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## Appeal Decision

Inquiry Held on 30-31 January and 1-2 February 2018

Site visit made on 2 February 2018

**by Kevin Ward BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 22 March 2018**

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**Appeal Ref: APP/P2365/W/15/3132594**

**Land to the east of Prescott Road, Aughton, Ormskirk, Lancashire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full and outline planning permission.
  - The appeal is made by Wainhomes Developments Ltd against the decision of West Lancashire Borough Council.
  - The application Ref 2015/0335/HYB, dated 30 March 2015, was refused by notice dated 30 June 2015.
  - The development proposed is a hybrid application – full planning application for the erection of 50 dwellings and associated works and outline application including details of access for development of up to 100 dwellings plus 295m<sup>2</sup> of D1 uses.
  - This decision supersedes that issued on 19 August 2016 which was quashed by order of the High Court.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The element of the appeal concerning an application for outline planning permission includes details of access. Appearance, landscaping, layout and scale are reserved for later consideration. It was accompanied by a parameters plan which I have taken into account in determining the appeal.
3. For the purposes of the Inquiry this appeal was conjoined with an appeal relating to land to the north west of Parrs Lane, Aughton, Lancashire (APP/P2365/W/15/3132596). Although evidence was heard on a joint basis, each appeal has been considered on its own merits and a separate decision has been issued.
4. The Council's decision notice contains five reasons for refusal. Three of these reasons relate to concerns over the potential impact of the proposed development on protected species and habitat, highway safety and transport matters and drainage and flooding. Following the Council's decision, further information was provided in respect of these matters and statements of common ground have been submitted. The Council confirmed that on this basis, it no longer contests reasons for refusal 3 to 5.
5. It is acknowledged that reason for refusal 1 contains a typographical error in referring to Policy RS2 of the West Lancashire Local Plan (the Local Plan), rather than Policy RS6.

6. In addition to those referred to above, statements of common ground were also submitted on planning and housing land supply. The latter was updated before the close of the Inquiry to provide the final position of the parties<sup>1</sup>. Detailed site specific issues relating to housing land supply were dealt with through a round table session during the Inquiry.
7. Duly executed planning obligations were submitted in the form of an agreement made under section 106 of the Town and Country Planning Act 1990 relating to the provision of affordable and specialist housing and open space and a unilateral undertaking dealing with contributions to education and a travel plan and bus service subsidies.
8. In terms of the bus subsidy, the Council considers that this is a matter covered by the Community Infrastructure Levy (CIL) and so should not be the subject of a planning obligation, although the County Council takes a different view. The CIL Regulation 123 list<sup>2</sup> sets out the types of infrastructure likely to benefit from CIL funding. It refers to strategic transport and highways improvements or provision to include, amongst other things, bus stops. It does not specifically identify subsidies to bus services however. Given this, it is not clear that subsidies to bus services would be covered by CIL funding and I consider that it is a legitimate matter to be dealt with by a planning obligation.
9. I am satisfied that the planning obligations are necessary to make the development acceptable in planning terms and otherwise comply with the CIL Regulations and the NPPF and I attach weight to them accordingly in reaching my decision.

### **Main Issues**

10. At the start of the Inquiry I identified the main issues as I saw them at that stage. After hearing and taking account of all of the evidence before me, and in light of the above, I have refined them as follows:
  - a) Whether the proposed development accords with Policies GN2 and RS6 of the Local Plan and specifically whether any of the triggers for Plan B have been activated.
  - b) The effect of the proposed development on best and most versatile agricultural land in light of the requirements of Policy EN2 of the Local Plan.
  - c) Whether the Council can demonstrate a five year supply of deliverable housing sites.
  - d) Whether relevant policies in the Local Plan are out of date.
  - e) If there is a conflict with the development plan and relevant policies are out of date, how should the proposed development be considered in terms of the fourth bullet point of paragraph 14 of the NPPF.
  - f) If there is a conflict with the development plan, are there material considerations which justify granting planning permission.

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<sup>1</sup> Inquiry Doc 21

<sup>2</sup> Inquiry Doc 23

## Reasons

### *Policies GN2 and RS6 of the Local Plan*

11. Policy GN2 identifies seven areas of safeguarded land. The land is safeguarded from development until 2027 for needs beyond 2027 (the end of the plan period). In five cases the land is identified as a "Plan B" site. Plan B allows for the release of land for development during the plan period and without a review of the Local Plan but only should it be required. If Plan B is not required, Policy GN2 makes it clear that the land should continue to be safeguarded from development until 2027 for development needs beyond 2027.
12. The appeal site forms part of the Plan B site at Parrs Lane, Aughton which is identified as having a potential total capacity for 400 dwellings. This Plan B site also includes the land to the north west of Parrs Lane, Aughton which is the subject of the conjoined appeal.
13. Policy RS6 sets out three triggers to activate Plan B and therefore consider the release of the sites in question for housing development. The second trigger relates to housing delivery after ten years of the plan period (2012-2022). This point in time has clearly not been reached yet. The third trigger refers to the situation where the Council chooses to increase its housing target to reflect the emergence of new evidence. Whilst a review of the Local Plan is underway, it is at an early stage and no decisions have been taken as to future housing requirements. The Council has not chosen to increase its housing target. The second and third triggers have therefore not been activated.
14. The first trigger for Plan B concerns housing delivery after five years of the plan period i.e. as of 1 April 2017. To activate this trigger less than 80% of the pro rata housing target would have needed to have been delivered by this date.
15. Despite the discussion at the Inquiry concerning the meaning of the term "pro rata", the Local Plan makes it clear that there is a staggered annual average housing target of 302 dwellings per year between 2012-2017 and then 335 dwellings per year between 2017-2027 (Paragraph 4.22, Table 4.1 and Appendix B of the Local Plan). Whilst the overall housing requirement for the plan period of a minimum of 4,860 dwellings (net) would equate to an annual average of 324, I see no grounds to use this figure as a target to assess delivery against.
16. The evidence submitted on behalf of the appellant prior to the Inquiry and indeed the statement of common ground on housing land supply confirms that the requirement/target for 2012-2017 is 302 dwellings per year. I have considered housing delivery and the first trigger for Plan B on this basis.
17. The pro rata housing target for the first five years of the plan period is therefore 1,510 dwellings and 80% of this is 1,208 dwellings (both net figures). The dispute between the parties in terms of assessing delivery against this target concerns whether or not to reduce the figure for net completions to take account of losses of C3 uses (dwelling houses) to C4 uses (Houses in Multiple Occupation or HMOs) and if so by how much.
18. The Council clearly has concerns regarding increases in C4 uses and in particular the potential effects that a concentration of such uses can have on the character of an area. The presence and growth of Edge Hill University has

