RE: LAND TO THE SOUTH OF CHAIN HOUSE LANE, WHITESTAKE, SOUTH RIBBLE

CLOSING SUBMISSIONS OF THE LPA

INTRODUCTION

1. This appeal concerns an outline application for up to 100 dwellings (including 30% Affordable Housing). All matters were reserved save for access. A full description of the development is contained in the SoCG (section 2). The application does not comprise EIA development.

2. In accordance with the recommendation to refuse (CD 4.1), the application was refused planning permission, in a decision notice dated 27th June 2019, for 3 reasons:

1. The application site is allocated as Safeguarded Land through Policy G3 of the South Ribble Local Plan. The proposal by virtue of its nature, scale and degree of permanence would be contrary to Policy G3 of the South Ribble Local Plan as the Council can demonstrate a 5 Year Housing Supply;

2. The proposal by virtue of its nature, scale and degree of permanence would be contrary to Policy G3 of the South Ribble Local Plan as the development would harm the ability of the Council to manage the comprehensive development of the area. Therefore the scheme would not amount to a sustainable form of development.

3. Insufficient evidence in the form of an Air Quality Assessment has not been submitted that demonstrate that the proposed development would not cause harm due to air pollution and therefore the proposal is contrary to Policy 30 of the Central Lancashire Core Strategy.

3. Following RFR 3, an Air Quality Assessment (AQA) was prepared and submitted to the LPA (Aug 2019). The AQA demonstrates that the proposal would be compliant with Policy 30 JCS and would not cause unacceptable harm to air quality. RFR 3 was withdrawn by the LPA on 18th September 2019 (SoCG at 2.6).

4. A first Appeal was heard by Inspector Hunt BA (Hons) MA MRTPI between 12th and 15th November 2019. At the Appeal, it was the LPA's case that *inter alia*:[1]

   (i) There had not been a fn 37 review of Policy 4 JCS;
   (ii) If there had been a fn 37 review, there had been "*a significant change*" in circumstances since the review, comprising the introduction of the standard methodology for the calculation of Local Housing Need (and a significantly reduced need for housing);
   (iii) For both reasons, Policy 4 JCS was out of date;
   (iv) 5YHLS should be calculated using the standard methodology in NPPF (2018/19);
   (v) The LPA had a very healthy 5 year supply and there was no need for the development of safeguarded land;
   (vi) The development would harm the ability of the Council to manage the comprehensive development of the area. Therefore the scheme would not amount to a sustainable form of development.

5. In a decision letter, dated 13th December 2019, the appeal was dismissed. The Inspector concluded *inter alia* (CD 6.1):

   (i) There had not been a fn 37 review (DL 16-25);

[1] This is of necessity a précis of the LPA's case – see LPA Closing Submissions at AD 4

(ii) In any event, a "*significant change*" has taken place, since the claimed review (for the purposes of NPPF and NPPG), comprising the introduction of the standard methodology in the NPPF (2018) and the Council's significantly lower figure arising from the standard method calculation (see DL 26-28, 37 and 85);

(iii) The Policy 4 JCS housing requirement of 417 d/pa was "out of date" for several reasons, including: "*the 'significant change' resulting from the introduction of the standard method in the 2018 Framework and Council's significantly lower figure arising from the standard method calculation*" (DL 37);

(iv) The NPPF LHN figure should be used to calculate 5YHLS. On that basis, the LPA has > 10 years' supply (DL 13, 37, 48/49 and 85);

(v) The distributional consequences of the LHN figures do not render Policy G3 out of date. There had not been a radical re-distribution (DL 87 and 88);

(vi) The proposal would prejudice potential longer term, comprehensive development of the land contrary to Policy G3 (DL 59-66);

(vii) Development of the appeal site in isolation would represent "*a disconnected pocket of housing in this otherwise undeveloped area*" (DL 71 and 72);

(viii) Planning permission was refused and the Appeal was dismissed (DL 96).

6. The Appellant made a statutory challenge of this decision on 5 grounds, which were (so far as relevant):[2]

(i) **Ground 1** – the Inspector fell into error in concluding that Memorandum of Understanding (MOU) 1 and the processes which preceded it did not amount to a fn 37 review (para 24);

[2] See CD 7.1 paras 24 *et seq*

(ii) **Ground 3** – in concluding that there had been a "*significant change*" since the review, the Inspector was guilty of a clear misinterpretation of the PPG in concluding that it covered a situation where an existing plan figure was significantly *above* (not *below*) the Local Housing Need figure generated using the standard method. The PPG was therefore rendered pointless (para 33);

(iii) **Ground 5** – as a consequence of the use of the standard method, the distributional consequences which would arise across the Central Lancs HMA would render Policy G3 out of date: the Inspector's reasons were lawfully inadequate in concluding that Policy G3 was not out of date contrary to this assertion (para 35).

7. The Inspector's conclusions regarding: (i) the prejudice to comprehensive development; and (ii) harm arising from the isolated pocket of development were not challenged. They remain as material considerations in the determination of this Appeal (see ***Davison v Elmbridge BC*** [2019] EWHC 1409 (Admin).

