CHAIN HOUSE LANE

APPELLANT'S CLOSING STATEMENT

1. The appeal proposal seeks outline planning permission for the construction of up to 100 dwellings with all matters reserved apart from access, on a site of approximately 3.6 ha located on greenfield land to the south of Chain House Lane[1].

2. The site is located within a linear ribbon of development which is established along Chain House Lane, with existing residential properties directly to the north, east and west. The north eastern part of the site abuts Church Lane[2]. Access to the site can be served directly from Chain House Lane[3]. The site benefits from good accessibility to local services and amenities[4].

3. The Council refused planning permission on 27th June 2019 on 3 grounds. However, the third reason for refusal was removed in September 2019. The two remaining reasons for refusal allege conflict with Policy G3 of the South Ribble Local Plan.

4. This is a redetermination of the appeal following a successful High Court challenge to the original decision dated 13th December 2019 which had dismissed the appeal[5].

5. The development plan comprises the Central Lancashire Core Strategy ("CS") adopted in 2012 and the South Ribble Local Plan ("LP") adopted in 2015[6]. The site is within an area of safeguarded land subject to policy G3 in the LP[7]. As such the land has been identified as suitable for development when needed.

6. The Council's evidence is that the most important policies for determining the appeal are CS Policy 1 and 4, and LP Policy G3[8].

[1] SOCG paras 2.1 and 3.1
[2] SOCG para 3.2
[3] SOCG para 3.3
[4] SOCG para 3.9 and SH 8.24-8.28
[5] SOCG paras 1.3 and 1.4
[6] SOCG para 4.2
[7] SOCG para 4.5
[8] NI para 7.16

7. The CS covers the three local authorities South Ribble ("SR)", Preston ("PCC") and Chorley ("CC") which reflects the close relationship between the three authorities and importantly that the Housing Market Area encompasses the three authorities.

The housing requirement

8. In identifying the calculation of the housing requirement as *"the central issue in this case*"[9] Mr Ireland ("NI") effectively concedes that if the Council is unable to identify a 5 years housing land supply it cannot make out its objections to this proposal.

9. In considering this issue it is important to keep in mind from where the relevant policy requirement to identify a 5 years housing land supply is derived. It is furthermore critical not to confuse or conflate the different tasks of decision-taking and plan-making. Despite making this point it is clear that the Council's entire case is based upon a failure to keep these two tasks separate. The Council's case relies upon a misguided attempt to import guidance (not policy) on plan-making into the entirely different task of determining the 5 years housing requirement in the context of decision-taking.

10. The requirement to identify and maintain a 5 years housing land supply is derived from NPPF 73 which provides:-

> *"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 the housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old."*

This guidance is subject to the important qualification in footnote 37. The effect of the qualification is that if strategic policies are more than five years old but have been reviewed and found not to require updating they are treated in the same manner as strategic policies that are less than five years old and they are to be used for the purpose of calculating the 5 years housing land requirement. The footnote further confirms that where local housing need ("LHN") is to be used it is to be calculated using the standard method ("SM").

11. The net effect of paragraph 73 read with footnote 37 is that –

    i) The 5 years housing land requirement is to be calculated against the housing requirement set out in adopted strategic policies (a) if the

[9] NI 1.14rquirement

policies are no more than 5 years old, and (b) if they are more than 5 years old but they have been reviewed and found not to require updating.

ii) The 5 years housing land requirement is to be calculated against LHN using the SM where the strategic polices are more than 5 years old and have not been reviewed and found not to require updating.

12. The Council stress that this is a simple binary choice: one either uses the strategic policies or LHN. It is important to note the terms in which that binary choice are set. The net effect of paragraph 73 and footnote 37 is that 5 years housing land is to be calculated against the development strategic figures unless they are over five years old and have not been subject to a review and found not to require updating. This is consistent with the primacy of the development plan as NI conceded.

13. It is common ground in this case that (a) the relevant development plan policy is CS policy 4, (b) it is over 5 years old, but (c) it has been the subject of a "footnote 37" review and found not to require updating. The position is clear cut the 5 years housing land requirement must be calculated using the figures from CS policy 4. Given the clear terms of paragraph 73, the onus must be upon the person seeking to argue otherwise.

14. It is also common ground that set against the CS policy 4 requirement the Council is unable to identify a 5 year supply. On the Council's own best figures the supply would only amount to 3.8 years. For the reasons explained by Mr Pycroft ("BP") the Council has over-stated its deliverable supply. The proper figure is 3 years.

15. The Council seeks to depart from the clear binary position set out in NPPF by arguing that there is a further requirement to consider whether there has been a significant change.

16. The first fundamental point to note with the Council's position is it is contrary to the clear provisions in NPPF. There is no qualification in paragraph 73, still less any requirement, that having identified whether the plan is less than 5 years old or has been subject to a review and found not to require updating one must (or even could) then go on to consider whether there has been a significant change.

17. BP explained that the whole point of the simple and clear choice set out in paragraph 73 and footnote 37 was the government's desire to make the task of identifying the figure against which to measure 5 years housing land supply straightforward, and to avoid unnecessary and time-consuming arguments at section 78 appeals. Despite appearing to

make the same point NI seeks to add an additional layer of complexity which is not found in the NPPF and which runs against this intention and aim.

18. NI sought to suggest that there was support elsewhere in NPPF for his approach referring to paragraphs 213 and 33. Neither paragraph assists NI.

