



Appeal Decision

Hearing held on 16 May 2012

Site visit made on 16 May 2012

by David Morgan BA MA MRTPI IHBC

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

Decision date: 5 July 2012

Appeal Ref: APP/D2320/A/12/2172036

47 Clancutt Lane, Coppull, Chorley, Lancashire PR7 4NR

- 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 Redrock Limited against the decision of Chorley Borough Council.
 - The application Ref 11/00993/OUTMAJ, dated 11 November 2011, was refused by notice dated 14 February 2012.
 - The development proposed is outline application for the demolition of 47 Clancutt Lane (and associated outbuildings) and erection of up to 29 residential dwellings (all matters reserved except for access).
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Decision

1. The appeal is allowed and outline planning permission granted for demolition of 47 Clancutt Lane (and associated outbuildings) and erection of up to 29 residential dwellings (all matters reserved except for access) at 47 Clancutt Lane, Coppull, Chorley, Lancashire PR7 4NR in accordance with the terms of the application Ref 11/00993/OUTMAJ, dated 11 November 2011 subject to the conditions set out in the schedule at the end of the decision.

Procedural matters

2. The planning application was submitted in outline with all matters bar access reserved; the appeal has been determined on this basis.
3. An agreement under S106 of the Town and Country Planning Act was submitted at the Hearing facilitating the provision of affordable housing. Chorley Borough Council (CBC) is party to the Agreement. In addition to affordable housing, a financial contribution is also sought for children's play space, this also needs to be considered in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL).
4. On the 27 March 2012 the Government published the National Planning Policy Framework (henceforth referred to as '*The Framework*'). The main parties have been consulted on and have responded to the document and this has been taken fully into account in the reasoning below.
5. On the 7 June 2012, after the date of this hearing but immediately prior to the anticipated issue of the decision, The Central Lancashire Core Strategy (CLCS) was judged as sound by the examining Inspector. Although the CLCS has yet to be formally adopted by the respective Councils (including Chorley Borough Council), this judgement of soundness increases the weight that may be afforded to it in relation to this appeal.

Main Issue

6. This is whether there is a current need to release the appeal site, presently designated as Safeguarded Land (SL), for residential development now. This is with specific regard to the release of that safeguarded land, housing land supply, site sustainability, setting of precedent, infrastructure provision and affordable housing.

Reasons

7. The appeal site comprises a modest area of open land at the northern periphery of the settlement. It is designated as SL, and lies adjacent to the Green Belt to the north and is bounded by the railway to the west and residential development to the south and east. Whilst termed 'greenfield' by the Council, the site is partly occupied by the existing dwelling and a collection of outbuildings to its west. From the visit it was apparent that other areas of the site had accommodated other built structures in the past and that there was evidence of metalled road surfaces and areas of hard standing, all perhaps reflecting the reference to 'works' on the Ordinance Survey map extract accompanying the Section 106 agreement. The scheme makes provision for up to 29 dwellings with 30% of them affordable. The scheme would be accessed by means of one junction off Clancutt Lane.

Release of Safeguarded Land

8. It is accepted by both parties that the proposals would be in breach of policy DC3 of the Chorley Borough Local Plan Review 2003 (CBLPR), which protects SL from development. Despite policy DC3 being saved through the Direction of the Secretary of State in 2007, the CBLPR anticipated the policy would be reviewed before the end of the plan period, which extended only until 2006. As the saving direction made clear at the time, the policy would need to be read in the context of other material considerations, including subsequent national and local policy, which may be afforded greater weight.
9. The core policy arguments surrounding this first sub-issue, specifically the more up to date local (formerly regional) policy directions, have been covered in some detail in the Wigan Road, Clayton Le Woods decision¹, and are clearly material to this case. The North West Regional Strategy (NWRS), still for current purposes part of the development plan, sets the broad strategic vision for the wider area, including housing targets. The CLPCS, judged as sound in June 2012 but yet to be formally adopted by the respective Councils, is at a very advanced stage, and can therefore be apportioned a very significant amount of weight in accordance with paragraph 216 of the Framework.
10. Policy 1 of the CLPCS identifies Coppull as one of only six Local Urban Service Centres (LUSCs) where 'some growth and investment will be encouraged' and these centres as a whole will be expected to accommodate approximately 9% of anticipated housing growth over the plan period (2010 – 2026). As the Inspector in the Wigan Road decision² concluded, 'In order to meet this planned growth, there would need to be a steep increase in housing delivery from now onwards'. A conclusion now given greater emphasis given the further 11 months that have passed since that decision.