- led to properties being purchased and rented to students. Policy RS3 of the Local Plan seeks to limit the proportion of HMOs in conjunction with an Article 4 Direction which covers Ormskirk and Aughton.
19. Paragraphs 7.38 and 7.50 of the Local Plan highlight concerns in relation to the effect on the availability of lower priced housing for families and housing for local needs in Ormskirk. However, nowhere in the Local Plan does it expressly state that changes from C3 to C4 use would be counted as net losses to the supply of dwellings. Furthermore, there is nothing, either in the Local Plan or elsewhere, which confirms that C4 uses were not included in the housing requirement. This requirement was derived from the 2011 based interim household projections which in turn were informed by the 2011 Census.
  20. Taking into account the clarification provided by the Office for National Statistics<sup>3</sup> it is clear that C4 uses not falling within the definition of communal establishments were included in the figures for private household population. The managers of HMOs have certain duties<sup>4</sup> but these are essentially those of a landlord. The glossary of terms for the 2011 Census<sup>5</sup> defines a communal establishment as one providing managed residential accommodation with the term "managed" in this context being defined as full-time or part-time supervision of the accommodation. It goes on to give examples of communal establishments. In relation to students it explicitly states that "houses rented to students by private landlords are also treated as households". Such properties were therefore not classed as communal establishments in the Census and would have been included in the figures for private household population.
  21. The Appellant points to an increase of 86 in the number of HMOs recorded in Ormskirk between January 2012 and December 2017. This may have included some C4 uses which were in existence prior to the Article 4 Direction coming into effect in 2011 but which the Council was not aware of in January 2012. Regardless of this there is no evidence that any of these are communal establishments. Evidence was submitted on properties where changes from C3 to C4 use had been permitted between 2012 and 2017<sup>6</sup>. Again there is no evidence that any of these were for communal establishments.
  22. No examples have been provided from local plan examination reports, appeal decisions or legal judgements where it was considered appropriate to deduct changes from C3 to C4 use from housing completion figures. I note the question from the Inspector examining the Cotswold Local Plan and the Council's response<sup>7</sup>. However, this simply confirms that HMOs (Class C4 uses) were not specifically considered in the Strategic Housing Market Assessment update in that case. It does not demonstrate that C4 uses were excluded from household projections or the Objectively Assessed Need.
  23. There are significant difficulties in establishing an accurate figure for net changes of C3 to C4 use in the Borough given that changes from C4 to C3 use are permitted development and outside of the area covered by the Article 4 Direction so are changes from C3 to C4 use. In any case, in light of the above and on the basis of the evidence before me I conclude that C4 uses were

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<sup>3</sup> Appendix 5 to the Rebuttal Proof of Mr Richards

<sup>4</sup> See Regulations in Appendix SH2 to the Rebuttal Proof of Mr Harris

<sup>5</sup> Appendix 6 to the Rebuttal Proof of Mr Richards

<sup>6</sup> Appendix 1 to the Housing Land Supply Proof of Mr Harris and Inquiry Doc 8

<sup>7</sup> Appendix 3 and Appendix 4 to the Housing Land Supply Proof of Mr Harris

- included in the housing requirement for the Local Plan. Given that they were included in the requirement, they should be included in the supply. It is not appropriate to reduce the net completions figure to reflect changes from C3 to C4 use.
24. Excluding any deduction for changes from C3 to C4 use, the main parties agree that net completions in the first five years of the plan period as of 1 April 2017 were 1,248 dwellings. This represents 82.7% of the pro rata housing target. The first trigger in Policy RS6 has not been activated.
  25. The triggers in Policy RS6 are clear and specific. The Local Plan Inspector pointed out in his report<sup>8</sup> that the provisions of Plan B would be supplemented by the mechanism contained in paragraphs 49 and 14 of the NPPF to address any failure to maintain a five year housing land supply. He considered that the approach to the frequency of review of housing delivery and trigger points in Policy RS6 was appropriate and would allow for the release of Plan B sites if there was a robust justification in the form of a demonstrated significant shortfall in provision over time.
  26. Whether or not there is a five year supply of deliverable housing sites at any point is not a factor in activating the triggers in Policy RS6. Neither is the fact that there has been a shortfall in housing delivery of 262 dwellings compared with the overall housing target for the first five years of 1,510 dwellings or that the 80% threshold has only just been achieved by 40 dwellings. It is for the Council to decide in advance of the relevant dates whether the triggers in Policy RS6 are likely to be activated and if so to undertake a review of the situation<sup>9</sup>. It did not consider this necessary for the first trigger point and this has been vindicated by actual completions that have occurred.
  27. None of the triggers for Plan B have been activated. Policy RS6 is unambiguous that Plan B sites will only be considered for release for housing development if one of the triggers is met. As noted above Policy GN2 makes it clear that the land should continue to be safeguarded from development until 2027 for development needs beyond 2027 if Plan B is not required.
  28. The proposed development conflicts with Policies GN2 and RS6.
- Best and most versatile agricultural land*
29. The appeal site covers approximately 5.6ha. Combined with the land to the north west of Parrs Lane, Aughton (the conjoined appeal site), it forms an area of some 17ha which is predominantly in agricultural use. Of this combined area, 9.6ha is Grade 2 and 3ha is Grade 3a giving a total area of Best and Most Versatile (BMV) agricultural land of 12.6ha.
  30. In the order of 85% of agricultural land in West Lancashire is BMV with 59% being Grade 1<sup>10</sup>. The proposed development would involve the loss of a small proportion of the overall BMV agricultural land in the Borough and opportunities for developing housing outside of urban areas without affecting such land may well be relatively limited. The quality of the agricultural land at Parrs Lane was apparent when the decision to include it in the Local Plan as safeguarded land and a Plan B site was taken.