19. Paragraph 213 states two things (a) that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the 2018 NPPF, and (b) the weight to be given to such policies should take into account their degree of consistency with the NPPF. The paragraph is entirely concerned with the weight to be given to development plan policies. It is not addressing the calculation of 5 year housing land supply and does not provide any qualification to paragraph 73. In so far as the paragraph can be said to have relevance to the weight to attach to CS policy 4 this does not alter how paragraph 73 is to be applied. The first point confirms that the mere publication of the NPPF is not such a change as to render the policy out of date. Paragraph 73 itself provides for continued use of development plan policies that are less than 5 years old and those which are more than 5 years old but which have subject to a review and found not to require updating. In the circumstances continued use of Policy CS 4 is entirely in conformity with the NPPF and paragraph 213 confirms that full weight can be given to it.

20. Paragraph 33 is within the section of the NPPF addressing preparing and reviewing plans i.e. it is concerned with plan-making. It does not address calculation of 5 year housing supply; it is not concerned with decision-taking. The paragraph provides advice on how frequently plans should be reviewed. The particular part relied upon was the final sentence which refers to the situation where the local housing need figure has changed significantly. It can be seen that in that situation it provides that the relevant strategic policies will need updating at least once every five years. The sentence calls for updating of the relevant policies, it says nothing about calculation of 5 years housing land supply.

21. The Council seeks to impose this unwarranted additional requirement by reference to guidance in the PPG. At the outset it is important to recall that the PPG is intended as guidance it does not and cannot change the policy. However, if reference is to be made to guidance it is important that the correct guidance is considered. The guidance in the PPG on the calculation of 5 year housing land supply is found in PPG 68 which is entitled *Housing supply and delivery*, and whose contents include *5 year housing land supply, Demonstrating a 5 year housing land supply, Confirming 5 year housing land supply,* and

importantly *Calculating a 5 year housing land supply.* If one is to seek the relevant guidance in the PPG on the interpretation and application of NPPF paragraph 73 it is this PPG to which one should turn.

22. Importantly PPG 68-005 addresses the question of *What housing requirement figure should authorities use when calculating their 5 year housing land supply?* The guidance provides –

> *"Housing requirement figures identified in adopted strategic housing policies should be used for calculating the five year housing land supply figure where:*
>
> - *the plan was adopted in the last five years, or*
> - *the strategic housing policies have been reviewed within the last five years and found not to need updating.*
>
> *In other circumstances the five year housing land supply will be measured against the areas of local housing need calculated using the standard method."*

The guidance is clear. The only issues are (a) is the plan less than five year old, (b) if so has it been reviewed and found not to require updating. There is no further qualification that one should then go on to consider whether there has been any *"significant change"*. NI's failure to address this guidance was a significant omission in his evidence. It was remarkable that he and GC QC criticised BP for not addressing the PPG 61-062 when NI had failed to address the actual part of the PPG which is directly relevant to the issue in hand.

23. The Council seeks to introduce a requirement to consider whether there has been a *"significant change"* by referring to PPG 61-062 which is set out in full on numerous occasions in the Council's evidence and opening. It is important to note what the guidance is addressing. The PPG is entitled *Plan-making* and it is clear from the contents that it is addressing issues about plan-making. The paragraph relied upon addresses the question *How often should a plan or policies be reviewed?*. It can be seen immediately that the paragraph is concerned with plan or policy reviews, it is not concerned with calculation of 5 year housing supply for the purposes of NPPF 73 or anything in the context of decision-taking.

24. The Council places particular reliance upon the final sentence in the second paragraph which explains that where a review was undertaken prior to publication of the NPPF but

within the last five years *"then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below."* The following paragraph then states amongst other things that *"local housing need will be considered to have changed significantly 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…to ensure that all housing need is planned for a(s) quickly as reasonably possible."*

25. The fundamental point overlooked by the Council is that this passage does not say anything about how one should calculate 5 years housing land requirement or supply. It may raise issues about whether particular policies remain up to date, but it does not seek to alter or even put a gloss upon the clear policy in NPPF paragraph 73 and footnote 37 or the relevant guidance in PPG 68. The guidance is concerned with whether there is a need to review and update the plan, not whether there should be an alteration to the way 5 years housing land supply is to be calculated. NI's claim that it was this paragraph that is of the greatest relevance in respect of calculating 5 years housing land supply is clearly wrong, and merely serves to underline that he and the Council are failing to approach this matter on the correct basis.

26. The Council seeks to draw support from the judgment in the challenge to the previous decision, but when it is properly read there is no support for the Council's position. The proper interpretation of this judgment is a matter for legal submissions, although BP was subject to extensive cross-examination on the matter.

27. It is important at the outset to understand the basis upon which the case proceeded, what the learned judge was asked to determine, and what he determined.

28. The Council's case relies entirely upon what is claimed to be the effect of its success on ground 3 of the challenge. Ground 3 of the challenge is explained at paragraph 33 of the judgment where it is set out that the challenge was that in considering whether there had been a significant change the inspector had misinterpreted PPG 61-062. The case proceeded on a concession that in order to succeed on ground 1 it was also necessary to succeed upon ground 3. This is clearly set out in paragraph 39 of the judgment: the learned judge passed no comment upon this but proceeded on that basis. It can be seen that the judge was simply asked to consider the interpretation of PPG 61-062. The judge was not asked to consider how one should calculate 5 years housing land supply or the

interpretation of NPPF paragraph 73. In particular he was not asked to consider whether in the event of there having been a footnote 37 review it was then necessary to go on to consider whether there had been a significant change. In the light of the concession emphasised by the judge in paragraph 39 all he had to consider was the question of interpretation of PPG 61-062 and he limited his observations to this issue.

