more than 5 years old, LPAs should identify a 5 year housing land supply (5YHLS) against their local housing need (LHN), unless those strategic policies have been reviewed and found not to require updating. The Council does not rely on such a review and the preparation of the emerging CLLP recognises that the strategic policies for Chorley require updating.
16. Footnote 37 goes on to state that where LHN is used as the basis for assessing whether a 5 year supply of deliverable sites exists, it should be calculated using the standard method set out in national guidance. The main parties agree that, as at 1 April 2020, the minimum LHN for Chorley, calculated using the standard method, is 569 dpa.<sup>3</sup>
17. However, the Council, PCC and SRBC have prepared a Memorandum of Understanding, dated April 2020 (MOU2), which aggregates the minimum annual LHN standard method figures for the three LPAs and redistributes that housing need across the Central Lancashire area. The redistribution relies on evidence in the Central Lancashire Housing Study (March 2020) (CLHS)<sup>4</sup>, produced to inform the preparation of the CLLP. But it also seeks to provide an interim set of district level housing requirements, which MOU2 states is 'to reflect the most sustainable pattern of development in the sub-region' and 'to align with City Deal growth aspirations in Preston and South Ribble.'<sup>5</sup>
18. The LHN figures have been updated in a Statement of Common Ground published by the three Councils in May 2020 (SoCG), to incorporate the most recent workplace-based affordability ratios released by the Office for National Statistics (ONS). Applying the MOU2 redistribution to the updated LHN figures results in a minimum housing requirement for Chorley of 278 dpa, against which the Council now seeks to calculate its 5YHLS position<sup>6</sup>. For ease of reference, I set out below the comparative housing need figures under the standard method calculation and the MOU2 redistribution for the Central Lancashire authorities.

Area	Standard Method LHN		MOU2 redistribution	
	Dpa	% of total	Dpa	% of total
Chorley	569	56.3%	278	27.5%
Preston	191	18.9%	404	40%
South Ribble	250	24.8%	328	32.5%
Central Lancashire	1,010	100%	1,010	100%

19. The main parties have presented the two alternative figures for Chorley as a binary choice in this case. Either the 5YHLS should be calculated against the LHN figure for Chorley based on the standard method, 569 dpa, or against a requirement of 278 dpa, which is predicated on a strategy that redistributes half

<sup>3</sup> Paragraph 2.7 of the Housing Requirement and 5 Year Housing Supply SoCG

<sup>4</sup> CD7.05

<sup>5</sup> Paragraph 6.11 of the Memorandum of Understanding and Statement of Co-operation: Relating to the Provision and Distribution of Housing Land, April 2020 (CD7.23)

<sup>6</sup> Paragraphs 2.5 and 2.6 of the Memorandum of Understanding and Statement of Co-operation: Relating to the Provision and Distribution of Housing Land, Statement of Common Ground, May 2020 (CD7.34)

- (51%) of Chorley's standard method LHN to Preston and South Ribble to meet the LPAs' joint growth aspirations.** In reaching a conclusion on this, I consider below, firstly, whether it is acceptable in principle, in this case, to assess the 5YHLS against a housing need or requirement other than the standard method figure; and secondly, the weight that should be attached to the alternative figure, in this appeal, in the light of the evidence and the stage the Councils have reached in the strategic policy making process.
20. On the point of principle, it is common ground between the main parties that the LHN for Chorley borough should be calculated using the standard method in accordance with footnote 37 and paragraph 73 of the Framework<sup>7</sup>. Paragraph 60 and the definition of LHN in Annex 2 of the Framework permit an alternative approach to the standard method to be used to calculate the LHN in the context of preparing strategic policies only, where exceptional circumstances justify this. However, the Council does not seek to argue that there are exceptional circumstances for taking an alternative approach **for calculating Chorley's LHN**<sup>8</sup>.
  21. Instead, the Council refers to paragraph 2a-013 of the Planning Practice Guidance (PPG) on how LHN should be calculated where plans cover more than one LPA area<sup>9</sup>. In such circumstances, the PPG states that the housing need for the combined area should be at least the sum of the LHN for each LPA within the area, but that it will be for the strategic policy-making authority to distribute the total housing requirement arrived at across the plan area. This is the approach the Council has taken jointly with the Central Lancashire authorities and on which the redistribution of LHN in MOU2 and the May 2020 SoCG is based.
  22. The Council maintains that it is legitimate to rely on this redistribution of LHN on an interim basis, for monitoring and calculating the 5YHLS, until the adoption of the replacement CLLP. That is clear from the agreement between the three Councils in paragraph 8.1 of the MOU2. The implication of this is that a housing requirement based on the redistribution of LHN set out in MOU2, as well as informing the emerging CLLP, is to be relied upon as a material consideration for decisions on planning applications and appeals in the meantime, where the existence of a 5YHLS is at issue. The Council has sought to argue that MOU2 is not material consideration for decision-making. However, it forms the basis for **the Council's case that it can demonstrate a 5YHLS**, and, therefore, is a material consideration in this appeal.
  23. Whilst paragraph 2a-013 of the PPG does not prohibit LPAs in joint plan areas from relying on a redistribution of LHN figures to determine planning applications in advance of the adoption of their plans, this paragraph ostensibly applies to plan-making rather than decision-making. This is clear from the question it seeks to answer<sup>10</sup> and its repeated references to spatial development strategies and policy-making. The national guidance on how housing need should be calculated for the purposes of decision-making is found in section 68 of the PPG on Housing supply and delivery<sup>11</sup>.
  24. The courts urge treating the PPG with considerable caution when there is a dispute about its interpretation, given that it is intended to be guidance not policy<sup>12</sup>. However, the guidance in the PPG on calculating housing need and the 5YHLS for

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<sup>7</sup> Paragraph 2.6 of the Housing Requirement and 5 Year Housing Supply Statement of Common Ground (SoCG)

<sup>8</sup> Confirmed by Nick Ireland (Iceni) in answers to cross examination on 23 June 2020

<sup>9</sup> Paragraph: 013 Reference ID: 2a-013-20190220 in the Housing and economic needs assessment section of PPG

<sup>10</sup> 'How should local housing need be calculated where plans cover more than one area?'

<sup>11</sup> To which the reader is directed from PPG paragraph: 016 Reference ID: 2a-016-20190220

<sup>12</sup> Solo Retail Limited v Torridge District Council [2019] EWHC 489 (Admin) (ID13) [33]

- decision-making purposes mirrors the policy in paragraph 73 and footnote 37 of the Framework, that where the adopted housing requirement is more than 5 years old and the strategic housing policies need updating, as in Chorley, the 5YHLS will be measured against the LHN using the standard method<sup>13</sup>.
25. The standard method was introduced into national policy in the 2018 Framework as the new baseline for assessing 5YHLS in the absence of an up to date plan, in order to incentivise LPAs to get plans in place<sup>14</sup>. Therefore, it is reasonable to conclude that the guidance in paragraph 2a-013 of the PPG is not intended to allow for a redistribution of LHN in joint plan areas to provide the basis for calculating 5YHLS in decision-making in advance of that distribution being properly tested at examination and found sound. For the PPG to do so would run counter to the definition of LHN in the Framework and the clearly stated policy on the application of the standard method in decision-making.
26. Nevertheless, to date the courts have held that it is not unlawful for an LPA to rely on a housing requirement or an apportionment of housing need for decision-making purposes, even if this is not contained in an adopted plan<sup>15</sup>. I recognise that the *St Modwen* and *Oadby & Wigston* judgements predate the standard method and the *Harrogate* judgement related to a planning permission granted before the latest version of the Framework<sup>16</sup> made clear that LHN could only be calculated using an alternative approach in the context of preparing strategic policies. However, these judgements remain and establish the principle that an apportionment of housing need in an emerging joint plan can be a material consideration in decision-making. Therefore, I consider below the evidence for and against the apportioned housing need figure based on the analysis in MOU2 and the weight that should be attached to it.
27. The CLHS considers a range of factors to inform the future distribution of the aggregated standard method LHN for the three Central Lancashire authorities. These include the distribution of population, jobs, workforce and affordable housing need across the sub-region, the relative affordability and urban capacity of each district, the existing spatial strategy for Central Lancashire and the proportion of land not subject to national policy constraints<sup>17</sup>. The distributions for Chorley range from 18% for urban capacity to 36% for affordability.
28. The recommended distribution of the aggregate LHN to Chorley is 27.5%. Whilst this sits within the range of 18-36% and recognises that a lower proportion of **Central Lancashire's** jobs and affordable housing needs are concentrated in Chorley and that its development capacity is more constrained, it is less than the proportion of the sub-**region's** population and workforce based in Chorley (32%) and below the level of housing development required to address the relative affordability needs in the district (36%). It is also lower than the share of the sub-**region's** housing requirement apportioned to Chorley in the existing CLCS spatial strategy (30%). **The Council's witness confirmed** that the 27.5% apportionment of LHN to Chorley was a judgement based on the range of factors assessed in the CLHS<sup>18</sup>. But it is apparent that a higher or lower percentage within the 18-36% range could also be a justified judgement depending on the relative weight given to different factors.