¹ Secretary of State and Inspectors decision Ref: APP/D2320/A/10/2140873 Land East of Wigan Road, Clayton Le Woods, Chorley, Lancashire

² Ibid.

11. A further consideration is the Chorley Council Site Allocations and Development Management Policies Development Plan Document (SADMPDPD), still some 9 – 12 months from formal adoption and thus meriting a lesser degree of weight being afforded to it. Nevertheless, in what ever form or shape it is adopted, in order for it to be consistent with the CLPCS it will need to plan for significant growth in the LUSCs in order that the projected housing is accommodated. By far the greater majority of these allocated sites (approximately 80%) are on SL and there must be very little doubt that without these sites being included the housing targets would not be met and, moreover, that a continuous rolling supply of housing land would be unachievable.
12. In this context and the anticipated review of SL in 2006, there is a general consensus that the appeal site will come forward for housing at some time, the essential dispute is whether it should be now, or whether bringing it forward pre-emptively would significantly distort and harm the strategic delivery of housing sites over the plan period.

Housing land supply

13. The Wigan Road decision³ established a 5.38 year housing land supply, whilst the Council determine that with consideration of windfall sites in accordance with paragraph 48 of The Framework, this figure now stands at 5.9 years. The appellant takes a different view, indicating that at best a Strategic Housing Land Availability Assessment (SHLAA) inferred figure stands at 5.7 years, whilst if a backlog figure and a +5% figure is added, this is reduced to 5.1 years. If further considerations are taken into account, such as density changes to approved schemes, discounts for smaller sites and the deletion of mooring sites, this figure falls to as low as 4.4 years. If a +20% buffer is added to reflect a persistent under-delivery of sites, this figure falls again to 4.3 years.
14. Either way, the 5 years supply is a pretty close call, and dependent on a key range of variables. On the basis of the figures, there have been swings of both over and under supply in recent years, and the inclusion or exclusion of specific sites has an impact on the final figure. Moreover, going forward, with the reduction of Government housing subsidies, which have helped drive delivery in the past, there must be questions over whether the recent levels of supply can be maintained. On balance though, the figures suggest that there is a 5 year supply but with some doubts as to whether there is a +5% buffer going forward.
15. If the judgement of the appeal were to turn explicitly on establishing this 5 year +5% (5.25 years) position then the figures would require further rigorous testing and challenge. But this is not the case here. The Council's conclusion that 'as the Council has identified in excess of a 5.25 years supply of deliverable housing sites there is no requirement to consider this scheme favourably in line with paragraph 49 of the NPPF' is flawed. Policy DC3 has been determined as out of date by the Wigan Road appeal⁴, a conclusion that has been fully endorsed by the reasoning in this case.
16. Having a 5.25 year supply does not make that relevant policy (DC3) up to date in the context of this appeal. Moreover, paragraph 49 makes clear that housing applications should be considered in the context of the presumption in

³ Ibid.

⁴ Ibid.

favour of sustainable development, as defined by paragraph 14 of The Framework. The 4th bullet point of this paragraph makes clear that where (inter alia) the relevant policies are out of date, decision makers should grant permission 'unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole'. There *is* therefore a requirement to consider the proposals favourably here unless the weight of adverse impacts dictates otherwise.