29. It is of note that the judge's consideration of ground 3 starts with the statement that *"it needs to be borne in mind that the passage from the PPG in relation to the need to review plans when there had been a significant change arose in the context of the arguments about whether or not Core Strategy Policy 4(a) was out of date"*[10] . The judgment makes clear that this is concerned with issues about whether a particular policy is up to date not how to calculate 5 year housing land supply. The judgment does not suggest that PPG 61-062 is to be read as qualifying NPPF paragraph 73 or as introducing a further requirement in identifying what figure to use for calculating 5 year housing land supply of considering whether there had been a significant change. It can be noted in addition that had the judge gone on to address these issues any comments would be what in legal terms is referred to as *obiter dictum* and would not be binding[11].

30. That is sufficient to dispose of the Council's misguided reliance upon the judgment in support of its case, but the matter does not stop there. The judgment found that the guidance in PPG 61-062 did not preclude the inspector from reaching the conclusion that the difference between the figure generated by the SM and Policy 4 was capable of amounting to a significant change rendering Policy 4 out of date[12]. It is important to note the limit of the finding. At times the Council contended that the learned judge endorsed the finding that there had been a significant change rendering Policy 4 out of date. He did no such thing, as he found that this was a planning judgment for the inspector, not the court[13]. Indeed importantly the judge commented that other inspectors might reasonably conclude contrary to the first inspector that this did not amount to a significant change and that the policy was not out of date[14]. The judgment expressly flagged up that it remained open to an inspector redetermining this appeal to come to a different judgment on this issue to the

[10] CD 7.1 para 42
[11] *Obiter dictum* is a judge's expression of opinion uttered in court or in a written judgement, but not essential to the decision and therefore not legally binding as a precedent.
[12] CD 7.1 para 43
[13] CD 7.1 paras 43 and 45. This point was accepted by NI in XX
[14] CD 7.1 para 45

first inspector. It was again surprising that despite the repeated quoting of paragraphs 42 and 43 this passage was not addressed by NI.

31. As the claim succeeded on ground 5 and the decision was quashed it was not open to the Appellant to challenge the finding on ground 3. The Appellant reserves its position on this. Should it be necessary the Appellant would still contend that when properly considered the guidance in PPG 61-062 does not allow for a finding of a significant change in the circumstances which apply in this case. However, for present purposes it does not matter as (a) for the reasons already discussed this has no bearing on how one is to calculate 5 year supply, and (b) even if it were relevant it remains open as a matter of planning judgment to conclude that there is not a relevant significant change in this case.

32. When making a planning judgment for the purposes of PPG 61-062 it is important to keep in mind why it provides that there will be a significant change where a plan was adopted prior to the SM being implemented on the basis of a number significantly below the number generated using the SM. The reason why this is identified as a significant change is *"to ensure that all housing need is planned for a(s) quickly as reasonably possible."* Clearly if the development plan provides for a figure significantly below the SM number all housing need will not be being planned for. That cannot be said to be the case if the plan is providing for more than the SM would require. The approach which the Council seeks to take is not supported by the guidance and runs counter to the very reason given for the guidance.

33. NPPF paragraph 73 does not distinguish between plans that are less than 5 years old and those which have been subject to a review and found not to require updating; they are both treated in the same way for the purposes of calculating 5 years housing supply. There is no reason why they should not. For example if Plan A were to be adopted on a particular day and on the same day a review of Plan B were to find that Plan B was up to date there would be no rational ground for claiming that Plan A was any more up to date than Plan B. However, the Council seek to introduce an unwarranted qualification and distinction between the two plans. The Council argues that in the case of Plan B there is a further requirement to consider whether there has been a significant change before it can be used to calculate 5 year housing land supply but that there is no such requirement in the case of Plan A. As both plans are as up to date as each other there could be no rational basis for this, and there is no such requirement in the NPPF or any guidance. It was not ultimately clear what NI's position was on this as it appeared to change. However, if it is the Council's

case (which it should be, and which was the way matters were put to BP in XX) that the two plans should be treated in the same way for the purposes of calculating 5 years housing land supply this completely contradicts its reliance upon the passage relied upon in PPG 61-062 which addresses the position where there has been a review within the last 5 years. It does not address the situation where a plan has been adopted in the last 5 years.

34. Indeed ultimately the Council's position appeared to be that as a matter of general principle it is always necessary to consider whether a plan policy is up to date and this is a planning judgment that does not require a formal review as such. Whilst that may be a consideration to apply generally when considering what weight to give to plan policies it is misconceived to attempt to apply this to the application of NPPF paragraph 73. The NPPF could have simply left the issue that one should continue to apply the development plan as long as it was considered to be up to date, but this would clearly have left scope for considerable argument at appeals as to whether the policy remained up to date, which was the very thing the policy seeks to avoid. The paragraph provides very clear guidance as to which figure to use for the calculation of 5 years housing land supply, and any attempt to add a gloss to this is contrary both to the policy and its aims and purpose.

35. There is no basis for departing from the clear guidance in NPPF 73 if there has been a *significant change* as contended by the Council. However, if there were it would remain necessary to consider whether any of the changes the Council rely upon could be considered to be a relevant *significant change* for these purposes.

36. NI spent a considerable time considering the genesis of the figures in CS Policy 4. However, once it is accepted that there was a proper review in 2017 and it was concluded that the Policy 4 figure remained up to date in 2017 none of this is relevant or assists the Council. It is worth remembering why the review was undertaken in 2016/17 and what was found.