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<sup>8</sup> CD5 – paragraph 140

<sup>9</sup> See Inquiry Doc 16 for explanation of process

<sup>10</sup> Appendix 16 to the Planning Proof of Mr Harris

31. However, the proposed development would involve the loss of a significant area of BMV agricultural land which is an important national resource. Policy EN2 of the Local Plan only allows for development on BMV agricultural land where it is absolutely necessary to deliver development allocated in the Local Plan, strategic infrastructure or development associated with the agricultural use of the land.
32. Given my finding above that Plan B has not been triggered, the status of the appeal site is as land to be safeguarded from development until 2027 for development needs beyond 2027. The appeal site is not allocated for development in the Local Plan. The proposed development would not deliver strategic infrastructure and would not be associated with the agricultural use of the land. It conflicts with Policy EN2 therefore.

#### *Five year supply of deliverable housing sites*

##### *The requirement*

33. The parties agree that the base date for assessing housing land supply is 1 April 2017 and that the five year period runs until 31 March 2022. It is also agreed that the basic five year requirement for this period is a minimum of 1,675 dwellings (335 dwellings per year) and that the shortfall in delivery from 2012 should be addressed in full in the five year period. As I have set out above, it is not appropriate to reduce the net completions figure to reflect changes from C3 to C4 use. Net completions have totalled 1,248 dwellings and so the shortfall is 262 dwellings. Adding this to the basic five year requirement gives a figure of 1,937 dwellings.
34. The question then arises as to the appropriate buffer to apply in light of paragraph 47 of the NPPF. In the five years since 2012 the annual housing target of a minimum of 302 net dwellings has not been met in three years. It was slightly exceeded in 2013/14 (308 net completions) and achieved in 2016/17 (302 net completions). As noted above, there has been a shortfall of 262 dwellings overall in this five year period.
35. When considering the situation in 2013, the Local Plan Inspector took account of housing completions up to and including 2012/13. Net completions in 2012/13 totalled only 137 dwellings. He acknowledged that in each year since 2007/08 completions had been below the housing target of 300 dwellings per year set by the North West Regional Spatial Strategy. Even so, he concluded that there had not been a record of persistent under delivery and that a buffer of 5% should be applied. I appreciate that he did this in the context of a housing trajectory which at the time envisaged a significant uplift in housing delivery from 2015 onwards. Completions in the last two years have been well below the level anticipated in the trajectory at the time and the Council now estimates that the shortfall in delivery will not be recouped until 2020/21<sup>11</sup>. On the other hand, actual completions in 2013/14 and 2014/15 exceeded the levels anticipated in the trajectory considered by the Local Plan Inspector.
36. In looking at completion figures over the longer term, it is important to bear in mind that the overall housing requirement for the plan period of 4,860 dwellings includes a figure of 679 dwellings to make up for the shortfall in delivery between 2003 and 2012 against the target in the North West Regional

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<sup>11</sup> CD31- 2017 Annual Monitoring Report – Housing Trajectory

Spatial Strategy. In this respect, under delivery in this period was factored in to and addressed in the housing requirement from 2012/13 onwards.

37. As set out above, the Local Plan Inspector considered that the triggers for Plan B would allow for an assessment of a demonstrated significant shortfall in provision over time and those triggers have not been activated.
38. The target of a minimum of 302 dwellings per year was met in two of the last four years including last year (2016/17). Given this and taking all of the above into account I find that there has not been a record of persistent under delivery.
39. A buffer of 5% should be applied therefore and the total requirement for 1 April 2017 to 31 March 2022 is a minimum of 2,034 dwellings.

#### *The supply*

40. Following the submission of proofs of evidence and rebuttals and in the light of discussion at the round table session, the final position of the parties is set out in the updated statement of common ground on housing and supply. I base my assessment on this and have taken full account of the evidence submitted in support of the relative positions. The Council's case is that there is a supply of 2,493 dwellings for the five year period and the Appellant considers that the supply is 1,810 dwellings<sup>12</sup>.
41. There is agreement on the supply from sites with planning permission for 1-4 units (135 dwellings) and planning applications pending at the base date (206 dwellings). There is also agreement that a deduction of 67 dwellings should be made for expected demolitions.
42. The Council seeks to include the sites at 5 Briars Lane, Burscough (66 dwellings) and 188 Southport Road, Scarisbrick (40 dwellings) in the supply from the Strategic Housing and Employment Land Availability Assessment (SHELAA). Neither site was the subject of a planning application as of the base date for the calculation of housing land supply, 1 April 2017. Importantly neither was considered by the Council to be deliverable within five years as of that base date (2017 SHELAA and 2017 Annual Monitoring Report). This distinguishes them from the SHELAA site at Abbeystead, Skelmersdale which although not subject to a planning application at the base date, was identified specifically as the only SHELAA site that was deliverable within five years.
43. The site at 5 Briars Lane, Burscough has gained planning permission since 1 April 2017 and work on site is already underway. A planning application for the site at 188 Southport Road, Scarisbrick has been submitted and approved subject to a S106 agreement. The appellant has not questioned the delivery of housing on the sites within five years. However, whilst the detailed estimated completion figures for specific sites identified in the supply may well change after the base date and be re-assessed at any point in the year, it is not appropriate to add new specific sites into the supply after the base date. For there to be an objective and fair assessment of supply against the requirement, there needs to be a fixed point in time to assess both.