Sustainability arguments

17. A fundamental prerequisite to favourable consideration of any housing development in the context of The Framework is that it be considered sustainable. Through its inclusion in the SADMPDPD the site has been subject to a rigorous sustainability assessment, and is rated 'C' on a scale of A to E (A being the highest score). However, detailed analysis of the scoring reveals that the site scores two of the criteria for an overall sustainability score of B, by adjoining a settlement and having 64% of indicators in band B or above (well over the threshold of 50%). Under the terms of the Council's own assessment the site only narrowly misses achieving the highest sustainability rating possible in the settlement. The key factor in it not achieving the top rated B status is the fact that it remains covered by the out of date DC3 policy.
18. Whilst there are three other sites within or adjacent to Coppull that are rated at band B, the appeal site is scoring very close to these, and is, for the present time at least, identified as coming forward in the first phase of the plan period (2011 – 2016) ahead of some of these competitor sites. In conclusion then, in terms of sustainability, the site scores well. Indeed, the appraisal indicates that the 'only negative (environmental) effect in developing this site is that the site is Greenfield with a current designation of safeguarded land'. Notwithstanding this qualification, in the context of the Framework, the site, and the development proposal, can be confidently accepted as sustainable.

Precedent setting

19. The Council assert that they currently have before them a number of applications on SL totalling 1164 units, equating to 2.8 years housing supply. The release of this site now would give the green light to the early release of these other sites, causing prejudice to the SADMPDPD in respect of scale, location and phasing of new development and undermine the growth ambitions and objectives of the CLPCS. It has to be accepted that if such circumstances were to arise the objectives of the emerging growth strategy would be significantly undermined.
20. But what are the actual risks to the shape and vision of the CLPCS and SADMPDPD if the appeal were to be allowed? The Council's case is predicated on the cumulative impact of all these sites being prematurely released, and quotes paragraphs 17 – 19 of *The Planning System: General Principles* in support of such a position. Here it specifically states that Council's may justify the refusal of planning permission where the development proposed is so substantial, or where the cumulative effect would be so significant that granting permission could prejudice the DPD. However, at the Hearing the Council accepted that for the greater number of cases forming the 1164 total, most could be held to be *so significant* in their own right as to continue to merit refusal on grounds of prematurely alone.

21. In fact, in respect of the cumulative impact of lesser sites, the Council identified four 'smaller' sites identified in the SADMPDPD that would be 'at risk' if the appeal was allowed. These comprised land at Babylon Lane (39 dwellings), Hilltop Lane (27 dwellings), Chancery Way (50 dwellings) and Robin Drive (26 dwellings), a total of 139 dwellings. Even if planning applications were submitted on the back of the appeal decision, they would have to be determined in the light of all material planning considerations relevant to each case, and potentially be subject to and allowed on appeal prior to the publication stage of the SADMPDPD within the next 11 months. Even if one or two were determined affirmatively in that intervening period, the implications for the delivery of the spatial vision of the plan area would be less than significant, amounting to no more than part of the total 139 potential pre-emptive dwellings across the district prior to the full force of the development plan coming into effect.
22. There is an added risk attendant on effectively embargoing any decision on SL as advocated by the Council in the current circumstances, and this was also identified by the Inspector in the Wigan Road case.⁵ This is that to defer determination of all SADMPDPD sites until the formal adoption of the document in approximately 11 months time risks perpetuating the current policy vacuum which in turn may compromise the delivery of the housing numbers anticipated by both NWRS and CLPCS, the ending of the first phase of which would be only two and a half years hence.

Infrastructure provision

23. The Council argue that 'unplanned' pre-emptive development of this type would undermine the more strategic delivery of infrastructure within the plan area and exacerbate the distortion to the growth vision identified above. However, this is a relatively small development which when considered on its own terms, or within the parameters of those set out in the paragraphs above, would not represent a material threat to the delivery of this strategic infrastructure provision.