8. In the Planning Court, **it was undisputed that Wainhomes (as Claimant) had to win on both Grounds 1 and 3** for the Claim to be quashed on these grounds (para 39). This is entirely self-evident and correct (XX of BP). In the event that there was a review, the LPA had argued and the Inspector had agreed that there had been a significant change in circumstances which nonetheless rendered Policy 4 JCS out of date (even if it had been reviewed).

9. Ground 1 had merit (see para 40). Dove J held that the Inspector failed to explain: (i) why the whole of Policy 4 had to be reviewed; and (ii) why the MOU did not constitute a fn 37 review of the whole policy (para 40).

10. However, crucially for the determination of this Appeal, **Ground 3 failed**. Dove J held (emphasis added):

42. Turning to ground 3, it needs to be borne in mind that the passage from the PPG in relation to the need to review plans when there has been a significant change arose in the context of the arguments about whether or not Core Strategy Policy 4(a) was out of date and, in particular, was relied upon in paragraph 37 of the decision as one of the reasons for the Inspector's conclusion that Core Strategy Policy 4(a) was out of date. ***Whilst it is fair to observe that the only significant change specifically instanced in the PPG is where a housing requirement is found to be significantly below the number generated using the standard method, in my view this passage of the PPG needs to be read purposefully and as a whole****. The third paragraph of the passage of guidance makes clear that a plan will continue to be treated as up to date "unless there have been significant changes as outlined below". The following paragraph provides some examples where there may have been significant change but, as Mr Cannock points out,* ***the question of whether or not there has been a significant change warranting a review of the plan on the basis that it is not up to date is not curtailed or circumscribed by the contents of the final paragraph****.*

43. ***There may be many material changes in the planning circumstances of a local authority's area which would properly render their existing plan policies out of date and in need of whole or partial review. I am unable to accept Mr Fraser's submission that it is impermissible to regard the emergence of a local housing need figure which is greatly reduced from that in an extant development plan policy as having the potential to amount to a significant change****. Whilst he is entitled to point to the wider national planning policy context of boosting significantly the supply of housing land, as Mr Cannock points out in his submissions, the*

use of the standard method to derive local housing need is part and parcel of the Framework's policies to achieve that objective. Moreover, ***the question of whether or not any change in circumstances is significant is one which has to be taken on the basis of not only the salient facts of the case, but also other national and local planning policy considerations which may be involved****.* ***In short, in my view, the language of the PPG and its proper interpretation did not constrain the Inspector and preclude her from reaching the conclusion that she did, namely that the significant difference between the housing requirement in Core Strategy Policy 4(a) and that generated by the standard method was capable of amounting to a significant change rendering Core Strategy Policy 4(a) out of date.***

11. This Judgment is of central relevance to the determination of this Appeal. **It meant that both Grounds 1 and 3 failed** and the decision would not have been quashed as a result. Dove J specifically endorses the conclusion that: "… ***the significant difference between the housing requirement in Core Strategy Policy 4(a) and that generated by the standard method was capable of amounting to a significant change rendering Core Strategy Policy 4(a) out of date. That was a planning judgment which*** **[the previous Planning Inspector]** ***was entitled to reach and was properly reasoned in her conclusions***."

12. This decision of the Planning Court is binding on the determination of this Appeal (unlike Appeal Decisions). **If applied to this Appeal, it means that there has been a significant change in circumstances, since the fn 37 review in 2017, which renders Policy 4 out of date**. The 5 year supply calculation must be determined against the LHN figure in NPPF (2018/19) derived using the standard methodology.

13. The SoS conceded in respect of Ground 5. The Judge agreed and the decision letter was quashed on Ground 5 alone.

14. The LPA submitted a revised SoC (Oct 2020). Further, the LPA determined a duplicate application (see Committee Report CD 4.3). On 18th December 2020, the LPA resolved to refuse the identical duplicate scheme for 2 reasons:

> *1. The application site is allocated as Safeguarded Land through Policy G3 of the South Ribble Local Plan. The proposal by virtue of its nature, scale and degree of permanence would be contrary to Policy G3 of the South Ribble Local Plan, to which substantial weight should attach. The Council can demonstrate a 5 Year Housing Supply, which should be calculated against the Local Housing Need figure of 191 d/pa. Applying the tilted balance, the proposal does not constitute sustainable development. Material considerations do not justify the conflict with the development plan.*
>
> *2. The proposal by virtue of its nature, scale and degree of permanence would be contrary to Policy G3 of the South Ribble Local Plan as the development would harm the ability of the Council to manage the comprehensive development of the area. Therefore, the scheme would not amount to a sustainable form of development.*

15. In resolving to oppose the Appeal, the LPA concluded (mindful of Dove J's conclusion on Ground 5) that Policy G3 was technically out of date because of the significant change in the distribution of housing across the HMA. Such a re-distribution of housing *could* result in the re-drawing of safeguarded land boundaries. However, there is significantly less need for housing in South Ribble (applying LHN) and the need for comprehensive development remains regardless of the housing requirement. The policy is only technically out of date and significant weight should nonetheless be attached to Policy G3, as the significant change in distribution across the HMA has resulted in a significant re-distribution of housing *away* from South Ribble and Preston but *towards* Chorley. There is no need for the development of safeguarded land in South Ribble at this time.