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<sup>12</sup> Inquiry Doc 21 – see also Inquiry Doc 19 - Mr Tucker's closing submission confirmed the figure of 1,810 rather than 1,807

44. The agreed base date is 1 April 2017 and additional specific sites that come forward as being deliverable after that base date should not be included. To include them would effectively mean rolling forward the base date. To do this would require an updated position on completions and a roll forward of the requirement figure. This has not taken place. Excluding these two sites gives a figure for supply from SHELAA sites of 45 dwellings. This is the position adopted by the Appellant.
45. The Council also seeks to increase the allowance for windfalls by 36 dwellings to take account of the site at Beechtrees, Digmaor, Skelmersdale. A planning application was submitted after 1 April 2017 and has now been approved subject to a S106 agreement. The Council's Annual Monitoring Report of 2017 and the version of the statement of common ground on housing land supply agreed prior to the Inquiry estimated 23 dwellings from windfalls each year from 2018/19 onwards (92 in the five year period). The site at Beechtrees is not allocated in the Local Plan, is not identified in the SHELAA and did not have planning permission or a pending application as of 1 April 2017. In this sense it is a windfall site. The appellant has not questioned the delivery of housing on the site within five years.
46. A site for 36 dwellings represents a significant proportion of the overall windfall allowance of 92 and is larger than windfalls that have come forward so far in the plan period. However, it may not necessarily be the case that the overall windfall allowance will be exceeded. Any increase in actual delivery on windfall sites can be assessed and used to inform a revised allowance at a future base date. Again the principle of using a clear and common base date for the assessment of the housing land requirement and supply is important. The estimate of windfalls at the base date of 1 April 2017 was 92 dwellings and I consider this to be the appropriate figure to include. This is the figure agreed by the Appellant. The site at Beechtrees should not be included in the supply either as part of an increased windfall allowance or as an individual site.
47. The Appellant considers that a deduction should be made from the five year supply for future losses of C3 to C4 use. For the same reasons that apply to the figure for net completions since 2012, this is not appropriate.
48. The Council's position on Local Plan Allocations is that they will deliver a total of 1,456 dwellings in the five year period. The Appellant disputes the figures in nine cases. I deal with each in turn. The figures referred to relate to dwellings delivered within the five year period.
49. **Yew Tree Farm, Burscough (Phase 2 onwards)** – The Council's position is that 70 dwellings will be delivered on this site. The Appellant agrees that the completions will take place from 2020/21 onwards but with 15 in this first year rather than 35 giving a total of 50 dwellings in the five year period. A reserved matters application for Phase 2 is yet to be submitted. There are also infrastructure requirements including significant drainage works and Phase 2 is reliant on provision of the spine road for the wider site.
50. However, given the expected timescale for the spine road and information from the landowner's agent regarding progress with bringing forward Phase 2 and infrastructure requirements, I consider that a full year of completions (35 dwellings) in 2020/21 is realistic, despite the slightly longer timescales that have applied to Phases 1A/1B. It gives adequate time to resolve the matters concerned. I note that the Appellant accepts an overlap in completions



between Phases 1A/1B and Phase 2 including full production of 35 dwellings on both in 2021/22. I consider that the site will contribute **70 dwellings** to the supply.

51. **Grove Farm, Ormskirk** – Construction on the site is underway and there have been some completions. The parties agree that from 2018/19 onwards there will be 35 completions per year. The only difference in positions concerns estimated completions during 2017/18. Based on recent site visits the Council estimates 25 completions<sup>13</sup> and the Appellant estimates 21 completions. Regardless of the exact number of completions in 2017/18, the site is clearly progressing well and given the estimate of 35-40 completions per year given to the Council by the developer, it is realistic to expect any shortfall from the figure of 35 in the first year to be made up during the five year period. I consider that the site will contribute **175 dwellings** to the supply.
52. **Firswood Road, Lathom, Phase 2** – The Council's position is that 30 dwellings will be delivered in 2021/22. The Appellant argues that the site will not deliver any dwellings in the five year period. Whilst the ground conditions on site could be dealt with, there appears to be a significant issue with land ownership. The report to the Council's Cabinet of 14 March 2017<sup>14</sup> notes that Phases 2 and 3 would need to be brought forward in a co-ordinated way due to access constraints. It points to multiple land ownerships and highlights concerns over a lack of progress and the approach to land values taking into account constraints associated with the site. Although the Council refers to negotiations between the consortium of landowners and developers, it appears that such negotiations have not progressed successfully.
53. Given this lack of progress and the particular issues highlighted above, the time needed for a planning application to be submitted and determined and the likely need for ground works, I consider that there is not a realistic prospect of housing being delivered on the site within five years and it will contribute **0 dwellings** to the supply.
54. **Whalleys 4 and Whalleys 2, 5 and Cobbs Clough** – I deal with these together as they form part of one allocation in the Local Plan, although I understand that development is being brought forward in three phases. The first phase (Whalleys 4) is under construction and completions have taken place. The Council anticipates that all 202 dwellings on Whalleys 4 will be completed within the five year period. Given progress on the site and noting the completion figures agreed by the Appellant for the first two years, I consider that in itself this is realistic.
55. I appreciate that the Council's estimates for completion rates on the second phase (Whalleys 5) are based on information from the preferred bidder. However, I consider that they are unduly optimistic, particularly given that there would be an overlap with full production on the first phase and for the last two years also the third phase (Whalleys 2 and Cobbs Clough) and taking account of the evidence relating to the strength of the market in Skelmersdale<sup>15</sup>. The Appellant's estimate of 119 completions for the second