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<sup>13</sup> Paragraph: 005 Reference ID: 68-005-20190722 of the Housing supply and delivery section of the PPG

<sup>14</sup> Paragraph 1.15 of the White Paper on Fixing our broken housing market, 2017 (CD7.06)

<sup>15</sup> *St Modwen v SSCLG and East Riding* [2016] EWHC 968 (Admin) (CD11.04); *Oadby & Wigston BC v SSCLG* [2016] EWCA Civ 1040 (CD11.17); *R (Oxton Farm) v Harrogate BC & Anr* [2020] EWCA Civ 805

<sup>16</sup> Published in February 2019

<sup>17</sup> Table 4.14 of the Central Lancashire Housing Study, 2020 (CD7.05)

<sup>18</sup> Confirmed by Nick Ireland (Iceni) in answers to **Inspector's questions** on 23 June 2020

29. I acknowledge that the standard method figure of 569 dpa for Chorley, amounting to 56% of the aggregate LHN across Central Lancashire, is well above the distribution for Chorley for any of the factors assessed in the CLHS. If adopted for the emerging CLLP, it would represent a significant shift away from the current spatial strategy and housing distribution for the sub-region. However, there is also evidence, presented by the appellant, which suggests that adopting a requirement based on the MOU2 redistribution would deliver less than half of the number of homes in Chorley that the standard method LHN indicates is needed, leading to an undersupply of housing and worsening affordability in the district. Although Central Lancashire functions as a single **Housing Market Area (HMA)**, the appellant's evidence points to more localised sub-markets within it<sup>19</sup> and a level of affordable housing need in Chorley, which the proposed apportionment of 278 dpa would fail to meet applying the current affordable housing policy<sup>20</sup>.
30. I recognise the arguments for focussing a greater proportion of future growth in and around Preston as the largest urban centre in Central Lancashire and to align with the City Deal growth aspirations and infrastructure investment plans in Preston and South Ribble. I also note the evidence that the 2014-based projections on which the standard method LHN is based were influenced by a trend-based migration component for the period 2009-14, which for Chorley coincided with a higher than normal level of completions at Buckshaw village during that period. However, I am not persuaded that applying the standard method housing figure in Chorley would unduly affect the delivery of housing in Preston and South Ribble needed to support the City Deal growth and funding model, in the light of the high levels of housing completions which have been sustained in both Chorley and Preston over the last 3 years.
31. All of the above and the rebuttals submitted by both parties to these points, constitute arguments and evidence which need to be properly tested through the emerging CLLP preparation and examination process, in order to arrive at a housing requirement for the sub-region and for Chorley, which satisfies the tests of soundness in paragraph 35 of the Framework. Whilst MOU2 was the subject of consultation, it is evident<sup>21</sup> that there are significant and substantive objections to the proposed redistribution of the LHN and the evidence which supports it, which remain outstanding and will need to be resolved, ultimately through the CLLP examination. The Court of Appeal has established that *'it is not for an Inspector on a S78 appeal to seek to carry out a sort of local plan process so as to arrive at a constrained housing requirement figure'*<sup>22</sup>.
32. Paragraph 48 of the Framework allows weight to be given to policies in emerging plans, according to the stage of preparation, the extent to which there are unresolved objections and the degree of consistency to the Framework. This guides my assessment of the weight that can be given to a housing requirement based on the redistribution of LHN in MOU2, as a policy document which informs the emerging CCLP. The emerging plan is at a very early stage and carries limited weight in this appeal. Although the MOU2 redistribution is an agreed position by the LPAs, there are significant unresolved objections to the recommended figures, which may result in **Chorley's apportionment being modified** following examination. For these reasons and in the light of my

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<sup>19</sup> James Donagh's PoE

<sup>20</sup> James Stacey's PoE

<sup>21</sup> From the report on the consultation of the Revised Joint MOU to the Central Lancashire Strategic Planning Joint Advisory Committee in January 2020 (ID24)

<sup>22</sup> City and District of St Albans v Hunston Properties [2013] EWCA Civ 1610 [26] (CD11.12)

consideration of the evidence submitted, I attach limited weight to the housing requirement figure for Chorley of 278 dpa in this appeal.

33. However, full weight can be attached to the standard method LHN figure for Chorley, given that its value and use in this case are entirely consistent with the Framework and the PPG. Accordingly, I conclude that the figure of 569 dpa should be used for the purposes of calculating the 5YHLS in this appeal. This **would also support the Government's objective**, in paragraph 59 of the Framework, of significantly boosting the supply of homes.
34. In reaching this view, I have had regard to the previous decision for the appeal site in 2017<sup>23</sup>. Whilst the Inspector in that appeal applied a redistribution of the objectively assessed housing need (OAN) for Chorley based on the 2017 version of the MOU<sup>24</sup> (MOU1) in order to calculate the 5YHLS, the apportionment in MOU1 aligned with the adopted CLCS, rather than an alternative arrangement. In addition, national policy on the calculation of 5YHLS at the time of that decision was very different, in that it predated the 2018 Framework and the introduction of the standard method. However, I also note that in the Chain House Lane appeal decision<sup>25</sup>, which dealt with the draft version of MOU2 in the context of the new Framework and the standard method, the Inspector gave limited weight to the draft MOU2 and concluded that the standard method LHN figure for South Ribble should be used in that case. I have explained my reasoning for attaching limited weight to a housing requirement based on the redistribution of LHN in MOU2 in the light of the evidence before me in this case.

#### Housing Land Supply

35. The Housing SoCG sets out two alternative housing land supply calculations for Chorley of 5.5 years or 2.5 years of deliverable supply. These are respectively based on annual requirements of 278 dpa and 569 dpa, with a buffer of 5% in light of the 2019 Housing Delivery Test Measurement, and a 5 year deliverable housing supply of 1,617 or 1,505 dwellings.
36. I have concluded above that 569 dpa is the appropriate housing requirement figure for Chorley for the purposes of calculating the 5YHLS in this appeal. The main parties dispute the deliverability of an allocated site at Cowling Farm, for which the Council includes 112 dwellings in the supply to the end of March 2025. However, even if the Cowling Farm figure were included in the deliverable supply, 1,617 dwellings would only amount to a 2.7 year supply against the LHN calculated using the standard method<sup>26</sup>, still well below the 5 year requirement. Consequently, it is not necessary for me to consider the evidence for and against the inclusion of the Cowling Farm site any further here.

#### Conclusion on Five Year Housing Land Supply

37. Overall, therefore, in the light of the evidence before me at this appeal, the provisions of the development and the relevant national policy and guidance, I conclude that the Council is unable to demonstrate a 5 year supply of deliverable housing sites measured against the LHN for Chorley.

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<sup>23</sup> APP/D2320/W/17/3173275

<sup>24</sup> Joint MOU and Statement of Co-operation relating to the Provision of Housing Land, September 2017 (CD7.22)

<sup>25</sup> APP/F2360/W/19/3234070

<sup>26</sup> 1,617 dwellings/598 dpa = 2.7 years



*Most Important Development Plan Policies*

38. Footnote 7 and paragraph 11(d) of the Framework establish that in situations where the LPA cannot demonstrate a 5 year supply of deliverable housing sites, the policies which are most important for determining the application are out-of-date **and the 'tilted balance'** in paragraph 11(d) is engaged for the purpose of decision-taking. However, in this case, given the evidence before me, it is also necessary to consider whether or not **the 'most important' policies** are otherwise to be regarded as 'out-of-date' under the terms of paragraph 11(d).
39. The courts have defined a three-step approach to be taken in making such an assessment<sup>27</sup>. First, it is necessary to **identify which are the 'most important' policies** for the decision. The Planning SoCG identifies a number of policies in the CLCS and CLP which are relevant to the appeal. However, I concur with the Inspector in the Nine Mile Ride appeal decision<sup>28</sup>, that **'most important' does not** mean all relevant policies and that it is a matter of judgement for the decision-maker to decide **which are the 'most important' policies**.
40. It is common ground between the main parties that Policy BNE3 of the CLP is one of the most important policies for this application and appeal. It sets the parameters for the restrictions on the development of Safeguarded Land, for which the appeal site is designated, and it is referenced in the reason for refusal. The appellant also considers that Policy BNE2 of the CLP is one of the most important policies, as it identifies the types of development allowed in Areas of Other Open Countryside (AoOOC), which Policy BNE3 defines as permissible within Safeguarded Land. However, the appeal site is not within an AoOOC and, as such, the proposal is neither in conflict nor in accordance with Policy BNE2. It is Policy BNE3 which acts to constrain development on the appeal site. It does so by reference to the types of development identified in Policy BNE2, but it is not Policy BNE2 of itself which sets those limits for Safeguarded Land. Accordingly, whilst Policy BNE3 is one of the most important policies for the determination of this appeal, I consider that Policy BNE2 is not.
41. Policy 1 of the CLCS sets the spatial strategy for Chorley borough, guiding the location of development to suitable sites and settlements, including Euxton. It is common ground between the main parties that Policy 1 is one of the most important policies of the development plan for this decision<sup>29</sup>.
42. Policy 4 of the CLCS sets the minimum housing requirement for the district. It is common ground between the main parties that Policy 4 is out-of-date<sup>30</sup>. As such, the Council contends that it is not a most important policy. However, to **exclude from the list of 'most important' policies those which are** out-of-date, would undermine the purposes of paragraph 11(d) of the Framework, which **seeks to ensure the 'tilted balance' is applied where the 'most important' policies** of the development plan are out-of-date. The MOU confirms that Policy 4 is of particular relevance to the provision of housing land<sup>31</sup>. Given that the appeal proposal is for housing development and that there is a dispute over whether the Council can demonstrate a 5YHLS, it follows that Policy 4 of the CLCS must be one of the most important policies in this case.

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<sup>27</sup> Wavendon Properties Limited v SSHCLG and Milton Keynes Council [2019] EWHC 1524 (Admin) [55-58] (CD11.10)

<sup>28</sup> APP/X0360/W/19/3238048, paragraph 11 (CD10.11)

<sup>29</sup> Page 29 of Christien Lee's PoE and paragraph 66 of the Council's closing submissions (ID 39)

<sup>30</sup> Paragraph 2.4 of the MOU (CD7.23) and page 29 of Christien Lee's PoE

<sup>31</sup> Paragraph 2.3 of the MOU (CD7.23)

43. The appellant also regards Policy 7 of the CLCS as a 'most important' policy, because it addresses the need for affordable housing. However, whilst the extent of affordable housing need in Chorley is disputed by the parties, the contribution the appeal scheme should make to that need is not, namely 30% of the total number of dwellings. Policy 7 itself guides the proportion of affordable housing to be provided on site, which would be met through the UU. As a result there is no suggestion that the proposal fails to satisfy the terms of Policy 7. Other relevant policies act in a similar way, for example Policies 14 and 24 of the CLCS, which place requirements on the proposed development to provide for school places and recreation facilities. If the proposal failed to comply with those policies they could be determinative, but they are not regarded as amongst the most important policies. On the same basis, I do not consider Policy 7 of the CLCS is one of the most important policies for this decision.
44. Therefore, Policies 1 and 4 of the CLCS and Policy BNE3 of the CLP are the '**most important' policies in this case**, defining the need and appropriate locations for housing in Chorley and the limitations on development on the appeal site as Safeguarded Land.
45. The second step is to examine each of these policies to see whether or not they are out-of-date. **The courts have established that a policy may become 'out-of-date'** where it is overtaken by a change in national policy<sup>32</sup>. That is clearly the situation applying to Policy 4 of the CLCS, where its housing requirements were derived from the former Regional Spatial Strategy for the North West, which in turn relied on the 2003-based household projections. This, combined with the introduction of the standard method in the 2018 Framework and the application of the 2014-based household projections, renders the housing requirements in Policy 4 out-of-date.
46. However, the fact that Policy 4 is out-of-date for this reason, does not necessarily mean the spatial strategy in Policy 1 of the CLCS for the distribution of its housing requirements is also out-of-date. Although the two alternative distributions of the standard method LHN figures put forward in this appeal would lead to a much higher (569 dpa) or lower (278 dpa) quantum of housing growth in Chorley borough than the CLCS apportionment (417 dpa), Policy 1 still provides for growth to be concentrated in Chorley town and some to be located at Euxton and other local service centres in the borough.
47. I note the conclusions of the Wheatley Campus appeal decision<sup>33</sup> on this point, but that was a different policy context, where the relevant policies in the South Oxfordshire development plan defined settlement boundaries outside of which development was not permitted. In this case, Policy 1 does not of itself define settlement boundaries or limit development only to sites within settlements in Chorley borough. The evidence before me does not show that Policy 1 would unreasonably constrain the ability of the borough to accommodate its standard method housing requirement of 569 dpa. As such, I do not consider that Policy 1 of the CLCS is out-of-date for the purposes of this appeal.
48. Turning to Policy BNE3 of the CLP, in designating the land to the east of Euxton as Safeguarded Land it effectively defines the settlement boundary on this side of Euxton to the rear of the dwellings in School Lane and The Cherries. It constrains