16. As both Policy 4 JCS and G3 are out of date, the tilted balance in NPPF 11 is engaged.

MAIN ISSUES

17. In that context, the agreed Main Issues[3] reflect the reasons for refusal:

(i) On what basis should the housing land supply be calculated?
   (a) There is a binary choice between Policy 4 JCS (the Appellant's position) and the Standard Methodology in NPPF 2018/19 (the LPA);
   (b) There is a dispute over the deliverable supply;

(ii) Whether the granting of planning permission would prejudice the comprehensive delivery of development in this area?

(iii) The proposal is contrary to policy G3 and contrary to the development plan as a whole. Applying s.38(6) P&CPA 2004, are there material considerations which justify the grant of consent, contrary to the development plan?

(iv) Applying the tilted balance, does the proposal comprise sustainable development?

THE STATUTORY TEST

18. The Main Issues fall to be determined in accordance with the development plan unless material considerations indicate otherwise (s.38(6) P&CPA 2004).

THE DEVELOPMENT PLAN

19. So far as relevant, the statutory development plan comprises:

[3] They have been discussed at the CMC and appear at SoCG at 6.1

- The Central Lancs Joint Core Strategy (JCS), adopted July 2012;
- The South Ribble Local Plan (2012-2026), adopted July 2015.

20. The proposal conflicts with Policy G3. It conflicts with the development plan as a whole. This is not in dispute. The proposal must, therefore, be refused unless material considerations indicate otherwise.

MAIN ISSUE 1 – HOUSING LAND SUPPLY

Common Ground

21. It is important to put this point into context:

- Applying the standard methodology (SM), there is **a 10.1 - 12.6 year supply**;
- Applying Policy 4, there is **a 3.0 – 3.8 year supply**.[4]

22. As BP accepted, applying the SM there is a double digit housing land supply (> 10 years supply) and more than enough time for a new plan to be adopted (in the intervening 10 years). There can be no reason to release safeguarded land.

23. The difference concerns the deliverable supply. There is a difference in supply between 2542 (LPA) and 2036 (Appellant). There is a difference of 506 dwellings. **It is common ground that *nothing* turns on the difference in supply (as BP accepted in XX)**:

- Neither party argues that the development is acceptable at 10.1 yrs supply but unacceptable at 12.6 yrs supply;
- Neither party argues that the development is acceptable at 3.0 yrs supply but unacceptable at 3.8 yrs supply.

[4] SoCG HLS Table 2 CD 2.4

24. Accordingly, the detail of the dispute on the deliverable supply is not material to the decision and is not addressed in this Closing Submission. The LPA's position in respect of the 3 points in dispute is unanswerably robust and set out in the Proof and rebuttal of Gregg Boyd.

The Key Issue

25. The sole issue (XX of BP) is: "*the basis for assessing whether a 5 year supply of deliverable sites exists*" (NPPF 73 and fn 37).

26. **BP agreed that this issue falls to be determined on 2 key points**:

(i) Whether the Inspector can lawfully consider whether policy 4 is out of date, given the terms of NPPF 73 and fn 37?

(ii) If he can consider it: whether policy 4 is out of date, as a matter of planning judgment?

27. This is the agreed basis on which this issue should be determined.

The Binary Choice

28. It is agreed (XX of BP) that the issue is "*the basis*" for assessing 5YHLS. It is not: what is the "*housing requirement*" for the purposes of the eLP.

29. The NPPF seeks to boost significantly the supply of homes (59). Strategic policies should therefore be informed by a LHN assessment conducted using the SM (60). It is, therefore, agreed that the standard methodology is the mechanism for delivering the significant boost in housing (XX of BP and see Dove J para 42 CD 7.1).

30. The standard method is used to inform strategic policies unless exceptional circumstances justify an alternative approach. You add unmet needs in neighbouring areas to the LHN figure as a component of the housing

requirement in strategic policy. "Exceptional circumstances" and unmet needs may be relevant to a consideration of the housing requirement at an EIP. They are not relevant to the application of the LHN figure as the basis for the 5YHLS calculation for NPPF (73) and fn 37 (accepted in XX of BP). **It is impermissible and unlawful for the decision maker to conflate the two processes**. It is not for a s.78 Inspector to consider what the housing requirement might be in the ELP and to apply that figure in the HLS calculation.

31. Yet, in criticising the MOU2 review process ('the second review"), BP makes precisely that mistake.

32. Firstly, BP criticises the review process because the CLHS (CD 1.7) fails to undertake a SHMA or a revision to the SHMA (BP at 7.35). However, as BP conceded, the LPA do not have to undertake a SHMA in order to rely on LHN as a basis for the HLS calculation. The LHN figure is derived from the standard method. It is agreed to be 191 d/pa. BP conceded that there would be no requirement on a developer (seeking to rely on LHN) to provide a SHMA. There is no requirement on the LPA either (as BP accepted). Indeed, it is quite clear that the whole purpose of the introduction of the SM was to avoid the time-consuming, expensive, opaque production of contested SHMA's (see para 1.12 White Paper CD 1.19).

