
Appeal Decision

Inquiry held on 17, 18, 19 20 May 2016

Site visit made on 20 May 2016

by C Sproule BSc MSc MSc MRTPI MEnvSc CEnv

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

Decision date: 09 December 2016

Appeal Ref: APP/P2365/W/15/3132596

Land off Parrs Lane, Aughton L39

- 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 Redrow Homes Limited against the decision of West Lancashire Borough Council ('the Council').
 - The application Ref 2015/0329/OUT, dated 30 March 2015, was refused by notice dated 30 June 2015.
 - The development proposed is outline planning application for residential development of up to 250 dwellings with access.
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Decision

1. For the reasons that follow I dismiss the appeal.

Preliminary Matters

2. For the purposes of the inquiry the appeal was conjoined with appeal ref: APP/P2365/W/15/3132594 for land to east of Prescott Road, Aughton, Ormskirk, Lancashire L39. Although evidence was heard on a joint basis, each appeal has been considered on its own merits.
3. This decision notice concerns an appeal for outline planning permission with all matters, except access, reserved for determination at a later stage.
4. During the inquiry the appellant in this case suggested a condition in relation to affordable housing and requested that an opportunity be given to provide a planning obligation if there was a likelihood of the condition being considered inappropriate. Subsequently, an opportunity was given for a planning obligation in relation to affordable housing to be provided. A planning obligation by agreement for affordable housing in relation to the conjoined appeal was executed within a week of the last sitting day of the inquiry,¹ which caused the decision for appeal ref: APP/P2365/W/15/3132594 to be issued first. That decision was challenged in the High Court, which led to exchanges of correspondence in relation to this case and these representations have been taken into account.²

¹ Inquiry Document (ID) 28

² ID36 to ID48

Main Issues

5. The decision notice contains five reasons for refusal. Section 6 of the Statement of Common Ground notes that Statements of Common Ground (SoCGs) are to be prepared to address the possible effects of the proposed developments on nature conservation matters, highway safety and drainage. In March 2016, SoCGs were produced to address these matters for both appeal proposals.
6. Based on the Council's remaining reasons for refusal and the substantive issues between the Council and appellant as set out in section 6 of the Statement of Common Ground, along with the context provided by paragraph 49 of the National Planning Policy Framework ('the Framework'), the main issues are considered to be: (a) whether the proposed development would accord with development plan and national planning policies regarding the provision of land for housing; (b) the effect of the development proposed on the availability of best and most versatile agricultural ('BMV') land; and, (c) whether the proposal could be considered as a sustainable form of development.

Reasons

Housing

Policy

7. Paragraph 47 of the Framework seeks to boost significantly the supply of housing, with paragraph 49 stating that *'...Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites...'*
8. Paragraph 85 of the Framework notes that when defining boundaries of Green Belt, amongst other things, local planning authorities should: where necessary, identify in their plans areas of 'safeguarded land' between the urban area and the Green Belt, in order to meet longer-term development needs stretching well beyond the plan period; make clear that the safeguarded land is not allocated for development at the present time - planning permission for the permanent development of safeguarded land should only be granted following a Local Plan review which proposes the development; and, satisfy themselves that Green Belt boundaries will not need to be altered at the end of the development plan period.
9. West Lancashire Local Plan 2012-2027 (LP) was adopted in October 2013 following an Examination within the context of the Framework. LP Policy SP1 provides *A Sustainable Development Framework for West Lancashire* which includes a Settlement Hierarchy. Within the hierarchy Ormskirk with Aughton, and Burscough, are the 'Key Service Centres' in the tier below the 'Regional Town' of Skelmersdale with Up Holland.
10. LP Policy RS6 provides *A "Plan B" for Housing Delivery in the Local Plan*. It states that Plan B sites will only be considered for release for housing development if one of three triggers is met. The first and second triggers are in relation to housing delivered after years five and ten of the Plan period (2012-2027) respectively. The third trigger is *The housing target increasing as a result of new evidence*.

11. The LP proposals map allocates the appeal site as one of the *Safeguarded Land Plan B Sites*, and the safeguarded land is listed in LP Policy GN2 as Plan B site "...i. Land at Parrs Lane, Aughton (400 dwellings)...". In combination, the development the subject of this and the conjoined appeal would provide up to 400 dwellings.
12. The appellant draws attention to the LP Examining Inspector's comments regarding Plan B and its relationship with paragraphs 49 and 14 of the Framework. Paragraph 140 of the LP Examination report states that "...The provisions of Plan B would be supplemented by the mechanism contained in paragraphs 49 and 14 of the National Planning Policy Framework to address any failure to maintain a five-year housing land supply. In this context, five-yearly reviews of housing delivery under Plan B would be sufficiently frequent to maintain the overall supply, while allowing for peaks and troughs in the trend of provision. Setting the trigger-point at 80% of the required level of supply is also appropriate, providing robust justification, in the form of a demonstrated significant shortfall in provision over time, for the release of Green Belt land under Plan B which would otherwise be safeguarded for development after 2027....".
13. Framework paragraph 49 is referred to above and paragraph 14 of the national policy sets out the presumption in favour of sustainable development. Plan B is integral to the policy framework within the adopted development plan for this area and is specifically addressed by the *Sustainable Development Framework* within LP Policy SP1.
14. LP Policy GN2 is unambiguous that safeguarded land "...is within the settlement boundaries, but will be protected from development and planning permission will be refused for development proposals which would prejudice the development of this land in the future...".³ As safeguarded land, the appeal site is outside the Green Belt and very special circumstances would not need to be demonstrated. Even so, the Policy GN2 confirms that: sites allocated for Plan B will be safeguarded from development for the needs of Plan B should it be required; and if Plan B is not required, the land will be safeguarded from development until 2027 for development needs beyond 2027.⁴ Accordingly, the purpose of Policy GN2 is to safeguard the appeal site from development, while providing a means for its release if Plan B is triggered.
15. There is nothing in the LP to suggest that the listing of safeguarded sites in Policy GN2 is a ranking for their release, which is reflected in the supporting text to LP Policy RS6 and explicitly dealt with in the LP Examining Inspector's report.⁵ In relation to LP Policy RS6 and its 'Plan B', the supporting text in LP paragraph 7.68 states "...If it is anticipated a year before any trigger point that is reached (i.e. at the end of years 4 and 9 of the Plan) that housing delivery is at risk of triggering the Plan B, the Council will commence a review of the level and nature of any undersupply compared to housing requirements...". This confirms that it would be the Council who would commence a review to determine which Plan B sites would be the most suitable for release at that time.

³ Paragraph 5.15 of the supporting text to Policy GN2 notes that the site is protected from development until *absolutely required*, and the associated tests are within the policy wording.

