LAND AT THE REAR OF OAKDENE, CHAIN HOUSE LANE, WHITESTAKE

PINs APPEAL REFERENCE APP/F2360/W/19/3234070

CLOSING SUBMISSIONS ON BEHALF OF SOUTH RIBBLE BOROUGH COUNCIL

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1. The application which is the subject of this appeal was refused by South Ribble Borough Council ("the Council") on 27th June 2019 for three reasons. The first two reasons concerned the conflict of the proposals with Policy G3 of the South Ribble Local Plan ("the Local Plan") (CD 4.20) and the third reason for refusal related to air quality. The Council has already confirmed that the third reason for refusal is no longer pursued.

2. Policy G3 of the Local Plan relates to safeguarded land. The policy identifies five areas of safeguarded land in the borough. The proposed development in this case relates to part of area S3 South of Coote Lane, Chain House Lane, Farington.

3. Policy G3 provides that the areas it refers to remain safeguarded and not designated for any specific purpose within the Local Plan period. Hence, the policy states that existing uses will for the most part remain undisturbed during the Local Plan period or until the Local Plan is reviewed. The policy also provides that planning permission will not be granted for development which would prejudice potential longer term, comprehensive development of the land.

4. Policy G3 provides very limited flexibility in its own terms in the phrase *"for the most part"*. Those words should be read in the light of the reasoned justification which makes it clear that the only development which it is contemplated could be brought forward under the policy is that referred to in paragraph 10.36 of the reasoned justification, namely, development which would generally be acceptable in the Green Belt and some appropriate minor residential development adjacent to other properties. It is hard to see where any further flexibility might reside. The proposal in this case falls outside any flexibility in the policy and is contrary to it (as SH accepted xx). Paragraph 10.36 also

(correctly) characterises the policy as embodying a presumption against built development.

5. There are two aspects to Policy G3: there is a temporal aspect in that uses will for the most part remain undisturbed during the Plan period or until the Plan is reviewed; and there is a spatial aspect in that planning permission will not be granted for development which would prejudice potential longer term comprehensive development of the land. In principle, a proposal could satisfy the second aspect of the policy but still be contrary to the first aspect (and therefore contrary to the policy), although the Council's case is that the development in this case infringes both aspects.

6. It is also to be noted that Policy G3 does not commit to future development but provides the potential for it. It is submitted that the analysis of the Inspector in the Pear Tree Lane decision, which was directed at safeguarded land in Chorley, has equal force in the present case: such land is suitable for development in the long term; but unsuitable during the plan period (CD 7.21 at paragraph 37). There is no link in Policy G3 to the question of a five year housing land supply ("5YHLS") and there is nothing in the policy remotely to suggest that safeguarded land within the policy can be released if there is a shortfall in the 5YHLS. It follows that the question of whether or not there is accordance with the policy cannot depend on that issue; and it also follows that the policy cannot be read as one which allows the release of safeguarded land if unmet housing need arises within the life of the Local Plan.

7. Policy G3 is consistent with the government's policy in relation to safeguarded land in the National Planning Policy Framework ("the NPPF"). Paragraph 139(d) provides that plans should make it clear that safeguarded land is not allocated for development at the present time and that planning permission for the permanent development of safeguarded land should only be granted following an update to a plan which proposes the development. The consistency of the policy with paragraph 139(d) of the NPPF is self-evident from reading the policy alongside that paragraph but the consistency has in any event been endorsed by the Inspector who examined the Local Plan (see paragraphs 90 and 93 of CD 4.3). Policy G3 attracts substantial weight by reference to its consistency with the NPPF (see paragraph 213 of the NPPF).

8. The present proposal is contrary to Policy G3 in that it promotes permanent built development on safeguarded land during the Local Plan period through the mechanism of a planning application without there having been a review of the Local Plan.