33. Secondly, BP criticises the CLHS for failing to consider a higher level of need than provided for by the standard method (BP at 7.37). BP relies on PPG 2a-010 and claims two "exceptional circumstances": (i) the City Deal; and (ii) Affordable Housing. NI's rebuttal addresses in detail why they do not constitute such exceptional circumstances (see 2.18 – 2.30). But in any event, the criticism is wholly misplaced. The PPG extract is titled: "*When might it be appropriate <u>to plan for</u> a higher housing need*

figure than the standard method indicates." The PPG is referring expressly plan-making. It is not referring to a planning judgment on whether a policy is out of date in the context of decision-making. BP accepts it is not addressing NPPF 73 and FN 37 (but addressing NPPF 60 and 20). He accepts expressly that NPPF 73 and fn 37 do not present an option of SM + additional housing to reflect changing economic circumstances. BP's points will be addressed through the eLP process. It is agreed they are not matters which this Inspector can consider. Accordingly, they cannot form any meaningful criticism of the second review process.

34. This is a point which the Cardwell Farm Inspector failed to understand, in criticising the CLHS for failing to consider whether "*to plan for a higher leve of need*" (see AD 1 para 35). Further, the Inspector criticises the CLHS because it "*did not assess housing need in the way the SHMA did*" (para 35). That is precisely the point. The introduction of the SM meant that such a SHMA process was no longer required in assessing LHN (NI in XX and ReX).

35. Indeed, the CLHS makes precisely this point (CD 1.7 at 2.18):[5]

> "…*A distinction thus needs to be made in respect of the appropriate housing requirement figure which is relevant for the calculation of five year housing land supply and associated development management in advance of the adoption of a new local plan; and the consideration of the appropriate housing requirement through the local plan process. Consideration of whether it is appropriate to plan for above the standard method local housing need figure is an issue for plan- making only. This is clear from Footnote 37 of the NPPF, which was revised in the February 2019 version*."

[5] NB In making his criticisms of the CLHS, BP referred to 2.18 but not this part of the paragraph (EiC of BP)

36. It follows that there can be no criticism of the CLHS as a review of the basis for calculating the HLS (as distinct from assessing the housing requirement in the eLP).

37. **It further follows that this Appeal falls to be determined on the basis of a strict binary choice:**

(i) 417 d/pa - Policy 4;

(ii) **191 d/pa – LHN and SM.**

Key Point 1 - Whether the Inspector can lawfully consider whether policy 4 is out of date, given the terms of NPPF 73 and fn 37

38. The Appellant asserted that, as long as Policy 4 had been reviewed, it should continue to be used for 5YHLS calculations (BP at 7.22). It was asserted (XX of NI) that NPPF 73 and fn37 preclude the exercise of a planning judgment on whether Policy 4(a) is out of date.

39. **This is the central point in the Appellant's entire case. It has, however, now been conceded to be untenable (XX of BP). The Appellant's case is therefore fatally undermined**.

40. As Males J. said in ***Tewkesbury Borough Council v Secretary of State for Communities and Local Government*** [2013] EWHC 286 (Admin): "13 *... The weight to be given to a development plan will depend on the extent to which it is up to date. A plan which is based on outdated information, or which has expired without being replaced, is likely to command relatively little weight*." (CD 7.11 para 25).

41. In explaining what is meant by "out of date" in the context of the NPPF, Lindblom J held in ***Bloor Homes*** (CD 7.11 para 45):

"*…And if the plan does have relevant policies* ***these may have been overtaken by things that have happened since it was adopted, either on the ground or in some change in national policy, or for some other reasons, so that they are now "out of date"****…And the question of whether relevant policies are no longer up to date will be* ***either a matter of fact or perhaps a matter of both fact and judgment***." [Emphasis added]

42. BP (ultimately) agreed that this judgment applied to Policy 4, as to any other development plan policy. Legally, that is the only rational conclusion. It is entirely consistent with the judgment of Dove J at para 43:

"*…the question of whether or not any change in circumstances is significant is one which has to be taken on the basis of not only the salient facts of the case, but also other national and local planning policy considerations which may be involved.*"

43. The Planning Court have therefore been emphatically clear that planning policies can become out of date as a result of a change in national policy (or for some other reason such as the consequences on the ground of such a change). Decision makers must reach a decision, in the light of such changes in circumstances, on whether policies are out of date (as a matter of fact and judgment). BP agreed that in reaching such a decision/judgment, <u>all relevant considerations needed to be taken into account</u> (in order to reach a lawful decision). In that context, **BP conceded**:

(i) **NPPF 73 does not preclude a judgment being made on whether Policy 4 is out of date**;

(ii) **The NPPF does not preclude a judgment being reached on whether Policy 4 is out of date because of a change "*on the ground*" or "*in national policy*" since Oct 2017**[6];

[6] This is the last date of the review. It is the date of MOU 1

44. Consistent with those answers, **BP conceded that the NPPF permits a judgment to be reached on whether there has been a significant change in circumstances since October 2017 rendering Policy 4 out of date**. This was the first basis on which key point 1 is conceded.