⁴ As recognised in paragraph 142 of the LP Examination Inspector's report

⁵ LP paragraph 7.68 and paragraph 141 of CD5

The first trigger for "Plan B"

16. The first trigger within LP Policy RS6 states that *"...If less than 80% of the pro rata housing target has been delivered after 5 years of the Plan period, then the Council will release land from that safeguarded from development for "Plan B" to enable development to an equivalent amount to the shortfall in housing delivery..."*.
17. The appellant's completions data excludes units in Use Class 'C2', and in doing so highlights that: Government household projections are understood not to include a component for C2 accommodation;⁶ and, the LP Examination Inspector did not have the Planning Practice Guidance (PPG) before him as it was first issued on 6 March 2014.
18. PPG states that *"...Older people have a wide range of different housing needs, ranging from suitable and appropriately located market housing through to residential institutions (Use Class C2). Local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement. The approach taken, which may include site allocations, should be clearly set out in the Local Plan..."*.⁷
19. There is nothing to suggest that the final sentence in this extract of the PPG is doing anything other than dealing with the two preceding sentences. If its focus were to be the heading of the paragraph and the first sentence, it would have been expected to be the second sentence, but it is not.
20. PPG issued in April 2016 provides specific advice in relation to the consideration of *Housing for older people* in assessing housing need.⁸ Amongst other things, the guidance notes that *"...Local authorities should therefore identify particular types of general housing as part of their assessment...."*.
21. LP Policy RS1(e) encourages the provision of accommodation specifically designed for the elderly, with requirements set out in LP Policy RS2, and the LP evidence base will have considered older people in Use Class C3 accommodation. Even so, in oral evidence to the inquiry the Council confirmed that C2 needs were not counted into the housing requirement side of the LP for subsequent 'C2' completions to be set against it. As a consequence, C2 completions should not be included when considering the first Plan B trigger in LP Policy RS6.
22. Excluding 'C2' completions, during the period 2012-2016 the Borough has delivered 956 homes against the total requirement for the period of 1,208.⁹ That would be below the 80% threshold for the first trigger, but the 5 year period for the first trigger will only be reached in April 2017.
23. While LP paragraph 7.68 looks forward, the first trigger in LP Policy RS6 is clearly backward looking after the five year period, and any release of safeguarded land would be in 2017 following actions by the Council.

⁶ That PPG Reference ID: 2a-015-20140306 confirms household projections to *provide the starting point estimate of overall housing need*

⁷ Reference ID: 3-037-20150320

⁸ Reference ID: 2a-021-20160401 (ID23)

⁹ That is an annual requirement of 302 dwellings per annum, but the initial trajectory 2012-2015 is below this rate

24. The LP Examination Inspector specifically concluded that the five year review mechanism would be sufficiently frequent to maintain the overall supply,¹⁰ and in these cases, the first trigger point has yet to be reached.
25. During cross-examination the appellant accepted that the appeal proposal conflicts with LP Policies GN2 and RS6, but highlighted a clear need for market and affordable housing due to failures in housing delivery.¹¹
26. Housing delivery under the LP has not met the LP requirement in total and in three of the last four years, although actual delivery has compared more favourably against the LP Examination Inspector's trajectory.¹² In Footnote 1 to the housing trajectory table annexed to the LP Examination Inspector's report the Inspector assumes that the shortfall in delivery during 2012-2013 of 51 units¹³ would be made up during the first five years.
27. Delivery was higher than expected during 2013-2014 with 310 units, significantly above the trajectory of 262. Completions were also above the trajectory for 2014-2015, with 239 delivered against the expected 222. Even so, the housing trajectory steps up significantly during 2015-2016 with 451 expected completions, whereas only 268 units were delivered. The LP Examination Inspector anticipated that in the first five year period 90% of the LP requirement would be delivered. At present after the first four years, it is 79.1%.¹⁴
28. Attention is drawn to matters that have prevented allocated sites coming forward at their expected rates, with the potential shortfall against the LP trajectory noted to be substantial and getting larger.¹⁵
29. However, looking forward to what the delivery rate is likely to be when the first trigger is reached during 2017, the appellant's evidence indicates 286 completions during 2016-2017. When this is added to the 956 completions agreed for the first four years, it results in a delivery of 1,242 units against the 1,510 requirement which is 82%. Ensuring 80% delivery during the first five years requires 252 units to be completed during 2016-2017.
30. Views differ on the need for a review to commence within the context of LP paragraph 7.68. Although the Council considers it highly unlikely that the first LP Policy RS6 trigger would be met, there must be a risk of it being met even if the Council does not anticipate it. The review set out within LP paragraph 7.68 would facilitate, rather than trigger, Plan B. The triggers are set out within LP Policy RS6.

The second trigger for "Plan B"

31. Given that the period of the LP began in 2012, the second trigger is not relevant to this appeal.¹⁶

The third trigger for "Plan B"

¹⁰ Paragraph 140 of CD5

¹¹ The background to this is set out in paragraph 4 (and paragraphs 6-10) of the Council's closing submissions, and is addressed by paragraphs 1.4 and 3.1 and section 5 of the appellants' closing submissions

¹² Detailed at paragraph 3.9 of the appellants' closing submissions

¹³ 139 actual completions against 190 predicted

¹⁴ Paragraphs 17(v) and 3.10 of the closing submissions for the Council and appellants respectively

¹⁵ Paragraph 3.15 of the appellant's closing submissions

¹⁶ Confirmed by both main parties during cross-examination and recorded in paragraph 19 of the Council's closing submissions

32. The third trigger in LP Policy RS6 states that *'...If, at any point during the 15 year period of the Plan, the Council chooses to increase its housing target to reflect the emergence of new evidence that updates the existing evidence behind the housing target and which would undermine the existing target, then an appropriate amount of land will be released from that safeguarded from development for "Plan B" to make up the extra land supply required to meet the new housing target for the remainder of the Plan period....'*
33. The appellant considers that the low rate of affordable housing delivery in the Council's area, along with the adoption of its *Housing Strategy 2014 to 2019*, is new evidence that should lead the Council to intervene and set a new housing target. Taking into account demolitions, the first three years of affordable housing delivery under the LP has provided 24 net units in the Borough, with 9 of these units in Ormskirk with Aughton. The appellant highlights that most housing allocations are failing to deliver the levels of affordable housing sought by LP policy.¹⁷
34. Both main parties referred to the LP monitoring target for affordable housing in Appendix B of the LP, which is for 20% of all annual housing completions to be affordable. ID27 confirms that 68 affordable dwelling completions were expected during 2015-2016, with the Council estimating a total of 295 and the appellant up to 225 affordable unit completions 2012-2017.
35. The Council highlights that the 2009 Strategic Housing Market Assessment, the 2010 Housing Need and Demand Study and the 2011 Census were all before the LP Examination Inspector. However, the appellant also refers to the Council's *Housing Strategy 2014 to 2019*,¹⁸ which has taken into account a range of strategies and plans, including the LP. Section 2.0 of the Housing Strategy notes that it *"...is intended to be an over-arching document that establishes priorities for action, both by the local authority and, where appropriate, by other service providers and stakeholders and sets out a clear action plan...."*. A Key Delivery Action of the Housing Strategy is to develop 500 new affordable homes, with *Objective 1* noting this will be done by *"...using planning policy requirements..."* and referring to LP Policy RS2. The Housing Strategy does not refer to LP Policy RS6 or Plan B.
36. An increase in the LP housing target would meet the third trigger of LP Policy RS6, but the policy is clear that it would be the Council that decides to increase the housing target (just as the last paragraph of LP Policy SP1 confirms that the Council may choose to enact all or part of the Plan B by releasing safeguarded land for development).
37. The challenges for affordable homes provision in the Borough, and Ormskirk with Aughton in particular, are apparent, but there is not significant new evidence that undermines the LP requirement in relation to the third trigger in LP Policy RS6.¹⁹ LP paragraph 7.21 notes there to be *an acute need for more affordable* homes in the Borough and the LP was found to be sound with a housing target that would not meet the full affordable housing needs.