9. The Council does not consider that there is any case to be made for conformity with either Policy G3, or the development plan as whole, through the application of the monitoring arrangements in the Local Plan. The Appellant's argument in relation to the monitoring arrangements found in Appendix 7A of the Local Plan faces the insuperable difficulty (demonstrated in xx of SH) that the sites within the contingency action relied upon of *"reconsidering phasing"* relates only to those sites in Policy D2. Policy D2 concerns the Local Plan's housing sites allocated under Policy D1. Safeguarded land within Policy G3 does fall within the category of housing sites which are the subject of phasing in Policy D2. Safeguarded land (even though it has a temporal dimension) is not a phasing policy. There is no contingency action which states that consideration is to be given to release for housing of safeguarded land in advance of a plan review in circumstances where a performance indicator (whatever it might be) is not met. It cannot be an *"appropriate management action"* within Policy 4(b) of the Central Lancashire Core Strategy ("the CS") to do something (release safeguarded land before a plan review) which is not the subject of a contingency action in the Local Plan and would breach that plan's own policy in relation to safeguarded land. It is important that there should not be conflated the question of whether the proposal would conflict with Policy G3 (or the development plan as a whole) with the question of whether, notwithstanding that conflict, there would be any material considerations outweighing it. It is nothing to the point, in judging conformity with the Local Plan, that safeguarded land might, in a wider planning balance, have to be considered for release in circumstances of housing need if no other more appropriate alternative sources of land present themselves.

10. It should also be noted that the City Deal (CD 8.1) is irrelevant to the question of whether the proposal is in conflict with the development plan. Neither delivery of housing in accordance with the City Deal, nor any other aspect of the City Deal, finds policy expression in the Local Plan. Delivery of housing in accordance with the City Deal is not a performance indicator in Appendix 7A of the Local Plan. The City Deal is a material consideration outside the Local Plan, and one which, the Council submits,

should only attract limited weight in any event given the uncertainty that attends its continuation, and, if so, the terms of that continuation as now thrown up in the mid-term review process (see minute 53 of the meeting of the Council on 25th September 2019).

11. The Council submits that the conflict of the development proposed in this case with Policy G3 involves the consequence that the proposal is in conflict with the development plan as whole. While the question of a whether a proposal accords, or does not accord, with the development plan must be judged by reference to the development plan as whole, there can be no doubt about the direct and central importance of Policy G3 to the decision in this case. That is underscored by the fact that Policy G3 is the only policy mentioned in the first and second reasons for refusal and is recognised in the common ground that exists between the parties that, for the purposes of paragraph 11(d) of the NPPF, Policy G3 satisfies the criterion of being a policy that is *"most important for determining the application"*. These matters are sufficient to elevate conflict with Policy G3 to the level of conflict with the development plan as a whole.

12. Not only is the proposal in this case contrary to Policy G3 of the Local Plan, it is also contrary to paragraph 139(d) of the NPPF (accepted by SH in xx). And, because that paragraph is premised on plan-led development of safeguarded land after a plan update, it follows that, were permission to be granted in this case, there would be a breach of the core principle that the planning system should be genuinely plan-led (paragraph 15 of the NPPF). These are matters which attract substantial weight.

13. It is further the case, in the Council's submission, that the proposal breaches that aspect of Policy G3 which provides that planning permission will not be granted for development which would prejudice potential longer term, comprehensive development of the land. This also attracts substantial weight. Even if it were to be accepted (putting to one side legitimate process concerns about the lack of public consultation) that the illustrative layout which the Appellant has agreed with Homes England reveals the potential for the design of a scheme whereby housing development on the appeal site could be combined with further housing on the adjacent landholdings

of Homes England, that would, as I put it in my opening remarks, serve only to demonstrate that the western part of S3 could be developed in isolation.

14. The position here is no different from that which obtained in the Coote Lane decision (CD7.7) where the Inspector considered that development of the appeal site there (the eastern parcel of S3) would effectively predetermine the appropriate role to be played by that land as part of the comprehensive development of the area in a future process where development requirements could be co-ordinated (see paragraphs 18 and 22). That way of approaching the issue of comprehensive development in terms of Policy G3 (then emerging, but in the form it is now) was not influenced by the fact that the Council was able to demonstrate a 5YHLS at that point. The two matters are quite separate. The approach the Inspector took was, the Council submits, the correct approach. Some much more convincing reason would need to be advanced why a different approach should not apply in this case. Effectively, the approach asks whether alternative development options for use of the safeguarded land, to be considered in the later context of a plan review, are foreclosed by what is proposed. They were in that case and are in the present case. It is not an answer to say that any development of a site would have the effect of determining or limiting what can be done on the site in the future. Not every site lies on safeguarded land which should only be released following a plan review in which the question of comprehensive development of that land can be considered in the round.