45. Further, the Appellant's case (on this point) is totally unarguable in the light of the judgment of Dove J in ***Wainhomes v SoS CLG and South Ribble BC*** [2020] EWHC 2294 (Admin) – CD 7.1.

46. **It is a significant criticism of the Appellant's evidence that it has simply airbrushed out this highly material judgment, which arose out of the first Appeal on this site**. BP is a professional witness. He has a professional obligation to draw the Inquiry's attention to issues which are contrary to his case (regardless of the LPA's SoC). He concedes (in XX) that: (i) this is a binding judgment; (ii) paras 42 and 43 are material to the determination of the Main Issue; (iii) he makes no reference to the judgment at all; (iv) he makes no reference to paras 42 and 43 of the judgment at all; (v) he has made no attempt to distinguish the judgment or explain its relevance.

47. In the light of his answers in XX, it is entirely unclear whether: (i) he has not taken into account; or (ii) having taken into account he has deliberately chosen not to refer to it (XX of BP). This is an issue which goes to the credibility and/or weight to be attached to BP's evidence.

48. In XX of NI, VF QC asserted that the judgment in paras 42 and 43 ["…*that the significant difference between the housing requirement in Core Strategy Policy 4(a) and that generated by the standard method was capable of amounting to a significant change rendering Core Strategy Policy 4(a) out of date*…"] was not referable to the housing land supply

calculation. Whilst not in his written evidence, that proposition was briefly advanced by BP in XX. He tentatively argued that: (a) Dove J was not reaching a conclusion in paras 42 and 43 which related to how 5YHLS should be calculated; and (b) PPG 61-062 was relevant *only* to plan-making. On that (frankly bizarre) basis, he invited the Inspector to attach no weight to that part of the judgment.

49. This ephemeral argument was, however, conceded (in XX of BP).

50. **BP agreed that: "*<u>if</u> Dove J is reaching that conclusion in full knowledge that it was relevant to the calculation of 5YHLS, then your proposition [that NPPF 73 and fn 37 mean the review is the end of any consideration that policy 4(a) is out of date] is untenable*"**.

51. In the light of that proposition, BP then agreed:

- The LPA had argued at the first Inquiry that <u>even if</u> the MOU was a review, it could not longer be relied upon because it had been superseded by the significant changes in national policy embodied in the introduction of the standard method, which should form the basis of the HLS calculation (see AD 4 para 21);
- In response, the Appellant had raised 2 "counter-arguments": (i) fn 37 rules out this argument (i.e. key issue 1); and (ii) PPG 61-062 does not apply to a LHN figure which is *below* Policy 4 (see AD 4 paras 21-23);
- In response, the Appellant had submitted that PPG 61-062 was relevant to the determination (see AD 3 19(i)). BP conceded that he had therefore changed his evidence from the first Inquiry. He provides no evidence or explanation for this fundamental shift in position. It is not credible;
- The Appellant had submitted that PPG 61-062 was (in fact) a complete answer to some of the LPA's points (AD 3 (19(i) and (ii));

- At the first Chain House Lane Inquiry (CHL 1), there were 2 main issues, which have remained the same. The first main issue concerned the housing requirement and whether a 5YHLS could be demonstrated (see CD 6.1 para 6(i));
- The key point of dispute was whether Policy 4 or LHN should form the basis of the 5YHLS calculation (see CD 6.1 para 12);
- This made a very significant difference to the HLS (see table at CD 6.1 para 13);
- The Inspector specifically addressed the argument about whether a "significant change" had taken place (paras 26-36), before concluding that Policy 4 was out of date (para 37) and LHN should form the basis of the HLS calculation (para 49);
- This is why Wainhomes had to win on Grounds 1 and 3 – because this argument applied only in the event that there had been a review (see para 37);
- The issue of whether Policy 4 was out of date was therefore relevant to the HLS calculation. Indeed it was *only* relevant to the HLS calculation;
- Dove J was a very highly regarded Planning Silk before becoming a Specialist Planning Judge. He is intimately familiar with 5YHLS calculations;
- In his judgment he fully understands the first main issue (see para 4): "*There were two important issues bearing upon the merits of the appeal. Firstly, the question of whether or not the second defendant could demonstrate a five year housing land supply*".
- He quotes from NPPF 73 and fn 37 which are only relevant to the issue of 5YHLS calculation;
- He correctly understands that if Policy 4 is out of date, very different outcomes in the HLS calculation would arise (para 6);

- He recites correctly the Appellant's contention that Policy 4 should form the basis of the HLS calculation (para 12);
- He recites correctly the LPA's contention that (if there had been a review) there had been a significant change, such that Policy 4 was out of date and the 5YHLS calculation should use the LHN figure, which produced a very different outcome (see paras 14 and 15);
- He identifies the key issues (review and significant change) which determined which figure should be applied to the 5YHLS calculation;
- He quotes from the CHL 1 DL. Those passages relate to Main Issue 1 (HLS calculation);
- In that context, he addresses Ground 3 (para 33), with reference to CHL 1 DL26-28, which relate to the HLS calculation;
- He identifies (at para 39) the undisputed (and undisputable) proposition that Wainhomes needed to win on Ground 1 and Ground 3;
- At para 43, he reaches the conclusion that the significant difference between the housing requirement in Policy 4(a) and that generated by the standard method was capable of amounting to a significant change rendering Policy 4(a) out of date.