¹⁷ LP Policy RS2 sets out the requirements for affordable and specialist housing, which include (other than in Skelmersdale) developments of 8-9, 10-14, and 15 units and above providing a minimum 25%, 30% and 35% of the units as affordable dwellings respectively in Key Service Centres, Key Sustainable Villages and Rural Sustainable Villages.

¹⁸ Appendix 17 to Mr Harris' Proof of Evidence

¹⁹ Paragraph 23(8) of the Council's closing submissions

38. In any event, whatever the situation is in relation to matters the appellant considers to be *new evidence*, the Council has not decided to increase its housing target and therefore, the third trigger has not fired.

Policy conclusion

39. The appellant has accepted that the appeal proposal conflicts with LP Policies GN2 and RS6 and for the reasons above, no matters would cause me to take a different view.

Five year housing land supply ('five year HLS')

40. The Council's most recent Annual Monitoring Report indicated 6.1 years housing land supply at 31 March 2015.²⁰
41. The main parties agree on: a base date of 1 April 2015 for the consideration of five year HLS; the use of the Sedgefield approach for dealing with any backlog; and, the application of the Framework paragraph 47 buffer to both the basic requirement and any backlog.
42. The LP requirement is 302 dwellings per annum (dpa) 2012-2017 and then 335 dpa for the remainder of the Plan period. Accordingly, the requirement for the five year period beginning on 1 April 2015 is 1,609 dwellings.

Use Class 'C2'

43. For the reasons set out above,²¹ dwellings in Use Class 'C2' should not be included when determining the Borough's five year HLS under the current LP.

Application of a 'buffer'

44. Framework paragraph 47 states that an additional buffer of 5% (moved forward from later in the Plan period) should be added to the supply of deliverable sites to ensure choice and competition; and the buffer should be increased to 20% where there has been a record of persistent under delivery of housing. The Council prepared its case on the basis of a 5% buffer, but it became apparent just before the exchange of proofs of evidence that the appellant considered a 20% buffer should be applied.²²
45. Paragraph 135 of the LP Examination report found a 5% buffer to be appropriate in the Borough.²³ It found there to have been housing provision in excess of policy requirements until the economic downturn in 2007-2008, and while this subsequently affected delivery, a 5% buffer was nonetheless appropriate.
46. In the LP trajectory of 139, 262, 222, 451, 470 dwellings for the years 2012-2017 respectively, the delivery (excluding C2 units) has been 139, 310, 269 and 268 dwellings for the years 2012-2016 respectively.
47. The LP Inspector was aware of the delivery of 139 units in 2012-2013. Completions during 2013-2014 were in excess of the requirement and significantly above the trajectory. The subsequent two years were below the requirement and an upturn in delivery of the scale envisaged by the LP

²⁰ CD12

²¹ Under 'The first trigger for "Plan B"'

²² As highlighted in paragraph 40 of the Council's closing submissions

²³ CD5

Inspector for 2015-2016 did not occur. However, only in 2015-2016 has the Council failed to deliver housing either at or in excess of the trajectory annexed to the LP Examination report.

48. Given the findings of the LP Examination Inspector in relation to the appropriateness of the 5% buffer, the reasons given for it and the consideration of the trajectory in his report to arrive at those conclusions,²⁴ at this stage it would not be appropriate to conclude the failure to realise the uplift in 2015-2016 results in a record of persistent under delivery of housing. Accordingly, a 5% buffer is still applicable in the Borough.

Deliverability of supply

49. Footnote 11 of the Framework states that *"...To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans..."*.
50. The appellant highlights that whether or not a site is deliverable within the context of Footnote 11 of the Framework, and therefore included within the supply, is a different matter to the likely rate of delivery from it. Even so, the second sentence of Footnote 11 is unambiguous that for a site with planning permission to be excluded from the five year HLS there needs to be *clear evidence* to indicate that it will not be implemented in five years.
51. PPG also addresses deliverability. In relation to planning permission, it is clear that *"...Deliverable sites for housing could include those that are allocated for housing in the development plan and sites with planning permission (outline or full that have not been implemented) unless there is clear evidence that schemes will not be implemented within five years..."*.²⁵ Approval of reserved matters is not required for a site to be considered deliverable, and the main parties are agreed that Footnote 11 applies to Local Development Orders (LDOs) as these grant planning permission.²⁶
52. In addition, the Council has highlighted that case law supports the view that a resolution to grant planning permission or inclusion in a development plan can provide evidence of deliverability.²⁷ Also, HLS does not require certainty that housing sites will be developed in the five year period, as a *loose end* does not necessarily provide the *clear evidence* that a site with planning permission would not be deliverable.²⁸

²⁴ For example, those in paragraph 137 of CD5

²⁵ Reference ID: 3-031-20140306

²⁶ Paragraph 44 of the Council's and paragraph 4.1.4 of the appellant's closing submissions

²⁷ With reference to PPG Ref: ID: 3-031-20140306 and for example, paragraphs 16, 20, 25 and 29 of *St Modwen Developments Limited and (1) Secretary of State for Communities and Local Government (2) East Riding of Yorkshire Council and (3) Save Our Ferriby Action Group* [2016] EWHC 968 (Admin)

²⁸ With reference to PPG Ref: ID: 3-031-20140306 and for example, paragraph 51 of and submissions to *St Modwen Developments Limited and (1) Secretary of State for Communities and Local Government (2) East Riding of Yorkshire Council and (3) Save Our Ferriby Action Group* [2016] EWHC 968 (Admin) as referred to in paragraph 47 of the Council's closing submissions

53. Agreement was reached in regard to 7 of the 17 sites in the appendices to Mr Harris' *Housing Land Supply* proof of evidence. The positions in relation to the sites are as follows:
54. **Site 1 - Skelmersdale town centre** – While the appellant considers that the only dwellings to be delivered are the 48 units with planning permission at Firbeck, the Council also include 75 units at Findon and Delph Clough to provide the 117 units included in the Council's 2015 Annual Monitoring Report (AMR). Findon and Delph Clough are the subject of LDOs that have conditions that require implementation within five years. Both sites are under the control of the Homes and Communities Agency (HCA). There is no developer to bring the sites forward, but the inquiry heard that in the absence of interest, the HCA would be expected to directly develop the sites. In that context the appellant's '0' delivery for Findon and Delph Clough appears to be too pessimistic and the delivery in the five year HLS would be **117 units**.
55. **Site 2 – Yew Tree Farm** –The Council's position reflected the 2015 AMR with 90 units in the five year HLS, which the Council considered to be conservative given that a letter from Fitton Estates suggests up to 150 units.²⁹ The Council also notes that high rates of delivery were expected at sites with multiple developers elsewhere in the locality. The appellant's position is 50 units within the five year HLS period. A resolution to grant planning permission for 580 dwellings was approved 14 January 2016, subject to planning obligation(s) being entered into. Although the Fitton Estates' letter expects to achieve sales of 120 to 150 units by 2020, this would appear optimistic given previous delivery expectations for the site and matters that remain to be resolved. These matters include completion of a contract with the named developer, site acquisition, determination of reserved matters and addressing any pre-commencement conditions or approvals. Given the nature and scale of the development and the matters that remain to be resolved, I find the Council's position overly optimistic. Accordingly **50 units** are added to the supply.
56. **Site 3 - Grove Farm:** There are no matters that cause me to take a different view to the **76 units** agreed by the main parties to the appeal.
57. **Site 4 - Firswood Farm:** The 2015 AMR is 75 units, but the Council's position at the inquiry increased to 94 units. The appellant's position is 25 units highlighting the absence of a formal consortium or equalisation agreement and possible presence of shallow mine workings. The Fitton Estates' letter refers to matters discussed in a meeting with the Council and developer, that pre-planning work has been carried out and terms have been agreed with the developer for the first phase.³⁰ Confirmation of these matters had yet to be received from the developer, but there is no doubt regarding the nature of the meeting and the matters discussed. The 94 units are to be built on land with its own access, open space and a single owner. These matters indicate it to be appropriate to add the **94 units** to the five year HLS.
58. **Site 5 - Whalleys, Skelmersdale:** The 2015 AMR includes this site at 140 units, but the Council's position has reduced to 120 units, while the appellant's position is 63. The site is allocated for 520 units during the Plan period and there is an extant outline planning permission for 630 units. This is an HCA site with a (unidentified) developer for the first phase that has a design and