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<sup>32</sup> Bloor Homes Limited v SSCLG [2014] EWHC 754 (Admin) [paragraph 45]

<sup>33</sup> APP/Q3115/W/19/3230827 (paragraphs 13.8-13.10)

the development of the appeal site within the current plan period, in order to offer long term protection to the Green Belt. Whilst this approach is consistent with national policy in paragraph 139 of the Framework, the boundaries of the Safeguarded Land and thereby the adjoining settlement boundaries, as identified on the CLP Policies Map, are predicated on a housing requirement in the CLCS which is out-of-date. The Green Belt boundaries in Chorley and the associated Areas of Safeguarded Land were defined in the 1997 Chorley Borough Local Plan. They were carried forward into the 2003 Local Plan Review and then into the current CLP, but on the basis of a housing requirement in Policy 4 of the CLCS, which is now out-of-date.

49. Case law<sup>34</sup> has confirmed that settlement boundaries may be out-of-date to the extent that they derive from out-of-date housing requirements, constraining the ability to meet housing need. That is evidently the case here. My conclusions on the 5YHLS above indicate that the restriction on the development of Safeguarded Land in Policy BNE3 is preventing the Council from being able to provide an adequate housing land supply, against its standard method LHN within the current plan period to 2026.
50. This is further supported by the fact that the emerging CLLP<sup>35</sup> identifies all but one of the Areas of Safeguarded Land in Policy BNE3, including the appeal site, as site proposals to meet **the borough's** housing needs for the period 2021-2036. Whilst the emerging CLLP is at an early stage and the final selection of housing allocations will be determined through the local plan examination process, it clearly recognises that land currently safeguarded in Policy BNE3 for development needs beyond the end of the CLP plan period in 2026, may need to be released before then to meet a housing requirement based on the standard method LHN. Although the previous appeal decision on this site<sup>36</sup> did not consider Policy BNE3 to be out-of-date, that relied on the housing requirement in the CLCS, which at the time of the decision in 2017 was not out-of-date. However, for the above reasons, Policy BNE3 is out-of-date in the circumstances of this appeal.
51. The third step that the *Wavendon* judgement established as required by paragraph 11(d) of the Framework, is **to assess the basket of 'most important'** policies in the round to reach a conclusion as to whether, taken overall, they could be concluded to be out-of-date or not for the purposes of the decision. In this case the 'basket' comprises Policies 1 and 4 of the CLCS and Policy BNE3 of the CLP. Although the overall spatial strategy for Central Lancashire in Policy 1 is not itself out-of-date, the policies establishing the amount of housing needed in Chorley borough and designating the appeal site as Safeguarded Land, so preventing it from contributing to those needs, are out-of-date. On this basis therefore, taken as a whole, I conclude that the 'most important' policies for determining this appeal are out-of-date.

#### *Other Material Considerations*

##### Shortfall in Housing Supply

52. **Based on the Council's** housing land supply estimate, the deliverable supply of housing sites in Chorley borough would at best provide 1,617 dwellings over the next 5 years from April 2020 to March 2025. The 5 year requirement for the borough for the same period **established by Chorley's** standard method LHN is

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<sup>34</sup> Suffolk Coastal District Council v Hopkins Homes Ltd and anr [2017] UKSC 37 [paragraph 63]

<sup>35</sup> Annex 1 to the CLLP Issues and Options Consultation, November 2019

<sup>36</sup> APP/D2320/W/17/3173275

2,990 dwellings. On this basis, there would be a substantial shortfall in the housing supply of 1,373 dwellings over the next 5 years. The appeal proposal would provide up to 180 market and affordable dwellings, meeting 13% of the shortfall. As such it would make a significant contribution to the housing needs of the borough.

### Affordable Housing

53. Up to 54 (30%) of the proposed dwellings would be affordable housing, with a tenure mix of 70% social rented and 30% intermediate units, secured through the provisions of the UU. This would accord with the requirements of Policy 7 of the CLCS and the Central Lancashire Affordable Housing Supplementary Planning Document (SPD) and meet the expectations of paragraphs 61-64 of the Framework.
54. Although there is a pipeline of 91 affordable housing units with planning permission still to be built in Euxton, the evidence indicates a net need for further affordable housing in Euxton and the borough. The Housing Register for the borough contained 655 households in need of accommodation, as at 1 April 2020, of which 124 had selected Euxton as their preferred location and had a local connection to the borough. Therefore, purely based on current social housing needs, there is a requirement to increase the supply of affordable housing in Euxton.
55. Despite a healthy track record of both market and affordable housing delivery in the borough over the last 10 years<sup>37</sup>, there is evidence of steadily worsening housing affordability. Average house prices in Chorley increased by 15% between 2010/11 and 2017/18 and the ratio of house prices to incomes in the borough has increased by 10% to 6.88 since the start of the plan period<sup>38</sup>.
56. In terms of future affordable housing requirements, the CLHS identifies a need for 132 dpa of affordable rented housing in Chorley borough for the period up to 2036<sup>39</sup>. It is agreed between the parties that based on a 5YHLS of 1,617 dwellings, 60 dpa of affordable housing could be delivered over the next 5 years<sup>40</sup>. This would result in a shortfall of around 360 affordable housing units in the borough over the next 5 years<sup>41</sup>. The Council could offer little evidence as to how it would address this need.
57. For the above reasons, therefore, the affordable housing component of the appeal scheme would be a significant social benefit. It would provide for households on the Housing Register with a need for social housing in Euxton, reduce the shortfall in the supply of affordable housing across Chorley over the next 5 years and help to address the growing affordability problems in the borough.

### Self-Build and Custom House Building

58. The appeal scheme would also provide up to 18 (10%) of the proposed dwellings as self-build or custom house building plots, secured through the UU. Although not a requirement of the CLCS or CLP, the housing needs of people wishing to build their own homes is one of the types of housing need which paragraph 61 of the Framework seeks to address.

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<sup>37</sup> Table at paragraph 3.7 of Zoe Whiteside's Rebuttal Proof

<sup>38</sup> Paragraphs 8.30 and 8.31 of James Stacey's PoE

<sup>39</sup> Table 5.6 of the Central Lancashire Housing Study, March 2020 (CD7.05)

<sup>40</sup> Paragraph 8 of Note for Inspector on future supply of Affordable Housing in Chorley borough (ID26)

<sup>41</sup> (132 dpa x 5 = 660 units) - (60 dpa x 5 = 300 units) = 360 units

59. To that end local authorities are required to keep a register of people seeking to acquire serviced plots within the area for self-build and custom house building, and to grant enough planning permissions to meet the identified need<sup>42</sup>. **Chorley's self-build** register contained expressions of interest in serviced plots from 9 individuals at March 2020<sup>43</sup>. However, the CLHS acknowledges this may underestimate demand for self-build, because awareness of the Right to Build Registers in England is low<sup>44</sup>.
60. The PPG advises that data on registers can be supplemented from secondary data sources to obtain a robust assessment of demand<sup>45</sup>. The Buildstore Custom Build Register, the largest national database of demand for self and custom build properties, has 185 people registered as looking to build in Chorley, with 699 subscribers to its PlotSearch service<sup>46</sup>. Data from a national survey conducted by Ipsos Mori for the National Custom and Self-Build Association, when applied to **Chorley's population**, indicates that as many as 1,929 people may wish to purchase serviced plots in Chorley over the next 12 months<sup>47</sup>. Whilst the secondary data sources may reflect a level of aspiration rather than genuine need and include households registering an interest in more than one district, the CLHS concludes they provide evidence of a greater level of demand for self-build than the Council's register shows.
61. In terms of supply, **the Council's 5YHLS statement** contains 49 self-build and custom house building plots with planning permission, including 20 in Euxton, but only 27 of the 49 plots have been secured by legal agreements. For the remaining 22 plots permitted, the applicants have indicated the intention to exercise self-build exemption from CIL. However, evidence<sup>48</sup> for the period 2016-2019 shows that only around 30% of such developments in Chorley have ultimately qualified for self-build exemption, which indicates that CIL self-build exemption applications are not a reliable proxy for the actual level of self-build supply.
62. Even so, and treating the Buildstore demand figures with caution, the evidence clearly indicates that the 5 year supply of self-build plots in the borough is likely to fall well short of the anticipated demand. As such the provision of a further 18 self-build and custom house building plots on the appeal site would make an important contribution to the need for this type of housing in Chorley. This would be an additional benefit of the scheme to which proportionate weight should be given in the planning balance.