52. In that context, the proposition that Dove J reached his conclusion on Policy 4(a) being out of date either (i) in ignorance of the consequences for HLS; or (ii) that it was not relevant to HLS, is absurd. It was relevant *only* to the issue of 5YHLS calculation. There was no other reason for its consideration. It is unarguable, when read fairly and in full, that paras 42 and 43 were written in ignorance of the entirety of the preceding detailed analysis.

53. **Indeed, BP expressly conceded (in the light of such passages) that Dove J had "fully understood" the relevance of Policy 4(a) being out of date for the 5YHLS calculation.**

54. **BP therefore conceded (consistent with the agreed proposition at para 50 supra) that his proposition [that NPPF 73 and fn 37 mean the review is the end of any consideration that policy 4(a) is out of date] was untenable.**

55. For a second basis, the Appellant's case on key point 1 must fail.

56. BP nonetheless repeated that PPG 061-62 was relevant *only* to plan making. That is hopelessly flawed because: (i) the Appellant had said the complete opposite at the Inquiry (*supra*); (ii) the Inquiry had *never* had anything to do with Plan making; (iii) the PPG had only ever been referred to in the context of there being a significant change rendering Policy 4 out of date for the purposes of 5YHLS calculation; and (iv) Dove J had referred to the PPG in upholding the decision of the Inspector; and (v) had specifically concluded that:

45. … I am satisfied ***that the conclusion the Inspector reached in paragraph 37(iii), that there had been a significant change pursuant to the PPG arising from the introduction of the standard method, was a planning judgment reasonably open to her based upon a correct interpretation of the PPG*** *(albeit other conclusions might reasonably be reached by other Inspectors), and therefore she was entitled to conclude that Core Strategy Policy 4(a) was out of date*

57. On this central issue, the LPA therefore submits that the Appellant's case falls apart. It is (and always has been) untenable in the light of Dove J's decision on Ground 3 and BP should have transparently applied this part of the judgment in his evidence. The content of paras 42 and 43 are *binding* on this Inspector. They are authority for the propositions that:

(i) NPPF 73 and fn 37 permit a planning judgment to be exercised concluding that there has been a significant change since the review process in October 2017;

(ii) The significant difference between the housing requirement in Policy 4(a) and that generated by the SM was capable of amounting to a significant change rendering Policy 4(a);

(iii) The exercise of that planning judgment does *not* require a second review;

(iv) The exercise of such a planning judgment is based upon a correct interpretation of the PPG.

58. Finally, PPG 61-062 does not state that where there has been a review, there cannot be a significant change in circumstances. It says the complete opposite. It states that <u>where there has been a review</u>, the policy will remain up to date <u>unless</u> there has been a significant change i.e. you only need consider whether there has been a significant change <u>if there has been a review</u>. It is quite clear that BP has not grasped this issue (hence the repeated references back to the review, as if that was a complete answer to the LPA's case).

59. **It follows that the only issue which remains in dispute is whether there has been a significant change, as a result of NPPF 2018/19, since Oct 2017. That is key issue 2.**

<u>Key Issue 2 - Whether Policy 4 is Out of Date</u>

60. It is common ground that this requires the exercise of a planning judgment, taking into account all relevant changes in circumstances since October 2017.

61. This issue must be considered in the context that:

(i) It is no answer (see concessions above) to assert there has not been a significant change because there has been a review and this is precluded by the operation of NPPF 73 and fn 37;

(ii) Dove J considered the Inspector's conclusions on this point to be "properly reasoned";

(iii) The Inspector is legally entitled to reach a different planning judgment but must give reasons for doing so (EiC in XX and ReX);

(iv) BP does not address this issue in his written evidence and provides no evidential basis for reaching a different conclusion (see BP at 7.22 *et seq*);

(v) In XX, BP conceded that there had been a number of significant changes brought about by the introduction of the standard method.

Background to Policy 4:

62. In the light of the XX of BP, the process by which Policy 4 was adopted is not in dispute.

63. The RSS for the North West was based on the PPS 3: Housing methodology (see PPS 3 para 33). It was based on the 2003 household projections (1998-2003) which resulted in 416,000 households across the region. The 2003 HHP's were then manually re-distributed across the North West (and Central Lancs) in accordance with the RSS spatial strategy. The RSS housing requirement (2003-2021) was:

- Chorley - 417 d/pa;
- Preston - 507 d/pa;
- South Ribble - 417 d/pa;
- Total - 1341 d/pa.