37. The review in 2017 was triggered by the CLA report of the 27th June 2016[15], which recommended the need to carry out an assessment of FOAN and the need for a SHMA[16]. It explained that this had become necessary because the CS would soon be 5 years old[17], that the policy 4 figures were derived from RS with a base date of 2003 and that this was leading to questions being asked as to whether the figures remained up to date for use in

[15] BP4
[16] Para 1
[17] Paras 6 & 7

calculating housing requirements[18]. The report concluded that it was timely to look at the housing requirement figures to review the housing requirement figures[19]. It can be seen the issues about the history of the numbers and the age of the evidence base were the very reason why a review was undertaken in 2017, and they were addressed in the review.

38. The outcome of the assessment commissioned in 2016 was reported to the CLA in March 2017[20]. The report explained that the FOAN had been calculated using up to date guidance[21] and concluded that the CS requirements should be retained[22].

39. In the circumstances there is no need to go back to consider the position in 2012. However, it can be noted that in considering the appropriate housing requirement the CS acknowledged the age of the RS figures and observed that later ONS projections suggested higher figures might be appropriate[23]; it recognised the subsequent economic downturn[24]; it noted the intention to revoke RS[25]; and it took into account the publication of NPPF in 2012.

40. In so far as NI compared the CS Policy 4 requirement figures for SR with the 2003 projections, not only was it irrelevant, bur ironically it provided no assistance to him as it showed them to be lower than figures which would have been derived from the 2003 projections[26]. The same point can be noted with respect to the 2017 SHMA which identified the SR OAN to be higher than the CS policy 4 figure[27].

41. The introduction of the replacement NPPF in 2018 cannot affect the position because this is the very document which provided for the continued use of strategic policies that were more than 5 years old if they had been subject to review and found not to require updating. As the NPPF both in its 2018 and 2019 versions provide for the retention of strategic policy which is more than five year old if it has been subject to review, the introduction of the NPPF cannot of itself provide any reason for departing from the conclusion of and reliance on the review.

[18] Para 8
[19] Paras 11 & 13
[20] BP5
[21] Para 12
[22] Para 20
[23] CD 1.1 para 8.7
[24] Para 8.4
[25] Para 2.5
[26] Table 5.3 accepted in XX
[27] Table 5.5 accepted in XX

42. NI identified 5 factors which he relied upon to amount to the "significant change" in this case.

43. The first factor was that MOU1 was said to be time-limited. However, as NI accepted –

    i) MOU1 was the outcome of the review, it was not the review,

    ii) MOU1 did not provide that it would cease to exist after 3 years, it merely provided that it should be reviewed,

    iii) MOU1 was prepared in advance of NPPF 2018 and was not considering the issue of whether it was a review for the purposes of footnote 37 and/or how long it might last for the purposes of a footnote 37 review,

    iv) None of this alters the fact that there was a review for the purposes of footnote 37. It is then for the NPPF to advise as to the consequences of that review and in particular the period for which it would be effective.

44. The second factor relied upon was the 2020 Central Lancashire Housing Study[28] ("2020 Study"). It is suggested that this Study considered the housing requirement against CS Policy 4, considered whether the policy remained up-to-date and found that the relevant policies needed updating[29]. When the relevant documents are considered there is no support for this.

45. The specification for the 2020 Study[30] makes it clear in the Introduction that it is all about the preparation of a new plan, there is no mention of considering how to calculate 5 years housing land supply or whether CS 4 remained up to date as NI accepted. The Background explains that the CLA want to commission *"a short study to update and complement the published 2017 SHMA and produce evidence now required, which considers the need for all types of housing including affordable housing and those household groups with particular housing requirements."* The natural reading of this in light of the preceding paragraphs is that the CLA want to update the SHMA to produce evidence now required by the latest NPPF. There is again no mention of calculation of 5 year housing supply – no suggestion of any need to consider whether the 2017 review has been overtaken by events. The background is limited to plan-making rather than anything to do with decision-taking and 5 year supply. NI again accepted this. The section on Outputs sets out what the

[28] CD 1.7
[29] NI 5.90 and XX
[30] A2

study is to do and address. NI agreed and said that the only relevant outputs are 1-4. Of those outputs 1 and 2 simply involve a review of policy and data. Output 3 requires evidence based suggestions for a housing target for the 3 CLA areas based on the SM and output 4 requires evidence based suggestions for an appropriate distribution of housing need across the HMA based on the SM. It is clear that the brief presumed use of the SM. This was decided before the study was undertaken. NI agreed that he had been instructed to use the SM: that there was no request to consider if CS 4 remained up to date: and no instructions to assess the 5 years housing land requirement.

46. In the final report NPPF paragraph 73 and footnote 37 are referred to in paragraphs 2.14 and 2.15[31]. Revealingly these paragraphs were not even in the draft report[32]. NI agreed that they were additions to the draft report. However, despite referring to paragraph 73 it made no difference to the conclusions in the 2020 Study.

47. Having referred to paragraph 73 the 2020 Study states that *"The Central Lancashire Core Strategy is more than four years old, and the circumstances identified in Footnote 37 whereby the housing requirement figures within it could be used where they 'have been reviewed and found not to require updating' or not applicable"*. The natural interpretation of this statement is that there has not been a review, and that the 2020 Study proceeded on a false basis, as the Cardwell Farm inspector has found[33]. NI recognised that this was the natural meaning of what was written but claimed that if he were writing it again he would have written it to say that there had been a review but that this had been overtaken by a significant change so that the figures in the CS should no longer be used. That claim does not fit in with what was clearly written.