Affordable Housing

24. The proposals offer 30% affordable housing on the site which would equate to 8.7 units (eight built, with a commuted sum making up the total for off-site provision). The Council suggest that at 1% of the identified shortfall this is not a significant benefit weighing in favour of the scheme. However, the shortfall alluded to amounts to an annual deficit of 723 affordable dwellings in the district. The 30% figure is 10% above the current CBLPR requirement, it is to be delivered through a signed and dated Section 106 Agreement, has an agreed tenure mix and has a Council approved registered provider expressing a keen interest in taking on the dwellings. With every prospect of the scheme coming forward quickly in the event of the appeal being allowed this does offer the opportunity to secure 8 homes for the community where there is an ongoing shortfall of such dwellings. This must weigh significantly in favour of the scheme, and I afford it significant weight accordingly.
25. In reaching this conclusion I have taken note of the Council's decision in respect of the Coach and Horses site in Coppull (Council ref:09/00696/FULMAJ) which comprised 40 dwellings, 11 of which were to be affordable (again

⁵ Ibid

provision 10% above the CBLPR requirement). Also on SL, here the Council concluded that 'very special circumstances had been demonstrated to overcome the safeguarded land policy and not establish a precedent for all other such land in the Borough in view of the need for affordable housing in Coppull'. Whilst the detailed circumstances of this case may be different to that of this appeal, it clearly demonstrates that the 'very special circumstances' of bringing forward affordable housing in the settlement are to be afforded very significant weight to justify the setting aside of policy DC3.

Other matters

26. Concern was raised at the Hearing over the impact the development would have on the safety of those using Clancutt Lane as a result of increased traffic generation; a petition was handed in at the Hearing from local children underpinning these concerns. Clancutt Lane is reasonably narrow with unrestricted parking that may, on occasion, limit the otherwise free flow of traffic along it. However, Traffic levels in the lane at the time of my visits (16.30 hours – 17.15 hours and 15.00 hours 16.15 hours) were modest, and with the anticipated additional numbers of traffic movements being small and in proportion to the numbers of units, no significant increased risk to highway users would result. This is a view shared by the highway authority.
27. Concerns have been raised in respect of bats roosting in the buildings to be demolished. Evidence of protected species on the site has not been identified in the submitted ecological survey and no counter- evidence challenging this position was presented at the Hearing. No material harm to protected species would result and mitigation for any potential roost sites lost could be secured through a suitable condition.
28. The Tree Preservation Order covering the site encompasses both a group of trees on the boundary of the site which would be substantially retained as part of the scheme and a small group within the site that would be lost. The limited impact upon the character and appearance of the site caused by the loss of these latter specimens, whilst part of the TPO, would be more than compensated for through the detailed provisions of a landscape planting scheme secured through the reserved matters.

Section 106 Agreement

29. The signed and dated Section 106 Agreement makes provision for eight affordable housing units on the site and a commuted sum for off-site provision which comprises 30% of the total, 10% above that required by policy HS5 of the CBLPR. It has a tenure split of six affordable rented units and two shared ownership, which accords with identified need. Given the need for affordable housing identified in the area I find such provision necessary to make the development acceptable in planning terms, and which is proportionate to that required, and is directly related to the development.
30. The development will generate an increased demand for children's play space, or increased pressure on existing sites in its environs. The agreement makes provision for such a play area in Longfield Avenue only a little distance from the site. This contribution would make the development acceptable in planning terms and the play facility provided would be directly related to the site. Although the quantification of the sum is not provided, this reflects the cost of such provision and is deemed to be proportionate on this basis. Both

components of the agreement therefore accord with the regulatory requirements of the CIL and I am able to take them into account when determining the application.