#### Highway safety

63. Local residents have objected to the effects of the proposed development on the operation and safety of the surrounding highway network. Particular concerns which have been raised include the proposed southern access to the site from School Lane at a bend in the road where visibility is poor; the danger of an increase in traffic for pedestrians using Pear Tree Lane and School Lane, given their limited widths, the absence of footpaths in places, and the fact that School Lane is used by parents and children to access the schools on the western side of Wigan Road; the effects of an increase in traffic on the junction of Pear Tree Lane

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<sup>42</sup> Footnote 26 of the Framework

<sup>43</sup> Paragraph 4.20 of Andrew Moger's PoE and paragraph 7.21 of Zoe Whiteside's PoE

<sup>44</sup> Paragraph 9.33 of the Central Lancashire Housing Study, March 2020 (CLHS) (CD7.05)

<sup>45</sup> Paragraph: 003 Reference ID: 67-003-20190722

<sup>46</sup> Paragraph 9.41 of the CLHS

<sup>47</sup> Paragraph 9.39 of the CLHS

<sup>48</sup> From the Council's response to an FoI request in June 2020 (see Andrew Moger's Supplemental Evidence)

- and Euxton Lane where there is a history of accidents; and an increase in traffic at the junction of School Lane and Wigan Road, which is already busy.
64. The highway and traffic impacts of the proposed development have been assessed in the Transport Assessment (TA)<sup>49</sup> submitted with the application, which proposes a series of improvements intended to mitigate the effects of the proposal on the highway network<sup>50</sup>. The Highways SoCG between the appellant and Lancashire County Council, as the local Highway Authority (HA), confirms the robustness of the traffic and junction modelling in the TA and that, subject to the implementation of the proposed improvements, the cumulative impact of the appeal development on the road network would not be severe. No other highways evidence was submitted to me to counter the technical evidence contained in the TA and SoCG.
65. With regard to the main traffic and safety concerns raised by residents, the accesses to the proposed development would form two new priority-controlled T-junctions on School Lane, one on the northern frontage of the site and the other at its south-western corner. The main internal road to the development would become the principal traffic route between School Lane and Pear Tree Lane, reducing through traffic on the northern section of School Lane. The junction at the south-western corner would improve visibility at the bend in School Lane and the T-junction would significantly reduce the potential for conflict between vehicles at the existing corner. Footways would be installed along the northern frontage of the site and adjacent to the junction at its south-western corner to provide a continuous pedestrian route along the length of School Lane. This would link up with the footpath running through the Rowland Homes development to the north, providing a safe walking route to Euxton Lane, to avoid pedestrians having to use the carriageway on the northern section of Pear Tree Lane. Traffic calming measures are also proposed along the length of the through route from the junction of Pear Tree Lane with Euxton Lane to the junction of School Lane with the A49 Wigan Road, together with a 20mph speed limit and additional street lighting. I am satisfied that these measures would improve the safety of School Lane and Pear Tree Lane for pedestrians, cyclists and drivers and adequately mitigate the effects of additional traffic along these roads.
66. Traffic modelling in the TA shows that the traffic generated by the development would result in an increase in vehicles at the junctions of School Lane with Wigan Road and Pear Tree Lane with Euxton Lane of 2.9-3.6% during the morning and evening peak hours, with resultant increases in queuing times. There has been only 1 'slight' accident in the last 5 years at the Pear Tree Lane/Euxton Lane junction; therefore, the accident records of the junctions are not a cause for concern. However, improvements are proposed, to be provided by the developer, at both junctions. At the School Lane/Wigan Road junction, a MOVA<sup>51</sup> system would be installed to manage the traffic light sequencing, minimising waiting times and queue lengths. At the Pear Tree Lane/Euxton Lane junction the bell mouth would be widened, visibility improved and a pedestrian island and refuge added on Euxton Lane. The modelling indicates that both junctions would continue to operate within capacity with the development traffic included. The T-junctions at the site accesses are both predicted to operate with high levels of spare capacity and minimal queues.

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<sup>49</sup> CD1.08

<sup>50</sup> Plans numbered: 1318/09 Rev G and 1318/23 Rev A

<sup>51</sup> Microprocessor Optimised Vehicle Actuation

67. The appeal site is accessible by sustainable modes of transport to shops, community facilities and employment, which should minimise the need for car journeys. It is within convenient walking distance of a number of local services in Euxton, including primary schools, a nursery, health centre, dental surgery, community centre and places of worship. An equipped play area is proposed on-site, which would be secured through the UU. There are bus stops on Wigan Road and Euxton Lane within 800 metres of the site, with frequent services to a wider range of shops, services and employment in Buckshaw Village, Leyland, Chorley and Preston. There are two railway stations near to the site at Balshaw Lane in Euxton (1.35 km away) and Buckshaw Parkway (1.6 km away), providing rail services to the major centres and services of Manchester, Liverpool and Blackpool. Bus stop improvements are proposed and a travel plan, which would encourage the use of sustainable modes of transport. The travel plan would be monitored to measure the modal shift from private car to sustainable modes of travel. The costs of monitoring would be funded by the development via the UU, which is both necessary and reasonable.
68. Therefore, given the location of the appeal site and its accessibility by sustainable transport modes, and subject to the range of improvements proposed to mitigate the effects of additional traffic on the road network, which could be secured by condition, I conclude that the proposed development would not result in an unacceptable impact on highway safety or a severe impact on the operation of the road network. Accordingly, it would comply with paragraphs 103 and 109 of the Framework and with the expectations of Policies ST1 and BNE1(d) of the CLP.

#### Landscape and Visual Impacts

69. The appeal site consists of five fields, currently used for grazing, which are bounded by tall hedgerows with trees. It sits between the existing urban edge of Euxton to the west and north and countryside to the east and south. Along its western boundary, the site is fringed by housing in School Lane and The Cherries, which forms a strongly urban context to this part of the site. In contrast, on its eastern boundary, Pear Tree Lane retains the appearance of a country lane lined by mature trees and hedgerows, with dispersed dwellings and farm buildings, lending a more rural character to this side of the site. Along the northern boundary of the site, School Lane is similarly lined by trees and hedgerows, albeit the context here is changing from rural to urban, with new housing to the north seen through the roadside hedges. The southern boundary of the site is formed by a well-established hedgerow and woodland surrounding **Rushton's** Brook, with countryside beyond.
70. There are no public footpaths running across the appeal site and views of it from the footpaths to the south and east and more distant viewpoints are largely screened by the intervening landscape. However, there are views into and across the site from Pear Tree Lane and School Lane, which are used by local residents for walking and exercise. There are also views across the site from the rear of properties adjoining the site on School Lane, Pear Tree Lane and The Cherries.
71. The Landscape and Visual Appraisal (LVA)<sup>52</sup> submitted with the application and the Landscape SoCG confirm that no landscape designations apply to the site **and that it is not part of a 'valued landscape' referred to in paragraph 170(a) of the Framework.** It is located within the Lancashire Valleys national landscape

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<sup>52</sup> CD1.05

character area and in the Cuerden-Euxton landscape character area of the Undulating Lowland Farmland landscape character type, as defined in the Landscape Strategy for Lancashire (LSL). The description of these landscapes<sup>53</sup> recognises that agricultural land within the Lancashire Valleys is fragmented by urban development and, as such, that within the Cuerden-Euxton landscape, its rural character is compromised. This is true of the appeal site, given its partially urban surroundings. Policy 21 of the CLCS, in respect of Landscape Character Areas, expects new development to be well integrated into existing settlement patterns and appropriate to the landscape type in which it is situated. The proposal would not conflict with Policy 21, which is common ground between the main parties<sup>54</sup>.

72. Nevertheless, the **site's open landscape** is clearly of value to local residents, as a visual amenity and as part of the wider rural setting of Euxton on this side of the settlement. The construction of up to 180 dwellings would result in a permanent change to the character of the site from agricultural land to urban development, causing harm to the landscape. However, in part this could be mitigated by the retention of the existing trees and hedgerows within and on the edge of the site, which could be secured by condition, helping to soften the visual impact of the development, particularly in views from Pear Tree Lane and School Lane. As the site is well contained by the surrounding landscape and dwellings from more distant views, the visual impact of the proposed development on the wider rural landscape would not be significant.
73. The Arboricultural Assessment<sup>55</sup> submitted with the application confirms that a number of trees would need to be removed to enable the construction of the proposed site accesses. This includes the specimen Oak tree at the southern entrance off School Lane, which is prominent in the street scene and of amenity value locally. However, its loss could be mitigated by planting replacement trees to either side of the proposed access, which could form part of the reserved matters landscaping scheme and be secured by condition.
74. The LVA provides a robust analysis of the landscape and visual impacts of the proposed development. Based on this, it is common ground between the main parties<sup>56</sup> that the proposal would have minor to moderate adverse effects on the landscape and visual amenity of the site and surroundings. In the light of my assessment above, I concur with this view. Whilst landscape harm would occur, the impacts would be localised and could be partially mitigated by retained and new landscaping. Moreover, the development would be seen in the context of existing housing on Pear Tree Land and School Lane. Accordingly, the landscape and visual harm carries no more than moderate weight in the planning balance.

### Heritage Assets

75. Houghton House Farmhouse, a Grade II listed building, lies adjacent to the north-east corner of the appeal site. Its principal elevation benefits from open views across the northernmost field of the site, which forms part of the setting of the listed building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that when considering development that affects a listed building or its setting, special regard shall be given to the desirability of preserving that building or its setting. Paragraph 194 of the

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<sup>53</sup> Paragraphs 3.2, 3.5 and 3.6 of the Landscape SoCG

<sup>54</sup> Paragraph 4.2 of the Landscape SoCG

<sup>55</sup> CD1.11

<sup>56</sup> Paragraph 5.8 of the Landscape SoCG



- Framework advises that the significance of a designated heritage asset can be harmed by development within its setting. Policy BNE8 of the CLP refers to the Framework for proposals affecting the setting of a heritage asset.
76. The significance of Houghton House Farmhouse is derived principally from its historical and aesthetic value. It is the primary building in a former farm complex, dating from the late 18<sup>th</sup> century, the associated barns and outbuildings of which have since been converted for residential occupation. Its historical interest relates to its place in the agricultural economy of Euxton. Its aesthetic value is seen in its symmetrical form, vernacular stone materials, original features and architectural detailing, making it a fine example of a farmhouse of its period.
77. The appeal site once formed part of the land holding of the farm. However, the surrounding farmland is now dissociated from the plot and no longer has any functional relationship with Houghton House Farmhouse. The wider historic rural setting of the Farmhouse has also been compromised by the residential expansion of Euxton to the north and west. The appeal site plays little role in affording views of the listed building, apart from distant private vistas from the rear of the houses along School Lane to the west. Public views of the main façade of Houghton House approaching east along School Lane are largely restricted by the roadside trees and vegetation, until arrival at the entrance to the property.
78. Therefore, despite forming part of the setting for Houghton House Farmhouse, it is common ground between the Council and the appellant that the appeal site only makes a minor contribution to the significance of the listed building.<sup>57</sup> For the reasons given above, I concur with this view. However, I also consider that the proposed development would reduce the remaining pastoral setting of Houghton House Farmhouse and thereby cause harm to its significance. The Heritage Statement submitted with the application proposes mitigation in the form of an area of open space in the north of the site, landscaping to the site boundary with Houghton House Farmhouse and setting back development from the north-eastern edge of the site<sup>58</sup>. These measures would reduce the harm, but not avoid it.
79. Nevertheless, given the minor contribution of the appeal site to the significance of the heritage asset, the proposals would amount to less than substantial harm to the heritage significance of Houghton House Farmhouse. With the inclusion of the mitigation measures proposed, I consider this would be towards the lower end of the spectrum of less than substantial harm. Paragraph 196 of the Framework states that where a development proposal would lead to less than substantial harm to the significance of a heritage asset, the harm should be weighed against the public benefits of the proposals. I consider this below as part of the overall planning balance.
80. The Archaeological Desk Based Assessment submitted with the application identified the potential for archaeological deposits from the Roman period along the eastern boundary of the site. However, the County Archaeological Service did not object to the proposal subject to a programme of archaeological work prior to the start of any development, which could be secured by condition. Accordingly, the potential effects on the archaeological interest of the site would not weigh against the proposal.