64. The JCS was submitted for examination in 2011 (NI at 5.49). At the 2011 EiP (June/July 2011), the housing requirement was 80% of the RS housing

requirement (which was extant at the time). In a letter, dated 15th November 2011, Inspector Hollocks expressed the view that the JCS was not sound, as it did not comply with the RS. The Inspector stated that the JCS should adopt the annual requirement of the RS, consistent with the legal requirement to be in general conformity with the RS. The Inspector was telling the Central Lancs LPAs to simply adopt the RS housing requirement (without further analysis). The JCS response was to adopt the RS housing requirement. MM1 of the JCS was "the adoption" of the RS annual housing requirements (see CD 1.13). It could not be clearer that the JCS simply rolled forward the RS housing requirements without further analysis, consistent with the requirement of the EiP Inspector (see CD 1.13 IR 8-11).

65. The second EiP was held in March 2012 (prior to the publication of the NPPF). In his report (dated 7th June 2012), the Inspector commended the approach of the JCS and considered it to be sound (CD 1.13 IR 47-49). However, the IR was written prior to the clarification on the interpretation of the approach required by NPPF 47 (in ***Hunston*** and ***Gallagher***).

66. Policy 4 JCS therefore simply provides for the RS housing requirement (for the same reasons as given in the preparation of the RS), with 702 dwellings to address under-provision (against the RS requirement).

67. In such circumstances, the LPA submits that:

(i) The JCS was required to be in general conformity with the RS;
(ii) The Inspector required the JCS to adopt the RS housing requirement;
(iii) Policy 4 is based simply on the RSS for the NW;

(iv) Policy 4 is based on the RSS/PPS 3 methodology, which resolved a housing requirement at the regional level before it was manually re-distributed;

(v) Policy 4 is based on the 2003 household projections, which are based on evidence between 1998 and 2003;

(vi) The RSS housing requirement ran from 2003 to 2021 and is now time-expired;

68. It follows that Policy 4 cannot be used as a proxy for an objective assessment of housing need. The housing requirement in the CS is significantly out of date and inconsistent with the NPPF.

Review of Policy 4:

69. Applying NPPF 73 and fn 37 it is common ground that Policy 4 is more than 5 years old. It is also common ground that there has been a review of Policy 4 (for the purposes of fn 37). This was addressed in Ground 1.

70. The review comprised a process which culminated in MOU 1 (CD 1.8). MOU 1 was *not* the review. It was the *product* of the review. MOU 1 confirmed the level and amount of housing in the HMA, in the light of the SHMA (Aug 2017). The MOU was signed on 3rd October 2017. It was time-limited and expressly states that new evidence could render it out of date (CD 1.8 at 7.1).

Significant Change in Circumstances:

71. **The LPA submit (as they submitted at the First Inquiry and in the Planning Court) that there has been a significant change in circumstances <u>since</u> the completion of the review**.

72. It must be noted that this submission does not require reliance on any planning policy or guidance. It relies on the general principles articulated

by Lindblom J and Dove J, on the circumstances in which a policy might be out of date.

73. In the light of the judgment of Dove J, it is also supported by the NPPG (which formed the basis of the Ground 3 challenge) reads in full:

> ***How often should a plan or policies be reviewed?***
> *To be effective plans need to be kept up-to-date. The National Planning Policy Framework states policies in local plans and spatial development strategies, should be reviewed to assess whether they need updating at least once every 5 years, and should then be updated as necessary.*
>
> *Under regulation 10A of The Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended) local planning authorities must review local plans, and Statements of Community Involvement at least once every 5 years from their adoption date to ensure that policies remain relevant and effectively address the needs of the local community. Most plans are likely to require updating in whole or in part at least every 5 years.* ***Reviews should be proportionate to the issues in hand****. Plans may be found sound conditional upon a plan update in whole or in part within 5 years of the date of adoption.* ***Where a review was undertaken prior to publication of the Framework (27 July 2018) but within the last 5 years, then that plan will continue to constitute the up-to-date plan policies unless there have been significant changes as outlined below****.*
>
> *There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years, for example, where new cross-boundary matters arise.* ***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****, or has been subject to a cap where the plan has been adopted using the standard method. This is to ensure that all housing need is planned for a quickly as reasonably possible.*
>
> *Paragraph: 062 Reference ID: 61-062-20190315*
>
> *Revision date: 15 03 2019*

74. In this case, there have unanswerably been significant changes. The significant change is not the introduction of new NPPF *per se* (in 2018). Rather, it is the practical consequences of the new National Planning Policy which constitute the significant change for this LPA, comprising:

(i) The significant change in the methodology for the calculation of local housing need, using the standard methodology (see NPPF 59, 60 and 73);
(ii) The significant change and reduction in the housing figures for South Ribble, using the standard methodology;
(iii) The significant change and reduction in the housing figures for the HMA, using the standard methodology;
(iv) The significant change in the distribution of housing across the Central Lancs; and
(v) The Central Lancs Housing Strategy.

75. These issues are simply not addressed in the Appellant's evidence (see especially 7.21-7.24). It is (now) emphatically clear that the Appellant *does* accept that there have been significant changes since the review. It is, therefore, an issue which should have been addressed in BP's evidence.