Planning balance and conclusions

31. The proposals, being on SL, are in conflict with policy DC3 of the CBLPR, deemed part of the development in accordance with paragraph 215 of the Framework. The Framework maintains that proposals should be determined in accordance with the development plan unless material planning considerations dictate otherwise.
32. In this case there are a number of such considerations in the balance. The first is that policy DC3 is out of date when judged against its own inherent obsolescence (review having been anticipated in 2006), and against the growth expectations of the NWRS, a component part of the development plan, and the sound CLPCS, a document very close to formal adoption and therefore to be afforded a considerable degree of weight. This context established, the presence of a 5.25 year land supply cannot render this policy up to date. Nor can it be right that weight be afforded to policy DC3 on the basis of conformity with paragraph 85 of The Framework, for the same reasons. The delivery of the growth targets in the NWRS and CLPCS, which are themselves consistent with the imperatives for growth set out in The Framework, should be afforded very considerable weight in any judgement concerning the contravention of policy DC3 in this case.
33. The site will deliver a modest though much needed element of affordable housing, for which there is an acknowledged demand, not just across the borough, but also in Coppull⁶. Such provision, as the Council acknowledge in other circumstances, merits being considered as 'very special circumstances' and so can reasonably be afforded considerable weight in favour of the proposals. The provision of funding for the provision of children's play space also militates in favour of the proposal.
34. Paragraph 14 of The Framework requires that housing development be considered in the context of the presumption in favour of sustainable development. Although there may be other sites deemed marginally more sustainable in Coppull, by the Councils' own assessment, the site is in a sustainable location, its place in the first phase of the delivery period of the emerging development plan giving additional support to its early delivery.
35. The Council's main concern here is the consequence of allowing this *pre-emptive* development proposal to come forward. Even if other analogous SL sites were to fulfil all planning requirements and go on to be allowed at appeal if still refused by the Council, this would leave potential for very few of them to 'get in under the wire' before the anticipated adoption of the SADMPDPD in 11 months time. There is therefore no significant risk to the shape or implementation of the growth vision for the area. This conclusion is given added assurance by the fact that any really substantial SL sites that did come forward could still be confidently refused on the grounds of prematurely.
36. Although contrary to policy DC3 of the CBLPR, the development can be judged sustainable. There may be a small risk other proposals will come forward on the back of this appeal, incrementally altering the shape of the emerging

⁶ Committee report on the Coach and Horses Site, Council Ref: 09/00696/FULMAJ

SADMPDPD. However, this risk is small, and this potential harm is significantly outweighed by the benefits of bringing this sustainable housing site forward to help deliver the growth vision for the area in a timely way whilst in addition providing much needed affordable housing, all of which accord with imperatives of the Framework as a whole. For these reasons, I conclude the appeal should succeed.

Conditions

37. The appeal being allowed, conditions are attached requiring the submission of reserved matters within the prescribed period and, on approval, commenced within a period of two years, both to furnish the appropriate level of detail required and to bring forward the development in a timely manner. A condition is attached requiring the submission of details of replacement bat roosts provision and replacement bird nesting sites, both to ensure the continued provision for such species on the site. Conditions are attached requiring that ground levels around protected trees are maintained and that measures are put in place to safeguard such trees during the course of construction. A condition is attached requiring ground investigation to mitigate any contamination of the site to safeguard living conditions of future occupiers. Conditions are attached requiring the separation of foul and surface water and that a scheme for such drainage arrangements, and one for surface water regulation be submitted to the local planning authority for approval to ensure appropriate segregated drainage of the site. A condition is attached requiring details of the acoustic screening on the site, to safeguard the living conditions of future occupiers. Finally, conditions are attached requiring the dwellings be built to meet Code Levels of the Code for Sustainable Homes and to ensure compliance with Code in order to reduce the carbon footprint of the site and mitigate the effects of climate change.
38. Conditions suggested requiring the submission of full details of existing and proposed ground levels, details of boundary treatments (including walls and fences and other means of enclosure), details of a full landscaping scheme, and provisions for its initial implementation and subsequent management and details of hard surfacing materials, details of all external surface materials and boundary treatments have been considered, though these issues may more appropriately be considered through the submission of the reserved matters identified above.
39. For the reasons given above, and having considered the views of local residents, I conclude that the appeal should be allowed.

David Morgan

Inspector

Schedule of conditions

- 1) Details of the, appearance, landscaping and siting (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.