²⁹ ID13

³⁰ ID13

other matters progressed with the aim of being on-site in 2017. While the proposed delivery rate is questioned, the HCA estimates 110 units by 2020 and is in the best position to understand the factors likely to influence that. Accordingly, the Council's position is accepted as the more likely outcome adding **120 units** to the HLS.

59. **Site 6 - Chequer Lane:** Although the 2015 AMR included 128 units for this site the Council has reduced this to 112 at inquiry, with the appellant's position 72. It is agreed that 66 units will be delivered on one of the two ownerships, but the HCA land has no planning permission resulting in the difference between the parties. A Gantt chart shows a developer on-site 1 month after planning permission is obtained, even though pre-commencement conditions and other agreements would have to be addressed, which appears to be very unrealistic. Accordingly, it is the appellant's position that is the likely outcome, which adds **72 units** to the HLS.
60. **Site 7 - Fine Janes Farm:** There are no matters that cause me to take a different view to the **59 units** agreed by the main parties to the appeal.
61. **Site 8 - New Cut Lane Halsall:** There are no matters that cause me to take a different view to the **50 units** agreed by the main parties to the appeal.
62. **Site 9 - Greaves Hall Hospital:** There are no matters that cause me to take a different view to the **60 units** agreed by the main parties to the appeal.
63. **Site 10 - East Quarry, Appley Bridge:** The 2015 AMR had 40 units on this site, which includes a number of floating homes. The Council's position is the 16 homes that would be built on the land immediately around the quarry, while the appellant sees no potential for inclusion within the five year HLS. The site is technically challenging, but it has planning permission and the evidence suggests that the scheme could come forward with 16 units by 2020. As such, the **16 units** are added to the HLS.
64. **Site 11 - Alltys Brickworks:** The Council and appellant consider the site to contribute 85 and 50 units to the five year HLS respectively. It is allocated in the LP and has outline planning permission. A reserved matters application has been made and a major house builder is involved that has provided an estimated delivery rate. There is a gassing landfill on the site, but not in the area intended for house building. Additional information was provided on the final sitting day of the inquiry regarding the environmental context of the site,³¹ and the main parties to the appeal provided their comments on it.³² The Council has confirmed that: the reports provide the baseline information for an application to discharge condition 34 of the outline planning permission; and, ecological considerations had already been accounted for within the timescales given for the development. There remain ground conditions to be addressed, but it has not been shown that environmental matters would be likely to prevent the site delivering **85 units** by 2020 and this is added to the HLS.
65. **Site 12 - Westec House:** This is a SHLAA site that does not have planning permission. However, it is the site of Council Offices that have now been demolished. It has a resolution to grant planning permission that awaits planning obligation(s) being entered into. Given the nature of the site, its ownership and location within Ormskirk, along with the factors described

³¹ ID16 and ID17

³² ID30

above, the Council is not excessively optimistic or unrealistic about the site's deliverability. The site would be likely to provide the **20 units** attributed to it and these are added to the HLS.

66. **Site 13 – Digmoor Sports Centre:** The Council and appellant's positions are for 50 and 0 units respectively. The appellant questions the achievability of the site due to its unsuccessful marketing with Findon and Delph Clough (Site 1). The site: has a LDO for 100 dwellings; is Council/ HCA owned; ground conditions are understood to be acceptable; has attracted interest in soft marketing and was to be marketed in summer 2016. Views differ on the attractiveness of this site to the market, but the Council's view that 50 units are likely to be achieved by 2020 appears realistic and to reflect the circumstances of the site. Accordingly, **50 units** are added to the HLS.
67. **Site 14 – Abbey Lane:** The Council expects 86 dwellings from this site, which has planning permission granted in March 2014. It is a former landfill for inert wastes and lime sludge that had previous interest from developers, but no schemes taken forward. The land owner's planning consultants have confirmed the owner's intentions for the site and that a sale process is underway with an expected completion and development towards the end of the year. While the appellant questions the viability of the site, noting areas where significant levels of ground gas have been observed and the possible presence of contaminants, insufficient information has been provided to put matters into context and demonstrate that there is *clear evidence* that the site is not deliverable. Therefore, **86 units** are added to the HLS.
68. **Site 15 – Sluice Lane/New Road:** The Council and appellant's positions are 48 and 0 units respectively. The site has outline planning permission for up to 51 dwellings, with a reserved matters application in February 2016. A local developer is on-board and both main parties consider it to be a good market location. The developer has confirmed its drainage solution for the site is acceptable to the relevant regulator and utilities provider.
69. Ground 2 of the High Court challenge regarding the determination of appeal ref: APP/P2365/W/15/3132594 is on the basis that the **48 units** for Site 15 should have been included as a deliverable site.³³ Information submitted after the issue of the decision letter for appeal ref: APP/P2365/W/15/3132594 has clarified the cases being made. In June 2016 the Water Vole Mitigation Strategy was found to be acceptable and an application for the determination of reserved matters was approved in August 2016. Although concerns have been expressed regarding a failure to comply with pre-commencement conditions, within the context of Framework Footnote 11, the evidence indicates Site 15 to be deliverable and the **48 units** are added to the HLS.³⁴
70. **Site 16 – Land at Stiles Lane:** The main parties agree that this site should be removed from the five year HLS. No matters would cause me to take a different view and therefore **0 units** are added to the five year HLS.
71. **Site 17 – Land east of the Close:** The main parties have confirmed that this site for C2 housing. For the reasons set out above **0 units** should be added to the five year HLS

³³ Planning Court Reference No.: CO/4913/2016

³⁴ ID43 and related correspondence/IDs

72. In addition to these sites, it is not disputed that **188 units** should be added to the five year HLS to address pending planning applications.³⁵ There are also **374 units** on uncontested sites that are added to the five year HLS.
73. Following the issue of the decision for appeal ref: APP/P2365/W/15/3132594, the Council and appellant noted that the HLS figures should have included **71 units** for Guinea Hall Lane, Banks and **94 units** for Tarleton Mill, Tarleton. These were agreed sites not listed within ID31,³⁶ but as agreed sites the units are now added to the HLS.
74. The Council has set out its position in regard to windfalls and noted the LP Examination Inspector found the windfall allowance to be “...*realistic and supported by compelling evidence*...”.³⁷ It would appear to avoid any double counting in arriving at 96 units, the basis for which has been adequately explained. Accordingly, **96 units** are added to the HLS.
75. A HLS SoCG was produced following closure of the inquiry and informs the following:
- | | | | |
|-------|------------------------|---|---|
| i. | Agreed base date | = | 1 st April 2015 |
| ii. | Five year period | = | 1 st April 2015 to 31 st March 2020 |
| iii. | Housing requirement | = | 1,609 units for the five year period |
| iv. | Shortfall less ‘C2’ | = | 218 units at 1 st April 2015 |
| v. | Apply 5% buffer | = | 1,609 + 218 = 1,827 + 5% = 1,918 ³⁸ |
| vi. | Requirement | = | 1,918 units for the five year period |
| vii. | Annualised requirement | = | 1,918 / 5 = 383.6 |
| viii. | Deliverable supply | = | 1,826 |
| ix. | Housing land supply | = | 1,826 / 383.6 = 4.8 years |
76. Paragraph 14 of the Framework is engaged due to the lack of a five year HLS. Framework paragraph 14 states that “...*where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted*...”. Restrictive specific policies in the Framework include those in relation to Green Belt, but the appeal site has been taken out of the Green Belt.