15. The future alternative use which was canvassed in the Coote Lane decision was office development. That is not a future alternative use which should be excluded in the present case in the light of the April 2019 update of the 2017 Central Lancashire Employment Land Study Key Issues Report (CD8.2). The document identifies a main gap to be addressed by additional provision of sites for inter alia, B1(a) offices and a specific need up to 2036 for office space in South Ribble, using previous take up as a guide, of 24.97ha equating to 97,383sqm at 3,900sqm/ha.

16. The Council also submits that, in terms of Policy G3 itself, it can properly be read (when considered with the reasoned justification) to provide that the only permanent built development which would not prejudice comprehensive development would be that which would not exceed the flexibility in the policy (appropriate minor residential

development adjacent to other properties or such permanent built development as would be acceptable in the Green Built).

17. The issue of prematurity as raised in paragraphs 49 and 50 of the NPPF is not of relevance to dealing with safeguarded land which, because of its role in long term planning, is already subject to a specific policy which only allows its release as part of a plan update process (paragraph 139(d)). Paragraph 139(d) has its own freestanding force divorced from the more general issue of prematurity. Paragraphs 49 and 50 of the NPPF are not the correct framework of analysis for the present case.

18. The Council accepts that Policy G3 would be out-of-date in terms of paragraph 11(d) and footnote 7 of the NPPF were it not to have a 5YHLS. As I have already said, Policy G3 clearly satisfies the criterion in paragraph 11(d) of a policy which is most important for determining the application. For the purposes of these submissions I also do not intend to go behind the concession of ZH (even though CL did not repeat it) that, if the standard method were to be employed for calculating housing need, the most important policies in the development plan for determining the application (including G3) would be out-of-date given the requirement and distributional consequences (with attendant land allocation/supply implications) that would arise across the Central Lancashire Housing Market Area as a whole were each of the three authorities to apply the standard method. What I do say is that, if Policy G3 is out-of-date with the consequence that the tilted balance of paragraph 11(d) is engaged, that does not foreclose the issue of planning judgment which would arise in respect of the weight it should be given, and the Council would still attribute considerable weight to it. The Main Street, Carlton decision (CD7.5) provides a good example of a case where the Inspector gave a safeguarded land policy (there Policy N34 of Leeds UDPR) considerable weight notwithstanding that it was out-of-date (in that case by virtue of the absence of a 5YHLS) because the policy was largely consistent with the NPPF (see paragraph 29 of the decision). One other factor which should be considered is that the present is also not the kind of case where Policy G3 as a safeguarded land policy might be regarded as of diminished weight in the sense that the relevant plan period has already passed. It plainly has not. Further, it would, in any event, remain a fact that the proposal is contrary to paragraph 139(d), and thereby paragraph 15, of the NPPF.

19. Turning to the housing requirement side of matters, paragraph 73 of the NPPF provides that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies or against their local housing need where the strategic policies are more than five years old. The relevant adopted strategic policy in this case, Policy 4 of the CS (CD 4.1), is more than five years old. The CS was adopted in July 2012. Footnote 37 to paragraph 11(d) adds the proviso *"unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance."*

20. The Council's case was, and remains, that the Memorandum of Understanding which was concluded by the three Central Lancashire authorities in September 2017 ("the MoU") (CD 6.9) did not amount to a review of Policy 4 of the CS. I use the term "MoU" as shorthand to encompass not just that final document but the process that went before it in terms of the production, and consideration, of evidence (in the form of the Strategic Housing Market Assessment ("SHMA")) (CD6.8). Ultimately, I consider that the concessions made by ZH under cross examination leave me but three points which I can rely on in support of the case that the MoU was not a review. They are, first, that there was no public consultation in the process which culminated in the MoU. It is submitted that some form of opportunity for public participation in the process is a proportionate ingredient of a review. The current process attendant on the revised MoU (however that document is to be characterised, review or not, on which I make no comment) does involve public consultation. Secondly, while there was a review of Policy 4(a) (which ZH conceded xx) there was not a review of the whole policy. It is true that the three authorities agreed in the MoU to continue with the existing monitoring arrangements (paragraph 6.1c)) but it is unclear where this decision is founded on supporting evidence (which, it is submitted, should feature in a review). Beyond that I leave it to the Inspector's judgment whether a partial, requirement figure only review, is sufficient to satisfy footnote 37. Thirdly, in the Brindle Road decision (CD 7.11) the Inspector (who must have had the advantage of the review point having been argued before him) was not convinced that the MoU was a review (paragraph 41).