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<sup>13</sup> The figure of 25 was confirmed at the round table session although it is noted that the updated statement of common ground retains a figure of 35 from the Council

<sup>14</sup> Appendix 4 to the Rebuttal Proof of Mr Harris

<sup>15</sup> Appendix 5 to the Rebuttal Proof of Mr Harris

- and third phases combined (Whalleys 2, 5 and Cobbs Clough) is in my view more realistic.
56. Based on these reduced completions rates for the later phases, the first phase (Whalleys 4) would be well established by the time there was any significant overlap in production and I consider that it could still realistically deliver all 202 dwellings within five years. Taking the above into account I consider that Whalleys 4 will contribute **202 dwellings** to the supply and Whalleys 2, 5 and Cobbs Clough will contribute **119 dwellings** to the supply.
57. **Chequer Lane, Up Holland Phase 2** – The Council anticipates that 116 dwellings will be delivered whereas the Appellant considers 69 to be a more realistic figure. Whilst there are a number of issues to resolve, including those raised by the Highway Authority, none would appear fundamental and the timescale for determining the planning application is realistic.
58. The estimated development rate supplied to the Council by the developer concerned is realistic, notwithstanding the lower average annual rate achieved for the market housing on Phase 1 (which saw a year on year increase in completions). Although achieving the full 30 completions in 2018/19 is likely to be unduly optimistic it is realistic to expect any shortfall from this figure to be made up during the remainder of the five year period. I consider that the site will contribute **116 dwellings** to the supply.
59. **Fine Jane's Farm, Halsall** – The Appellant anticipates completions on the site from 2019/20 onwards, a year later than the Council. The planning obligation is yet to be signed, the developer is yet to exercise their option on the land and there are enabling works. The developer also indicates that completions are not likely until at least May 2019. On this basis, I consider that the longer lead in time anticipated by the Appellant is more realistic. However, the completion rates provided to the Council by the agent for the developer are realistic and this would still give adequate time for the whole site to be completed within the five year period. I consider that the site will contribute **57 dwellings** to the supply.
60. **Greaves Hall Hospital, Banks** – There may be some delay in completions on the site due to the need to discharge the condition relating to the removal of invasive species and to undertake necessary works. However, this would appear to be a relatively straightforward matter to resolve and is not likely to affect the overall timescale for development envisaged by the Council to any significant extent. In any case, it is realistic to expect any shortfall from the figure of 25 in 2018/19 to be made up during the five year period, particularly given that an average of 32 dwellings per year were completed on the neighbouring Guinea Hall Lane site. I consider that the site will contribute **100 dwellings** to the supply.
61. **Alty's Brickworks, Hesketh Bank** - The Appellant anticipates completions on the site from 2019/20 onwards, a year later than the Council. There are a number of pre-commencement conditions to be discharged including relating to contaminated land. There is also a need to trap and relocate newts and the developer does not yet own the site. However, the Council point to the developer's intention to progress matters quickly and none of the issues would appear to be fundamental. It would not be unrealistic to anticipate some completions on the site in 2018/19 and any shortfall in completions in this first

- year due to a delayed start could realistically be recouped within the five year period. I consider that the site will contribute **90 dwellings** to the supply.
62. In total I consider that the contribution to the supply from Local Plan Allocations is 1,320 dwellings, a reduction of 136 on the Council's figure.
63. The Council's position on sites with planning permission for 5 or more units is that they will deliver a total of 484 dwellings in the five year period. The Appellant disputes the figures in six cases. I deal with each in turn. Again the figures referred to relate to dwellings delivered within the five year period.
64. **Abbey Lane, Burscough** – The Council estimates 110 dwellings being delivered on the site with completions starting in 2018/19. Outline planning permission for housing was granted in March 2014. One of the conditions imposed was that development should be carried out in accordance with the proposed site layout plan which clearly shows a total of 86 dwellings.
65. A reserved matters application was received in February 2017 and validated by the Council. This was for 110 dwellings. There is some doubt as to the status of this latest application, given the difference in the number of dwellings concerned. There is also some doubt as to whether it requires amendment to reduce the number of dwellings and whether this is possible. The Council confirmed that the applicant will be advised to submit a full application but do not consider that this would result in any significant delay in determining it. However, there is no certainty that such an application would be approved and as I understand it, no decision has been taken that 110 dwellings are appropriate on the site.
66. There are issues relating to the previous use of the site for landfill. Although this may not prevent development taking place it would appear to require significant remediation work and additional costs. Despite information provided in May 2016<sup>16</sup> that progress was being made regarding selling the site to a developer and completions were expected towards the end of 2016, the site has not been sold and there is no evidence of recent developer interest. The reserved matters application was submitted on behalf of the landowner. There appears to have been a long history to the site and as yet no significant progress in a developer bringing it forward for housing or showing a clear wish to do so.
67. Taking all of the above into account I find that there is clear evidence that the scheme will not be implemented within five years and there is not a realistic prospect that housing will be delivered within that period. I consider therefore that the site will contribute **0 dwellings** to the supply.
68. **Holly Farm Buildings, Plex Lane, Halsall** – Planning permission for 10 dwellings was granted in November 2015. Despite marketing, there is no evidence of developer interest in the site to date. However, this does not in itself provide clear evidence that the scheme will not be implemented within the five year period. Whilst other parts of Halsall can be affected by adverse ground conditions and additional remediation/build costs there is no evidence that this site is. There is a realistic prospect that housing will be delivered on the site within five years and I consider therefore that the site will contribute **10 dwellings** to the supply.