48. NI's interpretation of paragraph 2.14 is also plainly contradicted by paragraph 2.18 which refers to PPG 68 and states that the guidance provides *"that where housing requirement figures identified in <u>adopted</u> strategic housing policies are more than 5 years old and have not been reviewed and found not to need updating, then the housing requirement figure for five year land supply purposes will be the area's local housing needs calculated using the standard method"*. It is absolutely clear from this sentence that the study proceeds on the basis that there had not been a review, not as NI now claims that there had been a review but it had been overtaken by a significant change.

[31] See CD 1.7 p5.
[32] See CD 1.6 p4
[33] A1 para 35

49. Furthermore if the 2020 Study had proceeded on the basis now claimed, one would expect the study (a) to recognise that there had been a footnote 37 review, (b) explain why it considered it necessary to consider whether there had been a significant change, (c) identify the significant change, and (d) analyse the effect of this. There is no such reasoning, explanation or analysis.

50. NI claimed that paragraph 2.14 should not be interpreted as meaning that this issue was prejudged and that the work was undertaken with an open mind[34]. That is not only contrary to the clear wording in the 2020 Study but would also have been contrary to the specification for the study which stated that the SM was to be used. It would also be clearly contrary to the Council's position at the first inquiry. There is no reasoning at all to explain how having started with an open mind the conclusion was reached. This is all consistent with it being assumed that the SM was to be used.

51. Quite remarkably it was claimed that even if the 2020 Study had correctly identified that there had been a footnote 37 review that would have made no difference to the findings. This is untenable given that the study concludes that the SM figure should be used for the purposes of calculating 5 years housing land supply[35]. The claim that it would have made no difference merely highlights that the outcome had been pre-determined.

52. The 2020 Study proceeded on what is now acknowledged to be an incorrect basis.

53. The 2020 Study did draw attention to the fact that the SM provides a minimum starting point in determining the number of homes needed in an area, but made the point that this was something which would have to be addressed during the plan-making process[36]. Having identified the need to consider whether the need is in excess of the SM figure the 2020 Study did not provide any answer, leaving this for the plan process. The fact that more work is needed on this is highlighted by the fact that the CLA's intended commissioning further work on this last year having received the 2020 Study, but this has been delayed[37].

54. PPG 2a-010 provides a number of examples where need might be above the SM figure. They are (i) where there is a growth strategy, (ii) where infrastructure is being provided that is likely to drive an increase in the homes needed, (iii) where an authority agrees to

[34] NI para 5.79
[35] See for example CD 1.7 box after paragraph 3.25
[36] CD 1.7 para 2.18.
[37] See SH App 5

take on unmet need from neighbouring authorities, and (iv) where previous assessments of need such as in a recently-produced SHMA are significantly greater than the outcome from the SM. Quite remarkably all 4 examples apply in this case. The City Deal is a growth strategy which provides for infrastructure to aid the provision of housing, SR has agreed to take on need from CC and the 2017 SHMA identified need more than 100% greater than the SM figure.

55. Quite remarkably NI stated that he was suggesting that having found the need in SR to be 440 per annum in 2017 within 2-3 years that need had reduced to 191. Whilst it is fair to observe that it is for the plan-making process to determine what the level of housing need may be, the important point is that there is nothing in the limited terms considered by the 2020 Study which addresses whether the CS Policy 4 figure remains up to date, and there are no grounds from the study for coming to that conclusion. The study provides no grounds for concluding that there had been a significant change as contended by the Council.

56. Following receipt of the 2020 Study the 3 CLA entered into MOU2. That document is subject to an outstanding legal challenge, but importantly PCC has now withdrawn from the document and the Council's position is that it is no longer in place[38]. NI did not rely upon MOU2 as providing a significant change and did not rely upon it to support his case. To take any other position would have been inconsistent with the Council's position. Although it had not been relied upon by NI this document was resurrected in XX of BP as a claimed ground for distinguishing between the position in Preston and that in South Ribble on the grounds that the Council has not withdrawn from MOU2. This contention is completely unarguable given that the Council's public position is that MOU2 is no longer in place given Preston's withdrawal (this was recently confirmed in the Delegated Decision of 8th March 2021[39]).

57. For the sake of completeness it can be observed that there is nothing in MOU2 which would advance the Council's case. MOU2 paragraph 2.4 does state that the CLA considered that policy 4 was out of date for reasons explained below, but it does not then give any reasons for this conclusion. Importantly, however, MOU2 recorded that the 2020 Study demonstrated that applying the SM figures to each individual authority area would be significantly at odds with the distribution of people, jobs and services and serve to

[38] AD10 para 26 and NI XX
[39] AD 10

undermine the key principles of the City Deal[40]. NI agreed with this and agreed that it remained the Council's view.

58. The third factor relied upon was the introduction of the SM. For reasons already discussed the introduction of the SM cannot of itself amount to a reason for departing from the CS 4 figures. The SM was introduced by NPPF which contains clear instructions in paragraph 73 as to how to proceed. To be fair to NI he accepted that the introduction of the SM could not in itself amount to a reason for departing from the position set out in NPPF 73 but argued that it was the actual application of the SM in SR that led to that result.