He could hardly have been unaware of the SHMA given that it is referred to in the MoU.

21. I said in my opening remarks that, even if the MoU was a review, it could no longer be relied on because it has been superseded by the significant changes in national policy embodied in the introduction of the standard method and that it was that method which should now be used to inform the requirement side of matters, not an outdated CS policy which is now more than seven years old. I continue to pursue that argument on behalf of the Council but recognise that, amongst other things, it has to surmount counter arguments in relation to interpretation of policy and guidance before it could get off the ground. I now address those counter arguments.

22. The first of these is that footnote 37 of the NPPF itself rules my argument out. It is said that, once there has been a review which has found that strategic policies (of more than five years' vintage) do not require updating (which at this point I have assumed to be the case for the purposes of my argument), that is effectively the end of the matter. The strategic policies, so it is said, thus continue to apply without any further analysis being required. I submit that that cannot be the case because it would amount to ignoring any significant changes of circumstances after the review, which would contradict elementary principle. Indeed, paragraph 062 of the PPG (in the "Plan making" section under "Plan reviews") (Paragraph: 062 Reference ID: 61-062-20190315) demonstrates that, in principle, it is correct to have regard to the question whether there has been a later significant change of circumstances (in relation to local housing need) in the case of a review carried out before the publication of the NPPF (on 27th July 2018).

23. That leads directly on to the second counter argument which is that paragraph 062 provides that the only situation in which there will be considered to have been a significant change in local housing need after a pre-NPPF review is where a plan has been adopted prior to the standard method being implemented on the basis of a number that is significantly below the number generated using the standard method, or has been subject to a cap where the plan has been adopted using the standard method; and that this is to ensure that all housing need is planned for as quickly as reasonably possible. What I say in response to that is that the paragraph does not have to be read in that way. It does not contain the word "only". It can also be read as saying that, in the case of the

standard method producing a significantly greater number, it must be considered that there has been a significant change of circumstances without excluding the opposite case, that is, that a significant change in local housing need can occur where the standard method produces a significantly lower number (as is now the case in South Ribble). I also submit that the argument that the reading I suggest cannot be right because it would contradict the objective of *"significantly boosting the supply of homes"* (NPPF, paragraph 59) is not determinative. It is already necessarily implicit in the NPPF that a standard method figure significantly below a planned requirement figure can occur within the context of that objective. This is because, in circumstances where a strategic policy requirement is more than five years and there has been no review, there is an automatic default to the standard method even if it produces a significantly lower figure. The fact that that is an outcome in an individual authority does not therefore contravene the overall national objective.

24. It is also to be noted that there is nothing in the relevant "parent" guidance on plan reviews in paragraph 33 of the NPPF which suggests that there will only be a significant change in a local housing need figure if what emerges is a higher figure than a past figure and no such significant change if what emerges is a lower figure.

25. In the present case a change from the Policy 4 requirement figure of 417 dwellings per annum ("dpa") to 206 dpa is (if the arguments above are accepted) significant.

26. It is further submitted that the report of the Council's Director of Planning and Property for the Council's Cabinet on 13th November 2019 should not properly be read as expressing the view that the correct requirement figure for South Ribble remains that in Policy 4. The key message in this respect is in paragraph 8 of the report which states that *"the housing requirements set out in Policy 4 of the Central Lancashire Core Strategy are applicable from 2003 onwards. Given this it is clear that the housing figures in the current Core Strategy <u>are dated and are now superseded</u> by more recent policy approaches."* The underlining is mine to highlight the fact that the report is not saying that those figures <u>will be</u> superseded on adoption of the revised MoU but that they have already been superseded by fresh policy approaches (that is, the standard method) – as the Council argues in this inquiry - and that the original MoU (not based on that fresh approach) also no longer holds good. The same point is made in paragraph

2.4 of the draft revised MoU. Given that the Policy 4 figure has already been superseded, it would not strictly be necessary to withdraw the MoU or replace it in order to effect that change (although it would obviously be prudent in practice to do so).