- 2) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) On the submission of the reserved matters, details for the provision of bat roosts and bird nesting provisions shall be prepared in accordance with the submitted ecological report (Bat Scoping Survey by UES dated 1 November 2011) recommendations and submitted to and approved in writing by the local planning authority. The mitigation measures approved shall be carried out in full accordance with the approved details.
- 4) The existing soil levels around the base of the trees to be retained and shall not be altered.
- 5) During the construction period, all trees to be retained shall be protected by 1.2 metre high fencing as specified in British Standard BS5837:2012 at a distance from the tree trunk equivalent to the outermost limit of the branch spread, or at a distance from the tree trunk equal to half the height of the tree (whichever is further from the tree trunk), or as may be first agreed in writing with the Local Planning Authority. No construction materials, spoil, rubbish, vehicles or equipment shall be stored or tipped within the area(s) so fenced. All excavations within the area so fenced shall be carried out by hand.
- 6) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 7) Prior to the commencement of the development full details of the acoustic screening, in accordance with the suggested noise mitigation measures set out within the submitted Environmental Noise Impact Assessment Acoustic Consultancy Report (Ref: 1724/Enia dated October 2011) shall be submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be completed in accordance with the approved details.
- 8) Prior to first occupation any of the development full details of the on-site measures to be installed and implemented so as to reduce carbon emissions, by the figure set out in policy SR1 of the Sustainable Resources DPD, by means of low carbon sources has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall also include full details of the predicted energy use of the development expressed in terms of carbon emissions (If no data specific to the application is available

benchmark data will be acceptable) and how energy efficiency is being addressed, for example, amongst other things through the use of passive solar design. The approved details shall be fully implemented and retained in perpetuity unless agreed otherwise by the local planning authority.

- 9) All dwellings completed before 1st January 2013 will be required to meet Code Level 3, all dwellings commenced after 1st January 2013 will be required to meet Code Level 4 and all dwellings commenced after 1st January 2016 will be required to meet Code Level 6 of the Codes for Sustainable Homes.
- 10) The development shall not commence until details of a 'Design Stage' assessment and related certification have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out entirely in accordance with the approved assessment and certification.
- 11) Within 6 months of occupation of each dwelling a Final Certificate, certifying that the relevant Code for Sustainable Homes Level has been achieved, shall be submitted to and approved in writing by the Local Planning Authority.
- 12) Surface water must drain separate from the foul, and no surface water will be permitted to discharge to the foul sewerage system.
- 13) Prior to the commencement of the development a scheme for the disposal of foul and surface waters, including a detailed timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be completed in accordance with the approved details and timetable.
- 14) Prior to the commencement of the development a scheme for the provision of a surface water regulation system, including a detailed timetable for its implementation, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be completed in accordance with the approved plans and agreed timetable.

APPEARANCES

FOR THE APPELLANT:

Mr W.S. Fulster
Dr T.G. Powell

FOR THE LOCAL PLANNING AUTHORITY:

Mr S. Lamb	Chorley District Council
Mrs N Hopkins	Chorley District Council
Ms A. Mayes	Chorley District Council
Mr M Banks	Chorley District Council
Mr P Whittingham	Chorley District Council
Ms J Moore	Chorley District Council
P. McAnespie	Chorley District Council

INTERESTED PERSONS:

Mr S Taylor
Mr And Mrs Illidge
Mr M Dearden
Mr G Battosky
Mr D Rostron
Mr and Mrs Blackledge
Ms R Cohen
Mrs M Cork

Documents presented at the Hearing

1. Council's notification of Hearing date – CBC
2. Signed and dated 106 agreement – appellant
3. Timetable for CLPCS – CBC
4. Site allocations document – CBC
5. first time buyer guide – appellant
6. Table of record of completions – CBC
7. Petition from local residents – interested party

8. sustainability appraisal extract – CBC
9. Committee reports (X2) on Coach and horses site – appellant
10. Map of Buckshaw village – CBC
11. Local plan inst map of Coppell - CBC

Richborough Estates