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<sup>57</sup> Paragraph 5.1(4) of the Heritage SoCG

<sup>58</sup> Paragraph 5.3.1 of the Heritage Statement, April 2019 (CD1.17)

## Ecology

81. An Ecological Appraisal (EA)<sup>59</sup> of the appeal site, informed by surveys of habitats and protected species, was submitted with the application. An Ecology SoCG between the main parties was also submitted with the appeal. These confirm that the site mainly comprises species-poor, improved agricultural grassland of negligible nature conservation value. The hedgerows subdividing and bounding the fields are the habitats of principal importance, but the development framework plan and EA indicate these would be retained as part of the landscaping scheme for the site, which could be secured by condition. Likewise, the evidence indicates that the trees on site, which offer both amenity value and potential habitat for roosting bats and nesting birds, would mostly be retained. That includes the strip of woodland along the northern boundary and the woodland around **Rushton's Brook** on the southern boundary, which would be protected by a buffer of land.
82. In terms of protected species, **Rushton's Brook** offers ecological value for a range of species. Although the brook is off-site, measures are recommended to prevent pollution from the construction and operation of the site, which again could be secured by condition. There is a pond in the centre of the site, which surveys showed to be of average suitability for Great Crested Newts (GCNs), albeit GCNs were found to be absent from it and from any ponds within 500m of the site at the time of the surveys. However, the development framework plan shows the pond to be retained as part of the open space and landscape provision within the development. The Greater Manchester Ecology Unit also recommended that, if the development were to proceed, an Amphibian Mitigation Strategy be secured by condition to avoid any future harm to newts.
83. The site is used by foraging bats and nesting birds. However, hedgerows and trees, which form the main habitats to support these types of wildlife, would be largely retained. A condition could be imposed to ensure any clearance or construction work would be undertaken outside of the nesting season. As part of the landscaping scheme, bird and bat boxes on existing trees or new buildings are proposed to enhance opportunities for birds and bats.
84. The Council's view is that the proposed development would be likely to result in a net gain in biodiversity, which carries moderate weight in favour of the scheme in the planning balance<sup>60</sup>. I concur with this conclusion for the following reason. Although the proposal would involve a major urban development of the site, it would also provide the opportunity to retain, manage and enhance the existing habitats of value on site and introduce new habitats for nature conservation, as part of the landscaping, open space and sustainable drainage proposals for the site. I am also satisfied that the mitigation measures proposed would avoid or compensate for any residual harm to ecology that may occur.
85. As such the proposed development would comply with the principles for protecting and enhancing habitats and biodiversity in paragraph 175 of the Framework and with the requirements of Policy BNE9 of the CLP. It would also satisfy the relevant tests under the Conservation of Habitats and Species Regulations 2017 (as amended).

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<sup>59</sup> CD1.10

<sup>60</sup> Paragraph 7.26 of Zoe Whiteside's PoE

### Flood risk

86. The application was accompanied by a Flood Risk Assessment (FRA)<sup>61</sup>, which demonstrates that the appeal site is located within Flood Zone 1 and therefore at the lowest risk of flooding. As such, the proposal would meet with the expectations of paragraph 158 of the Framework, to steer new development to areas with the lowest risk of flooding.
87. However, the FRA proposes a number of measures to ensure surface water run-off is managed and would not increase flooding elsewhere. These include a sustainable drainage system (SuDS) with an attenuation basin in the south-west corner of site, the use of culverts under School Lane on the northern part of the site, and setting development levels across the site so that flows would be contained within the existing ditch systems and pond. Implementation and management of the SuDS would be obligated through the UU. The other measures could be secured by condition.
88. On this basis, the proposed development would not result in increased flood risk. It would, therefore, accord with Policy 29(d) of the CLCS, which seeks to manage flood risk in all new development and with paragraph 163 of the Framework which seeks to ensure flood risk is not increased elsewhere.

### Local infrastructure

89. The proposed development would increase the population of Euxton, generating additional spending for local businesses, which would be an economic benefit. However, it would also increase pressure on existing community services and infrastructure. Policy 2 of the CLCS seeks to ensure that development makes an appropriate contribution to the costs of infrastructure necessary to support it.
90. I have concluded above that the proposed transport improvements would be sufficient to mitigate the effects of the proposal on the highway network. The UU provides for financial contributions to create additional primary school places at local schools and to improve playing pitches at Gillet Playing Fields in Chorley. In addition, it secures the provision of a new play area on site, which would meet the needs of the development, but also be of benefit for the wider community.
91. The playing pitch contribution is proportionate to the number of dwellings proposed and the primary education contribution is based on the anticipated number of primary school age children who would be living on the site. They have been calculated **according to the relevant formulae in the Council's SPDs** and are agreed by the Council and the Local Education Authority (LEA). Local residents have expressed concerns about the absence of any provision for secondary school places as part of the proposal. However, there is forecast to be a surplus of secondary school places within 3 miles of the site once the development is occupied, and, therefore, the LEA does not require a contribution to secondary education provision.
92. A contribution towards improvements to local healthcare facilities is also not proposed. Whilst, the Euxton Medical Centre has expressed concerns about the capacity of the surgery to take on further patients, a financial contribution to local healthcare facilities has not been requested by the statutory providers, NHS England and the local Clinical Commissioning Groups.

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<sup>61</sup> CD1.13

93. Therefore, I am satisfied that contributions towards secondary education and healthcare facilities would not be necessary to make the proposed development acceptable in planning terms. However, the financial contributions to primary education, recreation and travel plan monitoring would meet the tests for planning obligations in paragraph 56 of the Framework.
94. The Planning SoCG<sup>62</sup> confirms that the wider impact of the proposed development on strategic infrastructure in Chorley would be adequately mitigated through CIL payments, for which the appeal scheme would be liable. Accordingly, subject to the provision of CIL and the planning obligations in the UU, the appeal proposal would not have an unacceptably adverse impact on infrastructure, services or facilities in Euxton and the surrounding area. It would as such comply with Policy 2 of the CLCS.

#### Living conditions

95. With regard to impact of the proposed development on the privacy and outlook of the occupiers of residential properties adjacent to the site, whilst their view would change from open fields to houses, there is no evidence that this would result in harm to living conditions through overlooking or an overbearing outlook. As layout and appearance are reserved matters, the Council would be able to control the detailed design of the development to ensure adequate separation distances between the new and existing dwellings. As such the proposal would not conflict with paragraph 127(f) of the Framework, which seeks a high standard of amenity for existing and future occupiers. Accordingly, this matter does not weigh against the proposal.

#### Economic Benefits

96. It is common ground between the main parties that the appeal proposal would generate a number of economic benefits<sup>63</sup>. These are quantified by the appellant as including a £19.9 million investment in construction on the site, approximately 353 direct and indirect FTE jobs in construction and associated industries, and around 400 new residents of whom at least half would be economically active generating a combined annual household expenditure of £4.9 million, a proportion of which would be spent in the local economy. These are not insignificant economic benefits, which carry weight in favour of the proposal in the planning balance.

#### Planning Balance

97. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed development would **conflict with the appeal site's designation as Safeguarded Land** under Policy BNE3 of the CLP. The policy remains broadly consistent with paragraph 139 of the Framework, in safeguarding land to meet longer-term development needs. Accordingly, paragraph 213 of the Framework establishes that due weight should be given to it. However, Policy BNE3 is also out-of-date, because it continues to safeguard land for longer-term development needs, based on a housing requirement in Policy 4 of the CLCS which is out-of-date, and when most of the safeguarded land is being promoted by the Council in the emerging CLLP for development to meet housing needs

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<sup>62</sup> Paragraph 4.19.6 of the Planning SoCG

<sup>63</sup> Paragraph 4.20.1 of the Planning SoCG

from 2021 onwards. Although limited weight can be attached to the emerging CLLP given it is at an early stage in the plan-making process, its recognition that Safeguarded Land, including the appeal site, may be released for housing development in the near future, is a material consideration which reduces the weight that can be given to the conflict with Policy BNE3 in this appeal.

98. Paragraph 11(d) of the Framework is also an important material consideration in this case. I have concluded above that the most important policies for this decision are out-of-date, both on their own merits and because the Council is unable to demonstrate a 5YHLS against the standard method LHN for Chorley. As such **the 'tilted balance'** in paragraph 11(d) is engaged for this decision. This means that planning permission should be granted unless: i) the policies of the Framework that protect areas or assets of particular importance, as defined in Footnote 6, provide a clear reason for refusing the development proposed; or, ii) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
99. On the first limb of paragraph 11(d), it is common ground between the main parties that there are no policies in the Framework which provide a clear reason for refusal<sup>64</sup>. Although the previous appeal decision on this site<sup>65</sup> found that Safeguarded Land was a specific policy in the Framework indicating development should be restricted, national policy has changed since then and Safeguarded Land is not listed in Footnote 6 in the current Framework.
100. The **Framework's** policies on designated heritage assets are Footnote 6 policies. Paragraph 193 of the Framework establishes that great weight should be given to an **asset's conservation when considering the impact of a** proposed development on the significance of a designated heritage asset. In this case the proposal would cause less than substantial harm to the significance of Houghton House Farmhouse and that harm would be at the lower end of the range of heritage harm, for the reasons I have explained above. Paragraph 196 of the Framework establishes that where less than substantial harm arises it should be weighed against the public benefits of the proposal. The public benefits of the appeal scheme include its contribution to reducing the shortfall in the housing supply and to meeting needs for affordable and self-build housing, a boost to the local economy from jobs and investment, a net gain in biodiversity on the site and additional local play facilities. I am satisfied that the combined effect of these benefits outweighs the less than substantial harm to the significance of the heritage asset in this case. Accordingly, I agree that the policies in the Framework for the protection of areas and assets of importance do not provide a clear reason for dismissing the appeal.
101. Turning to the second limb of paragraph 11(d), the adverse impacts of the proposal comprise a conflict with the site's status as Safeguarded Land under Policy BNE3, minor to moderate adverse effects on landscape and visual amenity, and less than substantial harm to the significance of the listed building. I attach limited weight to the conflict with Policy BNE3, because it is out-of-date and no more than moderate weight to the harm to the landscape and visual amenity. This is added to the great weight which should be attached to conserving the heritage asset.