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<sup>16</sup> Appendix 14 page 232 to the Housing Land Supply Proof of Mr Harris

69. **Hughes Mushroom Farm, Newburgh** – Outline planning permission for 7 dwellings was granted in July 2016. Whilst the site has a long planning history with applications made over time for various uses, the permission in 2016 was the first to be granted for residential development. Although the site has been marketed, there is no documentary evidence to date that a sale is progressing or that a developer is interested. However, this does not in itself provide clear evidence that the scheme will not be implemented within the five year period.
70. The covenant that restricts the use of the land and buildings to horticulture is a matter that could be resolved and again does not represent clear evidence that the scheme will not be implemented within five years. There is a realistic prospect that housing will be delivered on the site within five years and I consider therefore that it will contribute **7 dwellings** to the supply.
71. **Beconsall Farm, 31 Beconsall Lane, Hesketh Bank** – Outline planning permission was granted for 9 affordable houses on the site in September 2015. Applications were submitted for market housing before and after this approval but were either withdrawn or refused. The aspiration to gain permission for market housing on the site and the fact that no application for reserved matters has yet been submitted does not provide clear evidence that the approved scheme will not be implemented within the five year period.
72. Whilst the required visibility splay appears to involve land in the ownership of the neighbouring property, I note the view of the Highways Authority that adequate visibility is achievable and there is not clear evidence that this will prevent implementation of the scheme within five years. There is a realistic prospect that housing will be delivered on the site within five years and I consider therefore that it will contribute **9 dwellings** to the supply.
73. **Cop House Farm, Jacksmere Lane, Scarisbrick** - Outline planning permission was granted for 10 dwellings on the site in May 2015. There is no evidence of marketing or that a developer has an interest in the site. No application for reserved matters has been submitted to date. However, this does not represent clear evidence that the approved scheme will not be implemented within the five year period. There is a realistic prospect that housing will be delivered on the site within five years and I consider therefore that it will contribute **10 dwellings** to the supply.
74. **Downholland Bridge Business Park** – Outline planning permission for 6 dwellings was granted in November 2016. The fact that there is an existing business use on the site and business and self-storage units are currently being advertised for letting does not provide clear evidence that the approved housing scheme will not be implemented within five years. There is a realistic prospect that housing will be delivered on the site within five years and I consider therefore that it will contribute **6 dwellings** to the supply.
75. In total I consider that the contribution to the supply from sites with planning permission for 5 or more units is 374 dwellings, a reduction of 110 on the Council's figure.

76. My conclusions on all of the categories of supply are summarised below:

<b>Category</b>	<b>Deliverable supply 1/4/17 to 31/3/22</b>
Local Plan Allocations	1,320
SHELAA	45
Extant planning permissions 5 or more units	374
Extant planning permissions 1-4 units	135
Pending applications	206
Windfall	92
Less demolitions	-67
<b>Total</b>	<b>2,105</b>

77. The supply of deliverable housing sites is 2,105 dwellings compared to the requirement of a minimum of 2,034 dwellings. This equates to 5.17 years supply. The Council can demonstrate a five year supply of deliverable housing sites.

*Whether relevant policies are out of date*

78. The Local Plan covers the period up to 2027. It was adopted in October 2013, after the NPPF was published. Relevant policies in this case are consistent with the NPPF and are not time limited. The Council has started a review of the Local Plan but this is at a very early stage and can only be given limited weight.

79. The shortfall in housing delivery since 2012 compared with the target and the scale of affordable housing provision in relation to overall need and targets are not factors which render the policies out of date. Policy RS6 provides a clear mechanism to address a demonstrated significant shortfall in housing provision over time and the triggers for this policy have not been activated. The Council can demonstrate a five year supply of deliverable housing sites.

80. I conclude that relevant policies in the Local Plan are not out of date in terms of paragraph 49 of the NPPF or for any other reason.

*The fourth bullet point of paragraph 14 of the NPPF*

81. As set out above the proposed development conflicts with Policies GN2, RS6 and EN2 of the Local Plan. These are significant elements of the Local Plan dealing with matters of principle. There is a conflict with the development plan as a whole. The development plan is not absent or silent and relevant policies are not out of date. Under these circumstances the presumption in favour of sustainable development contained in paragraph 14 of the NPPF does not apply. It is not necessary for me to reach a conclusion in terms of the second limb of the fourth bullet point i.e. whether specific policies in the NPPF indicate

development should be restricted. Nor is it appropriate to apply the “tilted balance” set out in the first limb.

*Are there material considerations which justify granting planning permission*

82. Ormskirk with Aughton is identified in the Local Plan as a Key Service Centre which occupies the second tier in the settlement hierarchy set out in Policy SP1. Along with Burscough and the Regional Town of Skelmersdale with Up Holland, Ormskirk with Aughton is intended to provide the focus for growth and development in the Borough.
83. The proposed development would be accessible to a good range of local services and facilities including Aughton Town Green Primary School. The appeal site is some 2km from Ormskirk Town Centre and is within reasonable walking distance of Aughton Park and Town Green railway stations. The subsidy to bus services which would be secured through the planning obligation would enable an existing route to be diverted along Parrs Lane, serving the proposed development.
84. When considered together with the site on land to the north west of Parrs Lane, Aughton, development on the two appeal sites would be contained on three sides by existing residential development. There are also a number of existing properties along Parrs Lane itself. Development on the sites would represent a rounding off of the urban form. The layout and design of the development could be such that it was compatible with the character of the locality and it would make provision for public open space.
85. Whilst I appreciate the concerns of local residents in relation to the specific potential adverse effects of development including on the local road network and highway safety, I am satisfied that such concerns would be adequately addressed through appropriate layout and design, planning conditions and the planning obligations. As noted above, the reasons for refusal concerning protected species and habitat, highway safety and transport matters and drainage and flooding have been addressed to the Council’s satisfaction and are no longer contested.
86. Clearly the Local Plan Inspector considered the land at Parrs Lane, which includes the appeal site; to be suitable in principle for residential development at some point in time should it be required. But equally clearly he concluded that it should be identified as a Plan B site which would be subject to the particular policy approach set out above i.e. it should only be considered for release in this plan period if Plan B is required and if Plan B is not required it should be safeguarded from development until 2027 for development needs beyond 2027.
87. I appreciate that the two parcels of land at Parrs Lane were considered as options to include as an allocation in the Local Plan by the Inspector in his Interim Views, along with the sites at Fine Jane’s Farm and New Cut Lane, Halsall. However, the Council chose to put forward these latter two sites for allocation rather than the land at Parrs Lane and the Inspector agreed that this was the appropriate approach.
88. Whilst the process leading up to the adoption of the Local Plan is of interest, what matters ultimately is the fact that the land at Parrs Lane is not allocated