27. The concern, referred to in the Cabinet report, of all three authorities that the standard method does not truly reflect their needs moving forward cannot be turned on its head to read as any expression of support for the proposition that the Core Strategy requirement figures do truly reflect needs. The suggested redistribution in the draft revised MoU is to better reflect needs and to achieve, amongst other things, a closer alignment with the distribution of people, jobs and services (draft revised MoU at paragraph 6.7). The Council rejects the suggestion that the draft revised MoU is simply a creature of political expediency brought into being to bolster the position of the Council (and Preston) in defending section 78 housing appeals. It has already been made clear that, given the draft status of the revised MoU, the Council does not advocate in this inquiry the use for requirement purposes of the redistributed figure of 334 dpa. The present position arising from the use of the standard method is that the requirement figure is 206 dpa. Until the draft revised MoU has completed its consultation and has been formally agreed and adopted so that there may be effected a redistribution through adjustment of the individual standard method need figure for each council considered alone, it is that individual standard method need requirement figure which is operative. The Council's approach is not demonstrated to be wrong because Preston and Chorley presently take a different approach.

28. Turning to the supply side of matters, it is plainly the case that, with a requirement based on the standard method, the Council has a 5YHLS. That would still be the case even if the Appellant's attack on the supply side of the equation were to succeed in full (and I fully recognise that the concessions made by ZH travel a fair distance along that road). A supply of 2,174 (the Appellant's figure) would, when divided by an annual requirement (including a 5% buffer) of 216 dpa, give a supply of 10.06 years.

29. I must accept, however, that the concessions I have already referred to[1] mean that the Council cannot demonstrate a 5YHLS when the Policy 4 requirement figure is used. My arithmetic confirms that the outcome of those concessions results in a supply figure of slightly over 4 years as given in chief by SH (my arithmetic produces a figure of 4.3 years as opposed to the 4.2 quoted by SH but the difference is immaterial). That figure includes ZH's concession of the removal of the Moss Side Test Track (Site FF) from the supply in its entirety by reference to a strict approach which looks only at the evidential position as it was at 31st March 2019 and considers nothing thereafter, whether up to the point of the production of the Housing Land Position (CD 6.1) (originally in June 2019 with a correction in August 2019) or at any stage thereafter. In saying that that is a "strict" approach I recognise, of course, that it is the approach ZH herself adopts. This approach therefore excludes the 197 units from Site FF that ZH would, but for that approach, include in the supply were the evidence contained in Appendix 9 of her proof (and/or the grant of full permission for that number of units on 7th November 2019) to be considered. For his part BP accepts that the site is deliverable (but includes only 100 units in the supply). Even if the 197 units (or the 100 units BP accepts) were to be added back into the supply, it would still fall below five years.

30. I make two further submissions at this point. The first is that a strict approach should not be applied to the extent of unreasonably excluding sites where it is very probable that there will be significant delivery of housing within the five year period (see the Bures Hamlet appeal decision – CD 7.16 - at paragraph 68) which would, I submit, include the Moss Side Test Track. Secondly, whatever approach an inspector adopts to post-base date evidence, it must be one which is consistent and even-handed as between an appellant and a local planning authority; it cannot possibly be correct to preclude one side from relying on any evidence after a certain cut-off date but to allow the other to do just that.

31. The areas in dispute where opinions differ outside the sites which are the subject of the previous two paragraphs are Site EE (Pickerings Farm), Site S (Brindle Road) and the windfall allowance. I commend ZH's evidence to the inquiry in those respects.

[1] The concessions are the removal from the supply of Sites T, V, X, M, U, Z, CC, J, W and FF as well as the acceptance of a reduced contribution to the supply from Site H of 90 units (so that 60 are allowed for instead of 150).

32. Finally, I approach matters on the basis that the tilted balance of paragraph 11(d) is applicable in this case either through want of a 5YHLS (if the Policy 4 requirement applies) or on the basis that use of the standard method (which produces a 5YHLS) nevertheless renders the most important policies for determining the appeal out of date. In these circumstances it is submitted that, notwithstanding the benefits of the proposal, the adverse impacts of granting planning permission for 100 houses (in terms of release of safeguarded land prior to a plan review and prejudice to its comprehensive development) would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. Further, Policy G3 attracts considerable weight even if out-of-date, the development is contrary to the development plan and material considerations do not indicate that the decision should be made otherwise than in accordance with it.

33. The Council respectfully requests that the appeal is dismissed.

Kings Chambers
36 Young Street
Manchester M3 3FT

Alan Evans
15th November 2019