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<sup>64</sup> Paragraph 4.21.1 of the Planning SoCG

<sup>65</sup> Paragraph 63 of APP/D2320/W/17/3173275

102. Balanced in favour of proposed development, the delivery of up to 180 new dwellings carries significant weight in addressing housing needs and reducing the shortfall in the housing land supply by 13%. The designation of up to 54 of the units as affordable homes, of which 38 (70%) would be social rented tenure, would reduce the 360 unit shortfall in the projected supply of affordable rented housing by more than 10%, which also carries significant weight in addressing housing needs in the borough. The provision of 18 of the units as self-build or custom house building plots should also attract significant weight in favour of the proposal, given the level of demand for self-build as a sector of housing need in Chorley.
103. In terms of the economic benefits of the scheme, the creation of 353 FTE jobs and almost £20million of investment during the construction phase, plus an ongoing annual injection of almost £5million of expenditure, would serve to boost the local economy. However, in the overall scale of the economy in Chorley, the contribution would be modest and in the main temporary, thereby attracting moderate weight. The net gain in biodiversity carries moderate weight in favour of the proposal. Likewise the provision of an equipped play area offers a local benefit of modest weight. The highway improvements and contributions to education and playing fields would serve to mitigate the impact of the proposal and therefore carry neutral weight in the planning balance.
104. No other adverse impacts have been identified and there are no other policies in the Framework or the development plan which weigh against the proposal. Accordingly, taking all considerations into account, I conclude that adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework taken as a whole. Under the presumption in favour of sustainable development in paragraph 11(d) of the Framework, this means permission should be granted.
105. Overall, therefore, notwithstanding the **proposal's** conflict with the **appeal site's** designation as Safeguarded Land in Policy BNE3 of the CLP, the presumption in favour of sustainable development in paragraph 11(d) of the Framework is a material consideration which, in this case, warrants a decision other than in accordance with the development plan. Even if I were to conclude that the **'tilted balance'** was not engaged in this case, applying the **'flat balance'** under section 38(6), I find that the significant benefits of the proposal in addressing housing needs in Chorley would outweigh the harm due to the conflict with Policy BNE3 and its effects on the landscape, visual amenity and the significance of the heritage asset. As such the material considerations would still warrant a decision other than in accordance with the development plan. Accordingly, the appeal should be allowed.

#### Conditions and Planning Obligations

106. The Council submitted a set of suggested planning conditions which were discussed at the inquiry. I have considered which conditions are required having regard to the tests contained in paragraph 55 of the Framework and the Planning Practice Guidance. I have revised some of the wording, either as discussed at the inquiry or in the interests of clarity and enforceability.
107. A condition to specify the approved plans, including the access arrangements, is necessary in the interests of good planning and highway safety. It is also

necessary to specify the reserved matters to be submitted for approval and the time limits for their submission and the subsequent implementation of the permission in accordance with the requirements of the Act.

108. Conditions are included requiring a landscape retention, creation and management plan, lighting strategy and method statement on measures to avoid harm to amphibians, and to ensure no works to trees during the nesting season. I have amended the landscape condition to ensure it refers to the replacement of trees lost to create the site accesses. These are necessary to preserve the important habitats on site, avoid harm to protected species, enable a net gain in biodiversity and mitigate impacts on the landscape and visual amenity. However, I am satisfied it is not necessary to specify compliance with the wildlife legislation, as suggested in representations. I have assessed the proposal in terms of the tests in the 2017 Conservation of Habitats and Species Regulations, which the conditions referred to above would help to meet. The developer will be under a separate statutory duty to ensure compliance with the relevant legislation for the protection of wildlife and habitats during the construction phase.
109. A condition requiring an arboricultural method statement is necessary to ensure the appropriate measures are taken during construction to protect trees and hedgerows which form part of the retained landscape features. It is also necessary to impose a condition to ensure the implementation of the landscaping scheme as soon as possible after occupation or completion in the interests of the overall appearance of the development.
110. A separate condition to ensure the landscaping scheme incorporates measures to screen the development from Houghton House Farmhouse is necessary to meet the statutory duty to preserve the setting of the heritage asset. To preserve any archaeological heritage, a scheme of archaeological investigation and a programme of works are also required to establish the presence or absence of archaeological remains and, where necessary, to preserve or record them before construction starts.
111. A condition requiring finished floor levels to be agreed before the start of each phase is necessary to control the height of the development and safeguard the amenities and living conditions of local residents. Although the provision of public open space and an equipped play area is an obligation of the UU, a condition to ensure the position, layout, design and phasing of the open space provision is agreed as part of the reserved matters is necessary for the proper master planning of the development and the timely provision of public open space.
112. A condition requiring all dwellings on the site to achieve emission rates of 19% above the requirements of the 2013 Buildings Regulations is both necessary and reasonable to comply with Policy 27 of the CLCS. This would ensure the energy performance of the proposed dwellings would be at least equivalent to that of the former Code for Sustainable Homes (CSH) Level 4. Although the CSH has been withdrawn, continuing to require compliance with the equivalent energy efficiency standard accords with the transitional arrangements put in place by the Government until housing standards are set through revised building regulations. It is also consistent with national policy on climate change. I have amended the suggested wording of this condition to ensure it applies to all new dwellings proposed, as required by Policy 27, rather than the development as a whole.

113. A series of conditions were suggested for the approval and implementation of a surface water drainage scheme. I have condensed these into two conditions requiring an overall master strategy and details of the system for regulating the flow of surface water. This includes measures to prevent pollution of surface waters, such as **Rushton's Brook**. I consider these conditions are necessary to ensure the sustainable drainage of the site, prevent an increase in flooding elsewhere in line with the requirements of the Framework and protect wildlife habitat and ecology. I am satisfied that conditions to control the construction of estate roads to the required standard for adoption, their completion for each phase and details of their subsequent maintenance and management along with all parts of the public realm are also necessary to ensure highway safety and visual amenity.
114. A Full Residential Travel Plan (Full RTP) is necessary to encourage sustainable modes of travel and reduce car journeys. I have amended the suggested condition to refer to the Framework Travel Plan submitted with the application, to ensure the Full RTP remains consistent with the sustainable transport measures proposed in the Transport Assessment which address the traffic impacts of the development. A condition requiring a construction management plan to control the hours of site operation, noise, dust, emissions and waste during the construction phase is also necessary to safeguard the amenities of the occupiers of surrounding properties and ensure highway safety.
115. A condition is proposed requiring a strategy and infrastructure to support super-fast broadband on the site. Paragraph 112 of the Framework expects planning decisions to support the expansion of electronic communications networks, including full fibre broadband connections. Policies 1 and 3 of the CLCS also encourage greater use of information technology and better telecommunications to enable home working as a means of reducing the need to travel. **I note the appellant's objections to this condition, but** am satisfied there is a clear national and local policy basis for it and that it meets the Framework tests as necessary and reasonable to support the delivery of full fibre broadband connections for each property within the development.
116. A condition requiring an Employment and Skills Plan is a reasonable and necessary requirement to allow for local residents to benefit from the employment and training opportunities which would be available during the construction phase of the proposed development. This would also accord with Policy 15 of the CLCS.
117. A condition requiring a road link to the southern boundary of the site to enable access to the remainder of the BNE3.9 Safeguarded Land allocation to the south was discussed at the inquiry. Although the land to the south is not currently proposed for development, I am satisfied that the condition meets the Framework tests in the interests of good planning and to avoid this land being sterilised, should it be required for longer-term development.
118. A condition requiring the construction of the proposed accesses and off-site highway works before the development is occupied is necessary to ensure the effects of the proposal on the surrounding roads are adequately mitigated, in the interests of highway safety and the efficient operation of the highway network. I have amended the wording of the condition to remove the phrase which means the potential highway works would not be 'not limited to' those



listed, as this is too open ended. The intention of the condition is to ensure those works identified as necessary to mitigate the impacts of the development on the highway network are delivered. However, there may be ancillary accommodation works, such as street lighting, drainage and services diversions, which the Highway Authority is concerned may be necessary to enable the construction of the listed works to adoptable highway standards. I have therefore added these words for preciseness.

119. Finally, the Council suggested a condition requiring the location of the affordable housing to be submitted as part of the reserved matters relating to layout. However, the UU contains a legally binding obligation for an affordable housing scheme, including details of the numbers, type, tenure and location of the affordable housing units, to be approved by the LPA before the development is commenced. Therefore, a condition effectively requiring the same is not necessary.
120. The proposal is also subject to the signed UU, dated 6 July 2020, to secure the provision of 30% affordable housing, 10% self-build and custom housebuilding plots, amenity greenspace and play space and a SuDS on site, together with financial contributions for playing pitches and primary education school places off-site and travel plan monitoring. The obligations accord with the development plan and are required to mitigate the impact of the proposed development. As such they are necessary to make the development acceptable in planning terms. They are also directly related to the development and fairly and reasonably related in scale and kind to it. Accordingly, the deed meets the tests set out in paragraph 56 of the Framework and in Regulation 122 of the CIL Regulations 2010 (as amended).

#### Conclusion

121. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be allowed, subject to the conditions in the attached schedule and the obligations in the S106 UU, dated 6 July 2020.