Best and Most Versatile Land

77. LP Policy EN2(4) is not permissive of development on BMV land except where absolutely necessary to deliver development allocated within the local plan, strategic infrastructure, or development associated with the agricultural use of the land.

³⁵ Paragraphs 68-70 of the Council’s closing submissions

³⁶ ID36 & ID37

³⁷ Paragraph 136 of CD5 and paragraph 71 of the Council’s closing submissions

³⁸ Confirmed by paragraph 4.2 of ID31

78. Paragraph 112 of the Framework states that “...*Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality...*”.
79. Documentation appended to the Environmental Statement (ES) includes a single agricultural land classification (ALC) report by ADAS in 1995 for land that includes the appeal site. In 1995, the 24.9ha area reported on had BMV land, with other areas classed as non-agricultural, agricultural buildings, woodland, open water and urban, with 2.3ha not surveyed.
80. The 11.4ha appeal site, together with the land the subject of the conjoined appeal, would result in a combined area of 17.06ha. Work carried out for the ES concurred with the conclusions of the 1995 assessment, with the appeal sites noted to contain 12.6ha of BMV.
81. ES Figure 12.1 shows the area of BMV in the locality, and it is extensive.³⁹ Developing the appeal site would cause a loss of BMV land of sufficient scale to be locally significant and this weighs against the proposed development. Other safeguarded sites in the Borough have land that is classified as ‘urban’ or of a lower agricultural quality.⁴⁰ Consequently, it has not been shown that the proposed loss of BMV is absolutely necessary and the proposal conflicts with LP Policy EN2(4).

Sustainable development

82. Paragraph 7 of the Framework confirms there to be three dimensions to sustainable development, namely economic, social and environmental, and describes matters that are relevant to each.

Environmental dimension

83. The appeal site is predominantly agricultural land that abuts existing residential areas in Ormskirk with Aughton in an area that also includes characteristically open, rural Green Belt countryside.
84. The scale and density of this outline scheme would be appropriate given the nature of the predominantly residential development next to the appeal site and the context of proposed planning conditions. The Council’s report on the application notes that: LP Policy GN3(4) requires, amongst other things, development proposals to maintain or enhance the distinctive character and visual quality of any Landscape Character Area in which they are located; and as the landscape impact of the proposal was considered low to medium, if the application had been approved the Council would have looked at these matters carefully at the reserved matters stage. However, the proposal would cause a loss of countryside, the intrinsic character and beauty of which the Framework seeks to be taken into account. While the appeal site is clearly valued by local people who made representations to the inquiry, it is a LP allocation that now falls to be considered under the presumption in favour of sustainable development. The loss of valued countryside provides a moderate amount of weight against the appeal scheme, but this must be set against the aims and

³⁹ With paragraph 2.14 of the appellant’s closing submissions noting the majority of the Borough outside settlements to be BMV land

⁴⁰ As highlighted in paragraph 91 of the Council’s closing submissions

intentions of adopted planning policy and its allocation within the development plan.

Minerals Safeguarding

85. The LP proposals map indicates much of the appeal site to be within a Mineral Safeguarding Area. Paragraph 143 of the Framework states that in preparing Local Plans, local planning authorities should, amongst other things, "...define Minerals Safeguarding Areas and adopt appropriate policies in order that known locations of specific minerals resources of local and national importance are not needlessly sterilised by non-mineral development, whilst not creating a presumption that resources defined will be worked...". Framework paragraph 144 notes that when applications are determined, great weight should be given to the benefits of mineral extraction.
86. The Borough Council's report on the proposal notes the application to have been supported by a Minerals Resource Assessment that concluded the county to have a surplus of sand and gravel, and given the characteristics of the surrounding land use and uncertainty regarding the mineral resource on the appeal site, extraction from it would be commercially unviable and environmentally unacceptable. The Council's report notes that prior extraction of mineral would not be required and indeed, the mineral planning authority has not objected to the proposal. Therefore, in these cases the sterilisation of mineral reserves attracts considerably less than significant weight against the proposal.

Ecological matters

87. Application stage advice from Natural England noted that the proposal would be unlikely to affect any statutorily protected sites or landscapes. Consultation responses from Merseyside Environmental Advisory Unit (MEAS) highlighted the need for additional bat survey work prior to determination of the proposal.
88. In addressing priority species and habitats, LP Policy EN2 is clear that where there is a reason to suspect that there may be a priority species, or their habitat, on or close to a proposed development site, planning applications should be accompanied by a survey assessing the presence of such species and, where appropriate, making provision for their needs.
89. Framework paragraph 118 indicates that "...When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles..." which include that planning permission should be refused if significant harm from the development cannot be mitigated, or as a last resort, compensated for.
90. The SoCGs between the appellant and the local planning authority on ecological matters confirm that: (in common with statutorily protected sites and landscapes) no locally designated site is likely to be significantly affected by the proposal; the additional bat survey work was carried out and reported in July 2015; and subject to the imposition of certain planning conditions, MEAS no longer raised objections to the scheme nor suggests that Habitats Regulation Assessments are required for the site. Therefore, on the basis of the additional information provided, in November 2015 the Borough Council confirmed that it would no longer contest the third reason for refusal.

91. Evidence indicates that proposed mitigation measures (for matters such as noxious and invasive species, nesting birds, reptiles, lighting and landscape and habitat management) would ensure that no unacceptable ecological impacts occur from the development proposed. Accordingly, the appeal proposal complies with LP Policy EN2 and paragraph 118 of the Framework.

Drainage and Flood Risk

92. In seeking to ensure that development does not result in unacceptable flood risk, LP Policy GN3(3) requires development to, amongst other things, demonstrate that sustainable drainage systems have been explored alongside opportunities to remove surface water from existing sewers. In this regard, LP Policy IF3(2)(ii) seeks to protect and create sustainable places for communities to enjoy by mitigating any negative impacts to the quality of the existing infrastructure as a result of new development.
93. SoCGs in regard to drainage and flood risk have been produced that confirm the main parties to the appeal have reached agreement on all matters regarding drainage and associated possible planning conditions.
94. The site lies within Flood Zone 1, and the appeal scheme is for (predominantly) residential development over 1 ha in area.⁴¹ It is apparent that, with the suggested planning conditions, the proposal would reduce runoff rates, provide sustainable attenuation and reduce the transport off-site of sediment and other materials to better existing green field conditions.⁴² Accordingly, the proposal has considered existing drainage conditions and explored sustainable drainage systems. It would be expected to result in an acceptable flood risk to protect and create sustainable places for communities to enjoy. In this regard, the scheme complies with LP Policies GN3(3) and IF3(2)(ii).