59. The fourth factor relied upon is the radical redistribution of housing throughout the CLA that arises if one applies the SM individually in each of the 3 CLA areas. However, as seen above the 3 CLA are clear that this redistribution is at odds with the distribution of people, jobs and services and serves to undermine the key principles of the City Deal[41]. Because of this factor the 2020 Study recommended that the SM figures for each of the 3 authorities should be aggregated and then redistributed in a proportion that was not markedly different from that found in the CS. That is what MOU2 misguidedly sought to do outside of the plan-making process.

60. It is clear that NI's position as expressed in the 2020 Study and the Council's position as expressed in MOU2 is that the distribution of housing throughout the CLA should be broadly in line with that found in CS policy 4. This is perhaps unsurprising given that the Council considers that the spatial strategy in CS policy 1 remains up to date. When the matter is properly considered it is clear that far from supporting the case that the CS is out of date because of the redistribution which would arise from a straight application of the SM for each authority this issue supports the conclusion that CS 4 remains up to date, because the 3 CLA consider it important to retain the redistribution found in the CS.

61. The final factor relied upon is that the SM calculation provides for 191 per annum compared to a CS figure of 417 per annum. This is a repeat of arguments already considered. There is no support in the relevant policy and guidance (NPPF paragraph 73 and PPG 68-005) for moving to use of the SM because it would provide for a lower figure than the development plan. For the reasons already discussed PPG 61-062 does not assist the Council on this issue. Furthermore the purpose of the relevant policy and guidance has

[40] CD 1.7 para 6.7
[41] CD 1.7 para 6.7

to be considered. The intention is to boost the supply of housing land and ensure that any needs do not go unmet. The fact that the development plan figure provides for a higher requirement than the SM is not in conflict with either of these aims, indeed it furthers them. There is no ground for concluding that it amounts to a significant change which provides grounds for departing from the clear guidance in NPPF paragraph 73 and PPG 68-005. In any event in the circumstances of this case the approach advocated by the Council is incomplete. The SM is the minimum starting point. In this case there are recognised factors which would suggest that the actual need will be greater than that identified by the SM and this has yet to be determined. In the circumstances it has not been established that the need will be of a different order to that found in the CS. It is no answer to say that the SM is the method adopted for boosting the supply of housing land because the NPPF has to be read as a whole, and this includes the requirement to calculate 5 years housing land in accordance with paragraph 73, and the fact that the SM is the minimum starting point.

62. The Pear Tree Lane appeal decision[42] provides no assistance to the Council in this case. The appeal proceeded on the basis of an agreed position that there had been no footnote 37 review so that applying NPPF 73 the inevitable conclusion would be that the SM should be applied. The issue in that case was whether it was possible to redistribute the aggregate SM across the 3 CLA areas in the manner proposed in MOU2[43]. Ironically NI made the same mistake in that appeal that he makes today – he attempted to apply PPG guidance on plan-making to the quite separate decision-making issue of calculating the 5 years housing land supply. In so far as the inspector found that Policy CS 4 was out of date (a) that does not affect how one is to calculated 5 years housing land supply in accordance with NPPF paragraph 73, and (b) the very factors that he relied upon had been addressed in the 2017 review which had concluded that the policy remained up to date. Had the inspector been properly informed about this review he would have come to a different conclusion.

63. This matter has been recently and conclusively determined in an appeal into a residential application at Cardwell Farm in Preston[44] which found that CS Policy 4 remained up to date and should be used for calculating 5 years housing land supply[45].

[42] CD 6.2
[43] See CD 6.2 paras 15, 19 & 20.
[44] A1
[45] A1para 40

64. In that decision the inspector identified the various factors considered in the 2017 review which led to the conclusion that CS policy 4 remained up to date[46], and having considered the subsequent events and the arguments advanced in support of the conclusion that SM should be used he came to a clear conclusion that those factors remained relevant today[47]. The inspector observed that the NPPF did not appear to contemplate that one could "review a review" but concluded that even if one could the process would have to be robust[48]. NI agreed that if one were to depart from a review the process followed would have to be robust. The Inspector considered all of the events now relied upon by the Council as amounting to this review and concluded very clearly that the only review which had occurred was that in 2017[49]. In coming to this conclusion he took into account the Pear Tree Lane decision and unsurprisingly concluded that had the inspector at that appeal been told that there had been a footnote 37 review he may have come to a different decision[50].

65. The importance of that case to the central issue in this case is identified in the Council's evidence[51], and the Council has stressed the importance of a consistent approach across the 3 Central Lancashire Authority ("CLA") areas. In the circumstances the Council's continued attempt to rely upon the SM calculation for assessing 5 years housing requirement is unreasonable.

66. The Council claim that it is faced with two conflicting decisions at Pear Tree Lane and Cardwell Farm ignores what was decided in those two appeals. At Pear Tree Lane it was common ground that the SM should be used and the inspector was not asked to choose between use of CS policy 4 and the SM. His decision cannot be taken as a determination on that point at all. It must furthermore be recognised that had the inspector made a determination on this point in favour of use of the SM it would have been in error for not recognising the footnote 37 review. The point the inspector had to determine was whether in applying the SM one could undertake a redistribution as proposed in MOU2 outside of a local plan review. In contrast the inspector at Cardwell Farm was required to decide the same issue placed before this inquiry namely whether to use CS policy 4 or the SM. There

[46] A1 para 30
[47] A1 para 40
[48] A1 para 33
[49] A1 para 40
[50] A1 paras 36, 37 and 41
[51] NI 1.14

are no conflicting decisions on this issue. There would only be conflicting decisions were this appeal come to a different conclusion to that in Cardwell Farm.

67. The Council attempt to distinguish their position by arguing (a) that unlike PCC they have not withdrawn from MOU2 and (b) they have undertaken a recent review.