*M Hayden*

INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 5219-L-04 Rev A and Indicative Access Arrangements 1318/09 Rev G.
- 2) Prior to the commencement of development, full details of the layout, scale appearance and landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 2 years from the date of this permission.
- 4) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 5) The first reserved matters application shall be accompanied by a Landscape Retention, Creation and Management Plan for the entire site, which shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. This shall include the following details:
  - a) Details of new ponds / wetland creation;
  - b) Details for the retention of hedgerows, trees and ponds / wetlands on the site and how they are to be protected during any construction period, in accordance with the recommendations of the FPCR Ecological Appraisal, dated April 2019, the FPCR Arboricultural Assessment, dated June 2019, and the Heritage Statement, April 2019;
  - c) Planting plans, including details for the replacement of trees removed to create the site accesses off School Lane, taking into account the need to mitigate impacts on landscape and visual amenity, and to contribute to landscape connectivity and the creation of a coherent local ecological network;
  - d) Details of the location of bird boxes;
  - e) Detailed measures required to support bats;
  - f) Written specifications (including cultivation and other operations associated with plant and grass establishment);
  - g) Schedules of plants, noting species, planting sizes and proposed numbers/densities where appropriate;
  - h) Implementation timetables.

The development shall be implemented in accordance with the approved details.

- 6) **The first reserved matters application shall be accompanied by a 'lighting design strategy' that shall** identify areas/features on site that are potentially sensitive to lighting for bats and any other species that may be disturbed, to show how and where the external lighting will be installed (through appropriate lighting contour plans), so that it can be demonstrated clearly that any impacts on wildlife are negligible (in particular bats), in accordance with the recommendations in the FPCR Ecological Appraisal, dated April 2019. All external lighting shall be installed in accordance with agreed specifications and locations set out in the strategy.

- 7) The first reserved matters application shall be accompanied by a comprehensive Method Statement describing Reasonable Avoidance Measures for the avoidance of harm to amphibians, and shall subsequently be implemented as approved.
- 8) No tree felling, vegetation clearance works, or other works that may affect nesting birds shall take place between 1st March and 31st August inclusive, unless surveys by a competent ecologist show that nesting birds would not be affected.
- 9) The first reserved matters application shall be accompanied by an Arboricultural Method Statement that shall include details for the protection of all trees to be retained and details of how construction works will be carried out within any Root Protection Areas of retained trees. The development shall only be carried out in accordance with the approved Arboricultural Method Statement and with British Standard BS 3998:2010 or any subsequent amendment. No construction materials, spoil, rubbish, vehicles or equipment shall be stored or tipped within the Root Protection Areas.
- 10) Any Reserved Matters submission for landscaping associated with the development hereby approved shall provide sufficient screening to the development site from the adjacent grade II listed building, Houghton House Farmhouse, in accordance with the recommendations of the Heritage Statement, dated April 2019. The development shall be carried out in conformity with the approved landscaping details.
- 11) Either with any reserved matters application or prior to the commencement of each phase full details of the existing and proposed ground levels and proposed dwelling finished floor levels (all relative to ground levels adjoining the site) shall have been submitted to and approved in writing by the Local Planning Authority, notwithstanding any such details shown on previously submitted plans(s). The development shall be carried out strictly in conformity with the approved details.
- 12) Either with the first or any subsequent reserved matters application, full details of the position, layout, phasing and equipping of the public open space and play areas shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the provision and equipping of these areas shall be carried out in strict accordance with the approved details.
- 13) Prior to the construction of the superstructure of any of the dwellings hereby permitted details shall be submitted to and approved in writing by the Local Planning Authority demonstrating that all new dwellings proposed to be constructed on the site will achieve a minimum Dwelling Emission Rate of 19% above the 2013 Building Regulations. Thereafter, the development shall be completed in accordance with the approved details.
- 14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of any dwellings on each phase or following the completion of the development within the relevant Phase, whichever is the earlier. Any trees or plants which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

- 15) A programme of archaeological work in accordance with a written scheme of investigation, which shall have been submitted to, and approved in writing by, the local planning authority, shall be undertaken and submitted to the local planning authority as part of the first reserved matters application. This programme of works shall include an initial phase of geophysical survey and trial trenching, as well as the compilation of a report on the work undertaken and the results obtained. These works should aim to establish the presence or absence of buried archaeological remains and their nature, date, extent and significance. If archaeological remains are encountered, then a subsequent phase of impact mitigation (which may include preservation in situ by the appropriate design or siting of new roads, structures and buildings, formal excavation of remains or other actions) and a phase of appropriate analysis, reporting and publication shall be developed. A written scheme of investigation for that mitigation phase along with a timetable for its implementation shall be submitted for approval to the Local Planning Authority as part of the reserved matters application. All archaeological works shall be undertaken by an appropriately qualified and experienced professional archaeological contractor and comply with the standards and guidance set out by the Chartered Institute for Archaeologists. The development shall be carried out in accordance with the agreed details.
- 16) At the same time as the submission of the first Reserved Matters application a Surface Water Drainage Master Strategy for the whole site shall be submitted to, and approved in writing by, the Local Planning Authority. The strategy shall be guided by the principles of the submitted Lees Roxborough Flood Risk Assessment - Pear Tree Lane, Euxton, Chorley, Ref. 5901/R3, dated June 2019, including the Drainage Strategy, Ref: 5901 01-02 Rev. A. The Master Strategy shall include the following details as a minimum:
- a) schedule of pass forward rates for each phase or part phase;
  - b) preliminary timetable for implementation of the SuDS system;
  - c) The development levels appropriately set to ensure flows are contained within the existing ditch systems and directed safely through the development down to the boundary watercourse system to the south.
- Thereafter development should proceed in accordance with the approved Strategy, unless the Local Planning Authority gives written consent to any variation.
- 17) Prior to the commencement of each phase of the development, full details for a surface water regulation system and means of disposal for that phase, based wholly on sustainable drainage principles, shall be submitted to, and approved in writing by, the Local Planning Authority. For the avoidance of doubt no surface water shall discharge directly or indirectly into the public foul or combined sewerage systems. The details for each part or phase must be consistent with the approved Surface Water Drainage Master Strategy for the whole site. Those details shall include:
- a) Final sustainable drainage layout plan appropriately labelled to include all pipe/structure references, dimensions, design levels, finished floor levels in AOD with adjacent ground levels;
  - b) The drainage scheme should demonstrate that the surface water run-off and volume shall not exceed the pre-development runoff rate and volume.

The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

- c) Sustainable drainage flow calculations (1 in 1, 1 in 30 and 1 in 100 + climate change) with 10% allowance for urban creep;
- d) A plan/plans identifying areas contributing to the drainage network;
- e) Measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters;
- f) A plan to show overland flow routes and flood water exceedance routes and flood extents;
- g) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltration rates;
- h) Details of an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development. This shall include arrangements for adoption by an appropriate public body or statutory undertaker or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable.

Thereafter development shall proceed in accordance with the approved details, unless the Local Planning Authority gives written consent to any variation.

- 18) No roads proposed for adoption shall be commenced until full engineering, drainage and constructional details for them have been submitted to, and approved in writing by, the Local Planning Authority. The development shall, thereafter, be constructed in accordance with the approved details, unless the Local Planning Authority gives written consent to any variation.
- 19) Prior to the commencement of development, other than site enabling works, an Estate Street Phasing and Completion Plan shall have been first submitted to, and approved in writing by, the Local Planning Authority. The Estate Street Phasing and Completion Plan shall set out the development phases and the standards to which estate streets serving each phase of the development will be completed. No dwelling or dwellings shall be occupied until the estate street(s) affording access to those dwelling(s) has/have been completed in accordance with the Lancashire County Council Specification for Construction of Estate Roads.
- 20) No dwellings shall be occupied until details of the proposed arrangements for future management and maintenance of the proposed streets and public open space and any other areas within the development not to be adopted (including details of any Management Company) have been submitted to and approved in writing by the Local Planning Authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details, until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.
- 21) No development shall commence until a Full Residential Travel Plan has been submitted to, and approved in writing by, the Local Planning Authority, together with a timetable for its implementation. The Full Residential Travel Plan shall be guided by the principles in the Ashley Helme Framework Travel Plan, Ref. 1318/4/D, dated May 2019, submitted with the application. The

- provisions of the Full Residential Travel Plan shall be implemented and operated in accordance with the timetable contained therein unless the Local Planning Authority gives written consent to any variation. All elements of the Full Residential Travel Plan shall continue to be implemented at all times thereafter for a minimum of 5 years after the completion of the development.
- 22) No development shall take place, until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The approved CMP shall be adhered to throughout the construction period. The CMP shall provide for:
- a) vehicle routing and the parking of vehicles of site operatives and visitors;
  - b) hours of operation (including deliveries) during construction;
  - c) loading and unloading of plant and materials;
  - d) storage of plant and materials used in constructing the development;
  - e) siting of cabins, site compounds and material storage area(s) (ensuring they comply with the Method Statement for the avoidance of harm to amphibians);
  - f) the erection of security hoarding where appropriate;
  - g) wheel washing facilities that shall be available on site for the cleaning of the wheels of vehicles leaving the site and such equipment shall be used as necessary to prevent mud and stones being carried onto the highway;
  - h) measures to mechanically sweep the roads adjacent to the site as required during the full construction period;
  - i) measures to control the emission of dust and dirt during construction;
  - j) a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 23) Prior to the construction/provision of any utility services, a strategy to facilitate super-fast broadband for future occupants of the site shall be submitted to, and approved in writing by, the Local Planning Authority. The strategy shall seek to ensure that upon occupation of a dwelling, either a landline or ducting to facilitate the provision of a super-fast broadband service to that dwelling from a site-wide network, is in place and provided as part of the initial highway works within the site boundary only.
- 24) The development shall not commence until an Employment and Skills Plan that is tailored to the development and will set out the employment and skills training opportunities for the construction phase of the development has been submitted to, and approved in writing by, the Local Planning Authority, unless the Local Planning Authority gives written consent to any variation. Thereafter, the development shall be carried out in accordance with the Employment and Skills Plan.
- 25) Any Reserved Matters application submitted in relation to layout shall include the exact location and details of an internal access road that links School Lane with the southern boundary of the application site at a point between X and Y as marked on plan ref. 2018-013/303, to ensure access to the land located to the south within the wider safeguarded allocation BNE3.9 in the Chorley Local Plan 2012-2026 Policies Map, July 2015.