Social dimension

95. The appeal scheme would provide up to an additional 250 dwellings that would contribute to the local community and support services within Ormskirk with Aughton.
96. Representations were clear regarding the need for affordable houses in the locality.⁴³ Both the affordable and market homes delivered through the appeal proposal would be of direct benefit to people who wish to live in the locality, and there is no reason to doubt that the proposal would be delivered.
97. The provision of housing and affordable units (and 'D1' uses) would yield social benefits that meet Framework objectives and would attract significant weight in favour of the appeal scheme. However, this is dependent on there being a mechanism to deliver affordable dwellings that would meet the identified need.

Highway safety

98. The Council's fourth reason for refusal refers to LP Policy GN3(2), which addresses *Accessibility and Transport*. Amongst other things, Policy GN3(2) expects development proposals to incorporate suitable and safe access, and to provide safe, convenient and attractive pedestrian and cycle access.

⁴¹ For which Footnote 20 of the Framework is relevant

⁴² As summarised in section 2 of the Drainage and Flood Risk SoCGs

⁴³ And as summarised section 5 of the appellant's closing submissions

99. Local residents have expressed clear concerns regarding the existing highway conditions in the locality and these were observed during unaccompanied and accompanied site visits. These site visits enabled traffic levels to be seen during peak periods, including when children were arriving at Town Green School and some people would have been commuting to work.
100. The appeal site is on a route with commuter and other traffic, and the locality becomes very busy as people park their vehicles and walk to the school. The appeal scheme would add to this.
101. Access is a matter to be determined at this stage. Vehicular access to the proposed development would be provided from Parrs Lane.
102. The SoCG between the appellant and Lancashire County Council as Highways Authority set out the matters that are now agreed between these two parties. These matters include the existing and proposed traffic flows and their distribution, highway capacity and possible safety impacts, and the availability of alternative modes of transport to the car. It is agreed within the SoCG that there are no resulting highway capacity or safety concerns subject to the provision of identified works; and, that the appeal site would be sustainable in relation to transport.
103. The identified works include: the construction of the proposed accesses; the provision and improvement of footways and cycleways; and, improvements to public transport infrastructure such as increased frequency and later evening running of the No.5 circular bus service, together with the routing of the No.5 service along Parrs Lane.
104. Town Green, Aughton Park and Ormskirk railway stations would provide occupiers of the proposed development with regular train services to Liverpool and Preston. These train services run from early morning to late evening. An hourly bus service links Town Green/Aughton Park with Ormskirk six days per week.
105. The centre of the appeal site is approximately 850m from Town Green and Aughton Park railway stations. Formal bus stops are also this distance from the centre of the site. Where these transport options are over 800m from housing, the distance could be a disincentive to some pedestrians. Nevertheless, with the identified works described above the availability, frequency and proximity of bus and train services, and the semi-rural and residential character of the walking routes to them, would be expected to encourage occupiers of the appeal site to use alternatives to the private car.
106. The proposed access was visited during the accompanied site visit and this indicated that, along with the evidence in this case,⁴⁴ it could provide suitable visibility splays for the road conditions proposed and could operate safely.
107. Matters above lead the Council to conclude that the appeal site is reasonably sustainable, but not as sustainable as the sites allocated for housing (and listed in LP Policy RS1 rather than as safeguarded land in LP Policy GN2) within the LP.⁴⁵ Nevertheless, LP Policy GN2 and its supporting text are clear that

⁴⁴ And the two SoCGs dealing with highway and transport issues

⁴⁵ Paragraph 94 of the Council's closing submissions and paragraph 2.9 of the appellant's closing submissions with the background to the allocation of the appeal site also in Section 2. LP Policy GN2 confirms that the LP Policy SP3 allocation at Yew Tree Farm includes safeguarded land that is not marked on the proposals map.

safeguarded land is being protected for possible future development, and the Council accepted that the appeal site had been assessed and identified as acceptable in principle for residential development.⁴⁶

108. Accordingly, the evidence indicates that the appeal scheme: would be in an accessible location; would have an acceptable impact on the highway network and road safety; and would comply with LP Policy GN3(2). Framework paragraph 32 is clear that *'...Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe...'*, and no such impacts have been identified in this case.

Economic dimension

109. The development would result in economic benefit through the economic activity associated with construction and occupation. In accordance with Framework paragraph 19 (and 28), rural economic growth through the provision of construction jobs and the sale of construction materials, and expenditure during occupation of the houses, attracts significant weight in favour of the appeal scheme.

Conclusions

110. In the absence of a five year HLS, relevant LP policies for the supply of housing are out-of-date and the provisions of Framework paragraph 14 are engaged. The site lies outside the Green Belt. Although the potential loss of open countryside and BMV land weighs against the scheme, the land forms part of a designation that indicates the suitability of the site in principle for housing development. This includes the reasonable accessibility of the location in relation to its proximity to shops, services, job opportunities and transport infrastructure.
111. In accordance with paragraph 85 of the Framework the Plan B sites, which include the appeal site, have been taken out of the Green Belt and allocated for release at an appropriate time, or are to be retained for development needs beyond 2027. These sites are safeguarded to provide a means of addressing failures in LP housing delivery.
112. The appeal site is controlled by an established and active house-builder and there is no reason to doubt its deliverability. The scheme would appear as a natural extension to a Key Service Centre settlement which is next to the top of the settlement hierarchy provided by LP Policy SP1. There are no technical matters in relation to the scheme, such as highways, drainage and ecology, which would suggest planning permission should be withheld.
113. LP Policies GN2 and RS6 are clearly relevant policies for the supply of housing that, within the context of the provisions in paragraph 49 of the Framework, are 'out-of-date' due to the absence of a five year HLS. The Council refers to the *Richborough Estates*⁴⁷ case regarding the effect of policies being out-of-date within the context of Framework paragraphs 14 and 49. In particular, attention is drawn to paragraph 47 of the judgement which states *"...There will be many cases, no doubt, in which restrictive policies, whether*

⁴⁶ Section 2, including paragraphs 2.5 and 2.6, of the appellant's closing submissions

⁴⁷ *ID46 and Suffolk Coastal District Council vs Hopkins Homes Limited, Secretary of State for Communities and Local Government and Richborough Estates Partnership LLP vs Cheshire East Borough Council, Secretary of State for Communities and Local Government* [2016] EWCA Civ 168

*general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date...."*⁴⁸

114. The summary to the Council's letter of 7 November 2016 (ID43) states, with reference to my conclusion on the significance of a 4.2 year HLS in appeal ref: APP/P2365/W/15/3132594, that a HLS of 4.8 years "...would, on any view, have to be considered "less significant" by the Inspector..." . My view on the significance of a shortfall below a five year HLS is clear and is so with reference to the provisions of paragraph 14 of the Framework where relevant policies are out-of-date.
115. In this case the scale of the shortfall in five year HLS is not so great to suggest that these policies should be given little or no weight, but at 4.8 years (rather than 'barely three years' as the appellant believes) the shortfall in five year HLS is nonetheless significant. This conclusion would have been the same if I had accepted the appellant's position that 0 units should be added to the HLS from Site 15. In these circumstances: paragraph 49 of the Framework is unambiguous that '...Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites...'; and, under paragraph 14 of the Framework the presumption in favour of sustainable development is engaged.
116. In an area tightly constrained by Green Belt, LP Policies GN2 and RS6 have a specific purpose for land that has been taken out of the Green Belt and safeguarded within a group of sites for release for housing when required. There is no LP policy trigger for Plan B based on a lack of a five year HLS, but the LP Examination Inspector was unambiguous that Plan B triggers would be *supplemented* by the presumption in favour of sustainable development as described within paragraph 14 of the Framework.⁴⁹
117. The LP is a recently adopted development plan and Plan B seeks to ensure that the most appropriate sites come forward to meet shortfalls in housing delivery. However, even if the triggers for Plan B are not met, any unmet housing needs remain to be considered within the context of the 'supplemental' provisions for the presumption in favour of sustainable development. Presently, a clear need for market and affordable housing has been demonstrated, and in the absence of a five year HLS the weight attributed to LP Policies GN2 and RS6 is significantly reduced.