68. The issue of whether the Council has withdrawn from MOU2 is irrelevant. The issue is whether MOU2 amounted to a review, not whether the Council remained a party to it. The inspector at Cardwell Farm considered MOU2 and came to the firm conclusion that the only review was that in 2017. That is a clear finding that MOU2 was not a review. In any event the Council's position is that MOU2 is no longer in place. There is no distinction in this regard between PCC's position and that of the Council.

69. The Council now rely upon the Delegated decision of the 8th March 2021 as the "review" or a further "review". This is a remarkable document which has been rushed through (note the decision is taken as a matter of urgency[52] – although why it is urgent is not explained). The position is all the more remarkable, and unsatisfactory given that the Council claim to have been considering the issue since August 2020. Asked why the Council considered it necessary to produce this document NI said that it was to avoid ambiguity. The Council apparently considered its position was not clear after it had produced its evidence for this inquiry. There is no new information in this report nor any assessment. It claims to be a "review afresh"[53] and therefore does not rely upon the process in 2020 as amounting to a review as NI conceded. It proceeds on the basis of giving very significant weight to the Pear Tree Lane decision[54] but fails to acknowledge, let alone consider, the fact that the decision proceeded on the false basis that there had been no footnote 37 review and had not appreciated that the facts relied upon for finding CS policy 4 to be out of date had all been addressed in the review and importantly that the decision did not address the question of whether to use CS policy 4 rather than the SM. It fails to interpret the High Court judgment properly and ignores the observations in paragraph 45 of the judgment. There is no analysis or assessment of the situation and no meaningful detail. NI's response to this was that it was a report to a member which had to be kept simple. That is not consistent with it being a "review". The report expressly states that there are no background papers

[52] See the final page
[53] A10 para 20
[54] A10 para 21

to the report[55] and no appendices[56]. The Council cannot maintain (as NI attempted to) that one had to read into the report all manner of additional material. The review is plainly not a meaningful or robust process.

70. In summary the Council's approach is misguided. The policy and guidance are clear. Once it has been found that the plan has been reviewed and found not to require updating it should continue to be applied for the purposes of calculating 5 years housing land supply. There is no provision for taking the further step of assessing whether there has been a significant change as advocated by the Council. Furthermore even if it could be appropriate to go on to consider whether there has been a significant change that is an issue for plan-making not the calculation of the 5 years housing land supply. If contrary to all of this it were concluded that it is relevant in calculating 5 years housing land supply to go on to consider whether there has been a significant change, the facts in this case do not establish a change which would give grounds for departing from the clear position in NPPF paragraph 73.

71. It is ironic that having spent much time arguing that there had been no footnote 37 review despite the clear terms of the instructions leading up to the SHMA, the detailed assessment in the SHMA and the very findings in the SHMA and MOU1 that the Council now seeks to argue that one should consider whether there has been a change in circumstances even without a review and/or that a document such as the Delegated Decision[57] would amount to a review. If accepted the approach taken by the Council would create argument and confusion nationwide. It would also create a stark conflict in Central Lancashire between the position in SR and that in the other two areas following the Cardwell Farm decision.

72. City Deal was acknowledged by NI as being a material consideration. It was identified by the Council in MOU1 as a reason why the CS 4 policy figures should be retained[58]. It was identified by NI in the 2020 Study and the Council in MOU2 as a reason why use of the SM in each individual CLA area was inappropriate[59]. As a matter of fact the 10 year delivery target in City Deal will not be met[60].

[55] A10 para 32
[56] A10 para 33
[57] AD10
[58] CD 1.8 para 5.9 and NI XX
[59] CD 1.9 para 6.7 and NI XX
[60] BP 13.3-5 and NI XX

73. There is also an acute affordable housing need in the area, just as there is in Preston. The Cardwell Farm inspector considered this to be a further important reason why the CS policy 4 figures remain important and up to date.

74. All of the evidence points to the conclusion reached by the Cardwell Farm inspector that CS policy 4 remains the correct basis upon which to calculate 5 years housing land supply.

75. Set against the CS policy 4 figure the 5 years housing land supply is agreed to be significantly below 5 years. The Council figure is 3.8 years and BP's figure is 3.0 years. It is not suggested by the Council that the difference is material. The differences were explored at the round table. For the reasons explained by BP his figure is to be preferred. It is worth noting in particular the grossly excessive reliance upon windfall in the Council's figures. Taking into account windfall sites with planning permission and its claimed windfall allowance almost 40% of the Council's claimed supply (969 out of 2,542) is windfall. This highlights the problems experienced in the area in maintaining an adequate housing supply as BP explained in his proof, and emphasises the importance of providing additional housing land.

76. The Council's first reason for refusal is predicated upon there being a 5 years supply of housing land and NI that if there is found to be no 5 years supply of housing land this reason for refusal "falls away". That is consistent not only with the wording of the reason for refusal, and NI's evidence, but also with numerous appeal decisions highlighted by Mr Harris ("SH") most notably the decision at Pear Tree Lane.

77. It is also important to note that provision in SR against the CS requirement has been poor. As at 31st March 2020 there had been under-delivery against this figure of some 1,108 dwellings[61]. Essentially the same figure as found in the 2019 SR Housing Land Position Statement("HLP") [62]. BP explained that on the Council's own figures it will not meet it CS provision over the plan period[63].