- as a housing site; it is identified as safeguarded land, subject to the specific policy approach of Plan B.
89. Neither the Fine Jane's Farm or New Cut Lane sites have delivered housing so far and the New Cut Lane site is not included by the Council in its five year supply. However, this needs to be considered in the context of my conclusions that Plan B has not been triggered and there is a five year supply of deliverable housing sites.
  90. The Local Plan Inspector's conclusions were informed by, amongst other things, an assessment of the characteristics of the land at Parrs Lane and potential impacts of development, its relationship with the urban area and accessibility to services, facilities and public transport. The situation in these respects has not changed to any significant extent since then.
  91. Whilst I consider that the appeal site would provide a suitable location for housing development at the point in time when it is required, this point has not been reached. Policy RS6 sets out clear and specific triggers to consider the release of the Plan B sites; none of them have been activated. The approach towards Plan B is supplemented by the mechanism within the NPPF to address a failure to maintain a five year supply of deliverable housing sites. The Council can demonstrate a five year supply.
  92. The proposed housing is not required as part of Plan B, nor is it required to address a lack of a five year supply of deliverable housing sites. There is no evidence that it is required to ensure an adequate supply of housing land over the plan period as a whole.
  93. In July 2017, Council officers recommended approval of a planning application for housing at Meadowbrook, Burscough on safeguarded land despite considering that there was no reason in terms of housing land supply to do so. However, there were clearly very specific circumstances in that case in terms of land ownership and highway works and the relationship with the Yew Tree Farm strategic development site allocation. In any event the Planning Committee took a different view and the application was refused.
  94. Notwithstanding the above, the proposed development would provide for up to 150 dwellings, adding to the supply of housing and the range and choice available. Together with the conjoined appeal proposal, up to 400 additional houses would be provided. There is no substantive evidence that the development proposed would have a significant effect on progress with allocated sites and the housing requirement in the Local Plan is expressed as a minimum.
  95. The proposed housing would be deliverable and the Appellant is committed to bringing forward development quickly. It would be likely to make a significant contribution to housing supply in the short to medium term and help to recoup the shortfall in completions since 2012.
  96. I have given the contribution to housing supply weight although this is tempered by my finding that the proposed development is not required to address a demonstrated significant shortfall in provision over time (as defined by the triggers for Plan B), to address a lack of a five year supply or to ensure an adequate supply over the plan period.

97. The proposed development would provide for 35% of the dwellings to be affordable (up to 53 dwellings). Combined with the conjoined appeal proposal the affordable housing provision would be up to 141 dwellings. Whilst this is in line with and not above the minimum requirements set out in Policy RS2, it would nevertheless be a significant contribution towards affordable housing needs, both for this appeal proposal individually and in combination with the conjoined appeal proposal.
98. There is an identified need for 214 affordable houses per year in the Borough and 25 per year in Aughton Parish<sup>17</sup>. The Local Plan Inspector acknowledged that the maximum amount of affordable housing yielded by Policy RS2 would only represent about half of the assessed need in the Borough. Appendix B of the Local Plan includes two specific targets in relation to affordable housing. Firstly that 20% of all dwellings completed annually should be affordable and secondly that 25% of all dwellings granted consent on schemes with a capacity greater than 8 should be affordable.
99. Performance against these targets has fluctuated year on year but taking the totals for the five years since 2012, the first target has just been met with 266 affordable dwellings completed (20.1% of gross actual dwelling completions). If this performance was considered against the planned housing completions of 1,510 for this period, the target would not have been met. The second target has not been met with only 20.3% of dwellings on eligible sites granted consent being affordable<sup>18</sup>.
100. The parties disagree as to whether losses of affordable housing stock through the right to buy should be taken into account when assessing delivery of affordable housing. If they are, the figure for net affordable housing completions since 2012 would be only 20 dwellings. It may not be appropriate to factor in right to buy losses when assessing affordable housing needs given that it is not referred to in relevant parts of the Planning Practice Guidance or to deduct losses from completions as there is no requirement to re-house the households concerned. However, such losses provide part of the wider context to the issue of affordable housing provision in the Borough.
101. Even taking the Council's position on this particular issue, the delivery of affordable housing to date has fallen below the target, if planned housing completions are used as the basis. There is a significant gap between the delivery of affordable housing and the assessed need of 214 dwellings per year.
102. Further context is provided by evidence in relation to affordability indicators and numbers on the Council's Housing Register. Paragraph 7.21 of the Local Plan recognises an acute need for more affordable housing and paragraph 7.22 acknowledges that the Borough is faced with a perpetual pressing need to deliver affordable housing. Given all of this, the provision of up to 53 affordable dwellings as part of the appeal scheme and the combined provision of up to 141 affordable dwellings from the conjoined appeal schemes would be a substantial benefit to which I attach significant weight.
103. Aughton has not seen any affordable housing completions since 2011. Given the lack of allocated housing sites and the site size threshold that applies to Policy RS2, this is not surprising. The Local Plan was not based on the premise

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<sup>17</sup> CD29 Housing Need and Demand Study and CD30 Aughton Parish Summary

<sup>18</sup> CD31- 2017 Annual Monitoring Report page 53



that affordable housing needs arising from Aughton would be met there. Nonetheless, the provision of such a substantial amount of affordable housing would make a major contribution to identified local housing needs and again carries significant weight as a benefit.