Planning Obligations

118. The tests of a planning obligation are contained within CIL Regulation 122 and are reflected in paragraph 204 of the Framework. These tests are that planning obligations should only be sought where they would be: necessary to make the development acceptable in planning terms; directly related to the

⁴⁸ The Council highlights that such themes are also within *Shropshire Council vs Secretary of State for Communities and Local Government, BDW Trading Limited trading as David Wilson Homes (Mercia), Magnus Charles Mowat, Martin John Mowat* [2016] EWHC 2733 (Admin) (ID46)

⁴⁹ Paragraph 140 of CD5

- development; and, fairly and reasonably related in scale and kind to the development.
119. Two executed planning obligations have been received in relation to this appeal (ID21 and ID38). The first of these, executed 19 May 2016, deals with education contributions, a bus subsidy, a travel plan contribution and open space. The second, executed 19 September 2016, deals with affordable housing.
120. The Council has highlighted that public transport, including bus services, is a CIL matter for the Council. As a consequence, no weight is attributed to the planning obligation in regard to the bus subsidy.
121. The Council objects to the proposed tenure of the affordable homes that would be provided through the unilateral undertaking. It includes 20% Discounted Market Units or Starter Homes and 15% Social Rent or Affordable Rent. The 35% affordable housing provision complies with the requirement in LP Policy RS2.
122. However, the 35% affordable housing requirement is a starting point. LP Policy RS2 also states that the precise requirements of tenure, size and type of affordable units will be negotiated on a case-by-case basis having regard to viability and local need. As the appeal scheme is an outline proposal the design of affordable units, including their size and type, is not known at this stage. It would be the subject of reserved matters and guided by any planning obligation in relation to the size and type of affordable units.
123. The Council is unambiguous that its housing needs study indicates that the Borough-wide tenure mix sought is 80% social rent and 20% intermediate purchase products. That tenure split is the basis of the agreement made under section 106 of the Town & Country Planning Act 1990 in relation to the site next to the current appeal site.⁵⁰
124. The appellant indicates that it has seen a draft s.106 agreement from the Council for the Yew Tree Farm, Burscough site that includes Starter Homes, but that does not address the tenure split sought to address local need. There is no evidence that demonstrates the proposed 'Starter Homes' would meet the identified need for social rent in this housing market. Nor has the appellant set out a case that disputes the need identified by the Council.
125. In relation to 'Tenure', LP Policy RS2 states that the Council will usually expect *'...the majority of affordable housing provided should comprise social and / or affordable rented units, with the remainder intermediate housing...'*. The Council highlights that no negotiation has taken place on the content of the unilateral undertaking.⁵¹
126. A new legislative environment that includes Starter Homes as affordable homes was created by the Housing and Planning Act 2016 ('the 2016 Act').⁵² Sections 158 and 159 of the 2016 Act deal with *'Resolution of disputes about planning obligations'* and *'Planning obligations and affordable housing'* respectively by inserting sections 106ZA and 106ZB after section 106 of the

⁵⁰ Schedule 2 of ID28 for the 'Wainhomes site', appeal ref: APP/P2365/W/15/3132594

⁵¹ ID38

⁵² Section 159 of the Housing and Planning Act 2016

Town and Country Planning Act 1990 ('the 1990 Act'). This is yet to be reflected in national planning policy and practice guidance.

127. While the appellant states that LP Policy RS2 is 'tenure blind', it is not blind in regard to the approach that should be adopted for the provision of affordable housing. The appellant indicates that specialist housing for the elderly could be addressed by planning condition. However, the appellant has not demonstrated that the unilateral undertaking would meet the Council's identified need for 80% social rent and 20% intermediate purchase products. That need exists regardless of the Council's resistance to the proposed development.
128. The Council agrees to the approach within the unilateral undertaking (ID38) that the owner should have discretion regarding the split between social and affordable rent. However, the Council is equally clear that the tenure mix in the unilateral undertaking has been set '*...without any discussion...*' and is not appropriate to meet the identified need, nor the very limited opportunities to rent affordably in Aughton.⁵³
129. The Council also disagrees with the definition of 'locality' and the phasing for the delivery of affordable homes. Negotiation may have enabled the unilateral undertaking to address or clarify both of these issues, along with the Council's aim to have affordable houses, rather than apartments.
130. Negotiations also could have addressed the Council's concern regarding the inclusion of a requirement on the Council that if not fulfilled within 4 months of a Commencement Notice could release the developer from the obligations.⁵⁴ I note this clause has been present in other obligations entered into by the appellant in this area. However, the inclusion in Schedule 3 of the unilateral undertaking of a requirement for the Council to sign a Deed of Covenant that binds it to the dispute resolution proceedings set out within the obligation should also have been the subject of negotiation.
131. The appellant is unambiguous regarding the importance of affordable housing to its case. This proposal, along with the neighbouring 'Wainhomes' site, would deliver more affordable homes than were delivered in the first 4 years of the LP.
132. The evidence in this case demonstrates that the planning obligations for education and travel plan contributions, and open space, meet the CIL Regulation 122 and Framework paragraph 204. Also, there is no reason to consider that CIL Regulation 123 is breached.
133. However, the affordable housing provision is only policy compliant in part. It would provide the proportion of the total units sought by LP Policy RS2, but it has not been demonstrated that it would provide the tenure mix to meet the identified need. Importantly (and while the unilateral undertaking includes a facility for dispute resolution), adopted development plan policy states that negotiation will address tenure, size and type of affordable housing, having regard to viability and local need.

⁵³ Page 2 of ID39 notes dwellings in Aughton to be 88.6% owner occupied, 9% private rented and 2.5% social rented

⁵⁴ Schedule 3, Part 1 paragraph 2 of ID38 regarding the serving of a Deed of Covenant by the Council

134. The appellant refers to paragraph 187 of the Framework,⁵⁵ which states that *'...Local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area...'*.
135. LP Policy RS2 enables the Council to address the requirements of Framework paragraph 187. In the absence of that negotiation and the outcomes for it stated within LP Policy RS2, the provision offered fails to make the development acceptable in planning terms to meet the tests within CIL Regulation 122 as reflected in paragraph 204 of the Framework.
136. Consequently, the planning obligation cannot attract the 'substantial weight' that the appellant attributes to this component of the proposal.⁵⁶ This breach of LP Policy RS2 fails to adequately address the social aspect of sustainability to improve the social conditions of the area.