- 26) No part of the development hereby approved shall commence until a scheme for the construction of the site accesses and the off-site works of highway improvement has been submitted to, and approved in writing by, the Local Planning Authority, in consultation with the Highway Authority (as part of a section 278 agreement, under the Highways Act 1980). The scope of the works are shown on Drg. Nos. 1318/09 Rev. G and 1318/23 Rev. A and shall include;
- a) Extension of the 20mph speed limit eastward along School Lane to the junction with Pear Tree Lane and introduction of a 20mph speed limit on Pear Tree Lane between the junction with Euxton Lane and the junction with School Lane;
  - b) Introduction of a footway on the south side of School Lane along the northern Site frontage and to Pear Tree Lane;
  - c) Introduction of a footway on Pear Tree Lane;
  - d) Introduction of street lighting on School Lane and Pear Tree Lane;
  - e) Introduction of traffic calming measures on Pear Tree Lane;
  - f) Introduction of traffic calming measures on School Lane between the southern Site access and the A49 Wigan Road;
  - g) Improvement works at Euxton Lane/Pear Tree Lane junction (SJ5) as indicated on Drg No 1318/23/A;
  - h) Introduction of MOVA at A49/School Lane traffic signal junction (SJ2);
  - i) The upgrade of 2No bus stops in the vicinity of the Appeal Site to quality disability compliant standards;
  - j) Any ancillary accommodation works to street lighting, drainage and services diversions, which are necessary to enable the construction of the listed works to adoptable highway standards.

No part of the development hereby approved shall be occupied until the approved schemes have been constructed and completed in accordance the scheme details.

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Simon Pickles, of Counsel	instructed Chorley Borough Council (CBC)
Nick Ireland BA (Hons), MRTPI	Director, Icen Projects
Katherine Greenwood MTCP, MRTPI	Planning Policy & Housing Officer, CBC
Zoe Whiteside BA(Hons), PG Dip, MSc, CIHCM	Planning Policy Manager, CBC
Alison Marland BA(Hons), MRTPI	Principal Planning Officer, CBC
Iain Crossland MPLA, MRTPI	Principal Planning Officer, CBC
Stephanie Leach LLB(Hons)	Solicitor, CBC

### FOR THE APPELLANT:

Christopher Young QC	instructed by Gladman Developments Limited (GDL)
James Donagh BA(Hons), MCD, MIED	Director, Barton Willmore
Andrew Moger BA(Hons), MA, MRTPI	Associate Director, Tetlow King Planning
James Stacey BA(Hons), Dip TP, MRTPI	Director, Tetlow King Planning
Christien Lee BSc (Hons), MCD, MRTPI	Planning Manager, GDL
Ben Jackson	Director, Ashley Helme Associates
Jason Clemens	Director, Head of Heritage Planning, Savills
Gary Holliday	Director, FPCR Environment and Design
Suzanne Mansfield	Director of Ecology, FPCR
Nicola Baines	Solicitor, GDL

### INTERESTED PARTIES:

Glenn Robinson DMS	Team Lead, Highways and Transport, Lancashire County Council
Mrs S. Shannon	Local Resident
Susan Fox	Local Resident
Debra Holroyd-Jones	Homes England



DOCUMENTS SUBMITTED AT THE INQUIRY

- ID01 Appellant's opening statement
- ID02 Council opening statement
- ID03 Written statement from Mrs S. Shannon
- ID04 Joint Memorandum of Understanding and Statement of Co-Operation relating to the Provision and Distribution of Housing, Statement of Common Ground, Central Lancashire Local Plan, May 2020 (CD7.34)
- ID05 Draft suggested Planning Conditions V6 from the Council.
- ID06 Chapter 2a, PPG 2014, on Housing & Economic Development Needs Assessments.
- ID07 Extracts from chapter 61 of PPG 2019 on Plan Making
- ID08 Appeal decision APP/R1038/W/17/3192255, Land at Deerlands Road, Wingerworth, November 2018
- ID09 Summary Grounds of Resistance in Gerald Gornall v Preston City Council High Court claim CO/1962/2020, 18 June 2020
- ID10 Enclosures with **Defendant's** Summary Grounds of Resistance in the Gerald Gornall v Preston CC High Court claim, 18 June 2020
- ID11 **Claimant's** Summary Statement of Facts and Grounds, Gornall v Preston CC.
- ID12 Note for Inspector from Tetlow King Planning on Custom Build Homes (Buildstore) Demand Data, 22nd June 2020
- ID13 Solo Retail Limited v Torridge District Council [2019] EWHC 489 (Admin)
- ID14 Draft S106 Unilateral Undertaking, submitted by the Appellant
- ID15 Education Contribution Methodology, Lancashire County Council, April 2020 Revision
- ID16 Written representations from Ms. Susan Fox, dated 18th, 23rd June and 25th June 2020
- ID17 Written representation from resident of Belfry Close, Euxton
- ID18 Schedule of 66 written representations on the appeal, Chorley BC
- ID19 SHELAA Methodology Statement, Central Lancashire Local Plan, April 2019
- ID20 Chorley Borough Council Local Plan Review, Written Statement, Adopted Edition, August 2003
- ID21 South Ribble Local Plan, Policy G3 - Safeguarded Land for Future Development, adopted July 2015
- ID22 Oxtan Farm v Harrogate Borough Council [2020] EWCA Civ 805
- ID23 CIL Compliance Statement, addendum on Self-Build and Custom Housebuilding Plots, submitted by CBC

- ID24 Report to Central Lancashire Strategic Planning Joint Advisory Committee Consultation on Consultation of the Revised Joint Memorandum of Understanding, 28th January 2020
  - ID25 Response from CBC to written representations from Ms Fox (ID16)
  - ID26 Agreed note to the Inspector on future supply of Affordable Housing in Chorley borough
  - ID27 Chorley Local Plan [Publication] Policies Map (2012), Map 1
  - ID28 National Planning Policy Framework, July 2018
  - ID29 Core Strategy Policy 27: Sustainable Resources and New Developments, Position Statement following Deregulation Act 2015, submitted by CBC
  - ID30 CBC Note to the Inspector on Suggested Planning Condition 25
  - ID31 CBC Response to the Inspector's questions on Suggested Conditions v7
  - ID32 Appellant (FPCR) Response to written representations from Ms Fox (ID16) on matters relating to ecology, 25th June 2020
  - ID33 Appellant (Tetlow King) Response to Issues and Options Consultation Call for Sites Part 3 Annex 7
  - ID34 Appellant note on the Publication of the 2018-based Household Projections, 30 June 2020
  - ID35 Letter to MPs from Robert Jenrick, Secretary of State for Housing, Communities and Local Government, about Housing and Planning Update, 30th June 2020
  - ID36 Appellant (FPCR) further response to written representations from Ms Fox, dated 1st July 2020
  - ID37 Costs application on behalf of the Appellant, 2 July 2020
  - ID38 LPA response to the appellant note on the Publication of the 2018-based Household Projections (ID34), 2 July 2020
  - ID39 Closing submissions on behalf of the Council, 2 July 2020
  - ID40 Closing submissions on behalf of the Appellant, 2 July 2020
- DOCUMENTS SUBMITTED FOLLOWING THE CLOSE OF THE INQUIRY
- ID41 Location plan (drawing no. 2018-013/303) relating to suggested condition 25
  - ID42 Certified and signed copy of S106 Unilateral Undertaking from Gladman Developments Limited, dated 6 July 2020
  - ID43 Email from Gladman Developments containing agreed revised wording for suggested condition 25
  - ID44 **Council response to appellant's costs application, dated 9 July 2020.**
  - ID45 Manchester City Council v Secretary of State for the Environment [1988] J.P.L. 774; [1988] 1 WLUK 266 (QBD)
  - ID46 Appellant final reply to **the Council's response to Costs application**



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## Costs Decision

Inquiry Held on 22-26 June and 1-2 July 2020

Site visit made on 30 June 2020

by Mike Hayden BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11<sup>th</sup> August 2020

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Costs application in relation to Appeal Ref: APP/D2320/W/20/3247136  
Land at Pear Tree Lane, Euxton, Chorley

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Gladman Developments Limited for a full award of costs against Chorley Borough Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of up to 180 dwellings including 30% affordable housing, with public open space, structural planting and landscaping, surface water flood mitigation and attenuation and vehicular access points from School Lane.
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### Decision

1. The application for an award of costs is refused.

### Reasons

2. The Planning Practice Guidance (PPG) states that costs may be awarded against a party at appeal where that party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Claims can be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
3. The **Appellant's claim is substantive**. In summary, it asserts that the Council behaved unreasonably in pursuing a case at appeal, which relied on a housing requirement derived from a redistribution of the standard method local housing need as the basis for calculating the 5 year housing land supply (5YHLS), and a misreading and misapplication of the National Planning Policy Framework (the Framework) and the guidance in the PPG.
4. Notwithstanding my Decision on the appeal, the Council has provided evidence to substantiate the basis for its refusal of the proposal. It will be clear from my appeal Decision that **I do not find the Council's case to be without merit**. Whilst I have concluded that the standard method LHN figure for Chorley should provide the basis for calculating its 5YHLS in the appeal, I do not consider it was unreasonable for the Council to make the case for a requirement derived from a redistribution of housing need across Central Lancashire, given the courts have held this is not unlawful for decision-making purposes. Even **though I disagree with the Council's** interpretation and application of the PPG to support its approach, the Council has adequately explained the reasons for its reading of the guidance.

5. On the matter of timing, the Council argues that the application should be refused because it was not made in a timely manner in accordance with the PPG **and the Inspector's direction**. However, the Appellant submitted the costs application before the close of the inquiry in accordance with the guidance in the PPG<sup>1</sup>. Whilst the PPG also requests that, as a matter of good practice, costs applications should be made in writing before the hearing or inquiry, it acknowledges there may be circumstances where this is not possible. My directions following the first case management conference (CMC) reflected this guidance.
6. Although the appellant indicated at the CMC and at the opening of the inquiry that it did not intend to make a costs application, it has explained the reasons for **doing so having heard the Council's evidence at the inquiry**. In part this was because, in the **Appellant's view**, the Council persisted in pursuing arguments at the inquiry, which it considered were not credible. I have dealt with the substance of that above. But the PPG allows for costs applications to be made before the close of the inquiry, where they relate to behaviour at the inquiry<sup>2</sup>. Therefore, I am satisfied that the costs application was made in accordance with the deadlines and guidance in the PPG.
7. Nevertheless, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*M Hayden*

INSPECTOR

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<sup>1</sup> PPG Paragraph: 035 Reference ID: 16-035-20161210

<sup>2</sup> PPG Paragraph: 035 Reference ID: 16-035-20161210