104. The proposed development would include 20% specialist housing for the elderly. Although this is in line with the requirements of Policy RS2, it is a positive aspect of the proposal to which I attach weight.
105. It is intended that the D1 use within the proposed development would be for a new GP surgery to replace the existing surgery on Town Green Lane. This would enable the service to be improved and expanded and is a benefit to which I attach significant weight.
106. There would also be a range of economic benefits arising from the proposed development. It would support jobs in construction and associated industries, increase expenditure in the local economy and generate a very significant CIL contribution. I attach weight to these benefits.
107. In considering whether material considerations justify granting planning permission, it is important to recognise the context provided by Local Plan policies for the site in question and my findings above. Plan B is not required and under these circumstances Policy GN2 makes it clear that the land should continue to be safeguarded "from" development until 2027 for development needs beyond 2027. Although the appeal site is within the settlement boundary for Ormskirk with Aughton, it forms part of an area of safeguarded land between the existing urban area and the Green Belt and is subject to the specific policy requirements discussed above.
108. The identification of safeguarded land is a fundamental aspect of the Local Plan and provides the opportunity, should it be necessary, to meet longer term development needs beyond the current Local Plan period without further alterations to the Green Belt boundaries. It is not necessarily the case that the safeguarded land, including any of the Plan B sites, will be allocated for development in a future review of the Local Plan. Decisions will need to be taken at that time on the basis of circumstances that exist at that time. Whilst options for the scale of future housing growth have been considered as part of early work on the review of the Local Plan, no decision has been taken.
109. The release of the appeal site for housing now would significantly reduce the amount of safeguarded land available to meet development needs beyond 2027 and reduce the scope to accommodate such needs without altering the Green Belt. It would also significantly reduce the amount of land identified as Plan B sites and the options for releasing such sites if they are required.
110. I have taken account of all of the above material considerations and given them weight accordingly. These include a number of benefits, the provision of affordable housing and a new GP surgery in particular being substantial benefits to which I attach significant weight. However, taking all relevant factors into account and in the context of the specific policies that apply and my findings in relation to housing land supply, these material considerations do not provide a justification for granting planning permission.

## Conclusions

111. None of the triggers for Plan B have been activated and the proposed development conflicts with Policies GN2 and RS6. It would involve the loss of a significant area of BMV agricultural land and conflicts with Policy EN2.
112. The Council can demonstrate a five year supply of deliverable housing sites. Relevant policies in the Local Plan are not out of date in terms of paragraph 49 of the NPPF or for any other reason. Under these circumstances the presumption in favour of sustainable development contained in paragraph 14 of the NPPF does not apply. Material considerations do not provide a justification for granting planning permission.
113. For the above reasons and taking account of other matters raised I conclude that the appeal should be dismissed.

*Kevin Ward*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

James Maurici	Queen's Counsel Instructed by the Borough Solicitor
He called Peter Richards	Strategic Planning and Implementation Manager, West Lancashire Borough Council

### FOR THE APPELLANT:

Paul Tucker	Queen's Counsel Instructed by Stephen Harris
He called David Roberts IEng FIHE FCIHT	Director SCP
James Stacey BA (Hons) Dip TP MRTPI	Director Tetlow King Planning
Stephen Harris BA (Hons) MRTPI	Director Emery Planning Partnership

### INTERESTED PERSONS:

Colin Atkinson	Chairman Aughton Residents Group
Irene Roberts	Clerk to Aughton Parish Council
Ian Forbes	Local resident

## **INQUIRY DOCUMENTS**

The Inquiry for the conjoined appeals had a single document library with documents that are relevant to either or both appeals

- 1 Appeal decisions at land to the west of Langton Road, Norton dated 26 July 2016
- 2 Data on affordable housing delivery gross and net
- 3 Data on Housing Strategy target
- 4 Main issues identified by Inspector at start of Inquiry
- 5 Planning statement by Emery Planning for Redrow Homes Ltd dated March 2015
- 6 2012 Annual Monitoring Report
- 7 Technical Paper 1 – Strategic Options and Green Belt release V2 July 2012
- 8 List of planning permissions for change from C3 to C4 granted 1/4/12 to 31/3/17
- 9 Opening submission on behalf of Appellants
- 10 Opening submission on behalf of Council
- 11 Statement from Colin Atkinson, Chairman of Aughton Residents Group
- 12 Statement from Irene Roberts, Clerk to Aughton Parish Council
- 13 Oxford English Dictionary definitions for “persistent” and “pro rata”
- 14 Statement from Ian Forbes, local resident
- 15 Housing needs data for Derby, Knowsley and Scott Wards
- 16 Note explaining review process for Plan B
- 17 Extract from closing submission on behalf of Council for previous Inquiry
- 18 Closing submission on behalf of Council
- 19 Closing submission on behalf of Appellants
- 20 Duly executed planning obligations
- 21 Updated statement of common ground on housing land supply
- 22 Legal judgements
  - Barwood Strategic Land
  - Watermead Parish Council
  - Telford and Wrekin
  - R v Rochdale Metropolitan BC exp Milne
- 23 CIL regulation 123 list
- 24 SHELAA site assessments for 5 Briars Lane and 188 Southport Road