Overall conclusions - including in relation to sustainable development

137. There would be significant benefits from the proposed scheme, including the provision of new homes. However, the appeal scheme conflicts with LP Policies GN2 and RS6, and RS2 in relation to the tenure of the affordable housing proposed and the failure to negotiate. To this policy conflict is added the adverse impacts of the proposal through loss of open countryside and BMV land.
138. The presumption in favour of sustainable development, as expressed in paragraph 14 of the Framework, is not irrefutable. In this case, it is the conflict with the development plan that is intended to deliver the most appropriate and sustainable forms of development that, along with the loss of countryside and BMV, significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
139. Consideration has been given to all matters raised in this case. For the reasons above, the scheme complies with LP Policies EN2, GN3(3), IF3(2)(ii) and GN3(2), and Framework paragraphs that include 32 and 118. However, the appeal scheme conflicts with LP Policies GN2, RS6 and EN2(4), and RS2 in relation to the tenure of the affordable housing proposed and the failure to negotiate. No matters have been found to outweigh the significant weight attributed to the conflict with LP Policies GN2, RS6 and RS2, to which is added the harm due to conflict with EN2(4) and loss of countryside.
140. In such circumstances, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the development plan and Framework policies taken as a whole. It would not be a sustainable form of development and therefore, I conclude that the appeal should not succeed.

Clive Sproule

INSPECTOR

⁵⁵ At paragraph 7.5 of Mr Harris' proof of evidence

⁵⁶ As stated in paragraph 5.10 of the appellant's closing submissions

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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Queens Counsel,
instructed by the Borough Solicitor

He called
Peter Richards

Strategic Planning and Implementation Manager,
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FOR THE APPELLANT:

Paul Tucker

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He called
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INTERESTED PERSONS:

Councillor O'Toole

County Councillor and Ward Councillor with the
Borough Council

Colin Atkinson

Clerk to Aughton Parish Council

Ian Forbes

Aughton Residents Group (ARG 2012)

Local resident

INQUIRY DOCUMENTS (ID)

The conjoined inquiry had a single document library with IDs that may be relevant to either or both appeals

- 1 Opening submissions on behalf of the appellant
- 2 Opening statement on behalf of the Council
- 3 *Borough Council of Kings Lynn and West Norfolk vs Secretary of State for Communities and Local Government and Elm Park Holdings Ltd* [2015] EWHC 2464 (Admin)
- 4 A statement by Aughton Residents Group (2012) (ARG 2012)
- 5 Appellant's witness - David Roberts - Qualifications and Experience
- 6 A statement on behalf of Aughton Parish Council by Irene Roberts
- 7 A housing land supply table with details regarding 13 sites
- 8 A Statement of Common Ground on highway and transportation issues between Redrow Homes (Lancashire) and Lancashire County Council
- 9 A hand written note from the Council on affordable housing completions 2012-2015 and anticipated by 31 March 2017
- 10 Extracts from a Liverpool press website, dated 18 May 2016, reporting a Redrow proposal for a site in Allerton - provided by ARG 2012
- 11 An unexecuted planning obligation in relation to the Redrow proposal
- 12 An e-mail, dated 11 May 2016 at 15:12hrs, regarding New Cut Lane, Halsall
- 13 An undated letter with an accompanying e-mail, dated 09 May 2016 at 16:41hrs, from Fitton Estates regarding Yew Tree Farm, Crompton and Firwood Road, Halliwell
- 14 Development Management Advice, dated 27 April 2016, from Merseyside Environmental Advisory Service to the Council regarding additional information for the approval of reserved matters for land at the junction of Sluice Lane, New Road, Rufford
- 15 Initial Housing Completions Data - 2015/16 from the Council
- 16 Phase 1 Environmental Audit for Alty's Brickworks, Hesketh Bank, dated July 2014
- 17 Phase 2 Supplementary Ground Investigation for Alty's Brickworks, Hesketh Bank, dated July 2014
- 18 A housing land supply table with details regarding 13 sites
- 19 A table showing the main parties estimates of housing delivery on 17 sites 2015/2020 - replaces page 6 of the SoCG
- 20 An executed planning obligation by unilateral undertaking, dated 20 May 2016, in regard to Appeal A

- 21 An executed planning obligation by unilateral undertaking, dated 19 May 2016, in regard to Appeal B
- 22 Closing submissions on behalf of the Council
- 23 Planning Practice Guidance paragraph 021, reference ID: 2a-021-20160401
- 24 An addendum to the closing submissions on behalf of the appellant in relation to 5 yr housing land supply
- 25 A list of abbreviations used in the closing submissions on behalf of the appellant
- 26 Closing submissions on behalf of the appellant
- 27 Affordable Housing Completions Anticipated by 31 March 2017

Documents received after the final sitting day of the inquiry

- 28 An executed planning obligation by agreement, dated 25 May 2016, in regard to appeal ref: APP/P2365/W/15/3132594
- 29 Comments in relation to ID16 and ID17 from the appellant in appeal ref: APP/P2365/W/15/3132594
- 30 Comments from the Council in relation to ID16 and ID17
- 31 SoCG on Housing land Supply, dated 27 May 2016
- 32 E-mail correspondence, with dates in November 2015 and March 2016, between the Council, County Council and the appellants' highway consultant regarding public transport funding
- 33 CPT Cost Index summary of results: change in bus and coach industry costs for the 12 months to 30 June 2015
- 34 Secretary of State Decision Letter and report for appeal ref: APP/A0665/A/11/2167430
- 35 Secretary of State Decision Letter and report for appeal ref: APP/L3815/A/14/2223343
- 36 Borough Council e-mail, dated 05-Sep-16 at 17:31hrs, regarding housing land supply data not addressed by within the decision letter for appeal ref: APP/P2365/W/15/3132594
- 37 Appellant letter from Emery Planning, dated 13 September 2016, regarding housing land supply data not addressed by within the decision letter for appeal ref: APP/P2365/W/15/3132594
- 38 A Planning Obligation by Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990, executed 19 September 2016, complete with Power of Attorney to Execute Documents on Behalf of Redrow Homes Limited (Lancashire Division) and a covering letter from Redrow Homes Ltd, also dated 19 September 2016.

- 39 Borough Council e-mail, dated 27 September 2016, regarding the planning obligation for affordable housing provision
- 40 Appellant response, letter dated 30-Sep-16, to local planning authority comments regarding the s.106 on affordable housing
- 41 Appellant e-mail and letter to the Planning Inspectorate, dated 19 October 2016, enclosing a copy of the papers submitted by Wainhomes Developments Ltd in regard to the Council's legal challenge concerning appeal decision ref: APP/P2365/W/15/3132594
- 42 Borough Council e-mail to the Planning Inspectorate, dated 21 October 2016, providing a copy of papers submitted by the Council in regard to the High Court challenge concerning appeal decision ref: APP/P2365/W/15/3132594
- 43 Borough Council letter, dated 7 November 2016, and associated enclosures regarding Ground 2 of the High Court challenge in relation to appeal decision ref: APP/P2365/W/15/3132594
- 44 Comments from Aughton Residents Group – ARG 2012 dated 10 November 2016
- 45 Comments from the appellant, e-mail dated 10 November 2016
- 46 Comments from the Council, dated 10 November 2016
- 47 Comments from Mr Forbes, e-mail dated 11 November 2016
- 48 Acknowledgement from Aughton Parish Council, dated 11 November 2016