Comprehensive development

78. The concern raised in the reason for refusal is that the development would harm the Council's ability to manage the comprehensive development of the area. This is to be read in the light of the provisions of LP policy G3 which provides that planning permission

[61] SOCG (HS) para 2.4
[62] CD 1.20 p9 Table 1 – the figure was 1,110
[63] BP para 4.10

"will not be granted for development which would prejudice potential longer term comprehensive development of the land". The correct issue to consider is whether the proposal would prejudice the longer term comprehensive development of the land.

79. NI set a hare running raising issues about the scope for the site forming part of an area of separation. It is important to observe at the outset that it has never formed any part of any reason for refusal that the site formed any separation function and/or that there were concerns that development of the site would cause some merging of settlements. Had that been part of the Council's case it would have to have been identified as such. Furthermore the suggestion that it might form an important area of separation is completely contrary to the designation of the land as safeguarded land. The whole point about identifying safeguarded land is that it is intended to be available for development when needed to help preserve other identified areas which are to be kept open in the longer term. There are quite separate Areas of Separation identified in the LP.

80. NI referred to paragraph 49 of the Local Plan Examination report. This does not find that the land served a separation function. It refers to an assessment which said that land formed part of a natural break but the actual finding in the report was simply that there was not need to release the land at the time of the report.

81. The appeal site forms part of a wider allocation of safeguarded land designated S3. The S3 area is itself divided by the railway line. The two areas are in reality quite separate because of the railway line and the Council's own evidence recognises that they can be separately developed. The appeal site is within that part of S3 to the west of the railway line. The remainder of this land to the west of the railway line is controlled by Homes England. An illustrative masterplan has been produced which shows how the development of the wider area can be developed and Homes England is satisfied that the proposal does not prejudice its ability to develop the remaining land. In reality a masterplan is not going to alter how the site is accessed or otherwise planned for.

82. Development of the site now will not prejudice the ability for longer term comprehensive development of the land.

83. NI raises a concern that the masterplan has not been approved by the Council, and has not been out to public consultation[64]. There is no requirement for Council approval or public consultation. The issue is whether the proposal would prejudice comprehensive

[64] NI 8.23

development. It is a sad fact that one of the reasons that the Council finds itself with such a poor housing land supply has been the delays caused by its excessive demands with respect to masterplanning. One can note for example the delays at the nearby allocation at Pickerings Farm.

84. NI claimed that the access arrangements are unclear[65], but the access arrangements have been clearly set out and form part of the application and agreed with the highway authority. The second access point on the Homes England land has not given rise to any issues by the highway authority.

85. NI also raised an issue with respect to possible noise mitigation to address the A582[66], but he accepted in XX that this was an issue for the Homes England land, not this site and that it did not raise an issue for this application.

86. The point is made that the development would not accord with the current pattern of development along Chain House Lane, but this ignores the fact that development is going to happen in this area in event (a) because of the allocations in the current LP and (b) because the whole point about safeguarding land is that it is protected for development when needed. NI made the surprising claim that there is no certainty that the Homes England land would be developed[67]. This is a surprising and unfounded concern given Homes England's role in bringing land forward for new housing.

87. It is notable that the Council's extensive opening devoted 7 lines to the issue of comprehensive development. It is clear that this is very much a makeweight objection without substance.

The balancing exercise

88. It is an unusual feature of this case that it is common ground that the tilted balance under NPPF 11(d) applies irrespective of which approach is taken to the calculation of the 5 years housing land requirement. If the CS figure is used the tilted balance applies because of the absence of a 5 years housing land supply. If the SM calculation is used it applies because the consequent radical redistribution of housing across the 3 CLA areas renders policy G3 out of date[68].

[65] NI 8.23
[66] NI 8.23
[67] NI 8.25
[68] SOCG para 6.1

89. Although the Council accept the application of the tilted balance, and on their case the fact that policy G3 is out of date, in practice they then disregard both of these considerations. It remains necessary to undertake a proper balancing exercise when the tilted balance applies, and weight can still be given to development plan policies that are out of date. However, the fact that a policy is out of date reduces the weight that should properly be given to it, and the application of the tilted balance inevitably weighs in favour of a proposal. Neither of these factors appears to have been recognised by the Council who continue as if they were not present.

90. The Council is unable to identify a 5 years supply of housing land. This proposal would make a valuable contribution to much needed housing land. There is also a significant need for affordable housing in the area. The site has been identified as safeguarded land. It is safeguarded for development when needed. The land is clearly needed for residential development now.

91. The tilted balance in NPPF 11 applies in this case, irrespective of the position taken with respect to 5 years housing land, and the policies in the development plan most important for determining the application are out of date. The proposal would provide significant benefits in the form of general market housing and affordable housing in an accessible and sustainable location. There also a range of environmental and economic benefits to which SH gives limited or moderate weight in favour of the proposal[69].

92. The Council seeks to give substantial weight to policy G3 even though it accepts it is out of date. This position is unsustainable and the reasons advanced by the Council are addressed by SH[70]. As SH concludes any conflict with policy G3 would result in limited harm which is more than outweighed by the very significant benefits being delivered[71]

93. The development of this site now will not prejudice the longer term development of the wider area. In the circumstances, applying the tilted balance, any adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the development plan and the Framework as a whole.

[69] SH para 9.5
[70] SH paras 9.6-9.12
[71] SH para 9.13

94. Even if, contrary to both parties case, one were not to apply the tilted balance, the limited harm arising from the proposal is clearly outweighed by the benefits of the proposal, and granting planning permission is justified even if a “flat” balance were to be applied.

95. In all the circumstances we would ask that the appeal be allowed.

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19th November 2021
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