(a) Significant Change in Methodology

76. The SM was introduced because the Government wanted to deliver sufficient housing *in the right locations*. BP agreed that the White Paper identified methodological issues, delivery/numbers issues and spatial issues with the NPPF 2012 methodology. The intention was to deliver a significantly different methodology in order to address issues of complexity, delay, expense and transparency.

77. The SM[7] has two stages: (i) household growth; plus (ii) affordability adjustment. This results in the LHN figure. It is common ground that the change in methodology intentionally removed NPPF 2012 step 2 – consideration of economic forecasts. In XX, BP conceded (it's nowhere in his evidence):

(i) This is a significantly different methodology to RSS/PPS3, which underpinned Policy 4;
(ii) This is a significantly different methodology to NPPF 2012, which underpinned the SHMA (2017).

78. **The change in methodology is a significant change since the review in 2017**.

(b) Significant Reduction in Local Housing Need in South Ribble

79. It is agreed that the application of the standard methodology results in South Ribble's housing figure significantly reducing from 417d/pa to 191 d/pa. The South Ribble figure has reduced by 54%.

80. **BP conceded (it is nowhere in his evidence) that this is a significant change in circumstance since the review in 2017.**

(c) Significant Reduction in Local Housing Need in the HMA

81. It is agreed that the application of the standard methodology results in:

- A significant change in housing need in Preston – 507 d/pa to 250 d/pa;
- A significant change in housing need in Chorley – 417 d/pa to 569 d/pa;

[7] see NI Table 5.1 on p. 22

- A significant reduction in the total HMA figure from 1341 d/pa to 1010 d/pa.

82. **BP conceded (it is nowhere in his evidence) that this is a significant change in circumstance since the review in 2017.**

(d) Significant Change in the Distribution of Housing

83. It is agreed[8] that the application of the standard methodology results in a significant change in the distribution of housing across Central Lancs (XX of BP). Housing moves away from Preston and South Ribble towards Chorley (in the context of a significantly reduced total figure):

Table 7.1 Distribution of Housing Need – Policy 4 & Standard Method

	Chorley	Preston	South Ribble	Central Lancashire
Standard Method LHN	569	250	191	1010
	56%	25%	19%	100%
CS Policy 4 - Annual Requirement	417	507	417	1341
	31%	38%	31%	100%

84. It is agreed that (consistent with the White Paper intention to deliver housing *in the right locations*) the SM requires Chorley to deliver the most housing. This is consistent with the 2003 HHP's which underpinned the RSS, before they were manually re-distributed.

85. **BP therefore conceded (it is nowehere in his evidence) that there have been significant changes in circumstances, since the 2017 review resulting from this redistribution.**

86. **The LPA submit that such changes render Policy 4 out of date. Indeed, that conclusion has been expressly upheld by Dove J in the Planning Court (*supra*).**

[8] See Ground 1 and Appellants' Planning Addendum

Counter-Argument:

87. The Appellant does not address that point "head-on". Rather, a number of counter arguments have been deployed. A single counter-argument has been raised in the BP's written evidence but other counter arguments have been raised with a certain forensic abandon.

Counter-Argument (i) - Operation of NPPF 73 and fn 37:

88. BP argues (at 7.22) that as long as Policy 4 has been reviewed (whether or not there has been a "significant change"), it should form the basis of the HLS calculation. This point has been comprehensively addressed above. It offends elementary principle requiring a planning judgment to take into account all material considerations (especially such significant changes since 2017). The point has now been conceded (on two bases). It is common ground that a planning judgment on whether a significant change has occurred must be undertaken. No other point is raised in the Appellant's written evidence.

Counter-Argument (ii) – Wording of the NPPG:

89. At the first Inquiry, it was argued that PPG 61-062 applied and precluded a consideration of a significant change. This point was addressed by Dove J (*supra*) and is no longer pursued.

Counter- Argument (iii) – There Must be a Review:

90. Whilst not set out in the evidence and/or clearly put in XX, it appears to be the Appellant's case that there must be a review before you can exercise a planning judgment on whether there has been a significant change in circumstances. That is wholly unarguable: (i) there is no such statutory, policy or guidance requirement; (ii) there is no lawful basis on which a planning judgment on weight can only be exercised after a formal ("robust") process; (iii) planning judgments on whether policies are out of date (e.g. settlement boundaries, heritage policies etc) are routinely

exercise without a review process; (iv) this contention makes a nonsense of the PPG 61-062 – the review endures unless there has been a significant change but that cannot happen unless there has been a review, which renders "unless there has been significant changes" otiose (there will always be a review; (v) this precludes developers from ever arguing there has been a significant change because they could never undertake a "review" and thereby could never exercise a planning judgment – that out come would be absurd; (vi) this point is settled by ***Bloor Homes*** and Dove J – in neither case was there a formal review and Dove J concluded there had been a significant change in circumstances.

Counter-Argument (iv) – There can only be One Review:

91. This suffers from the same failings as (iii). There is no requirement for a review before you exercise a planning judgment. However, the references to reviews being required "at least" every 5 years self-evidently means: (i) there can be repeated reviews or second reviews or reviews of reviews; (ii) that was the Cardwell Farm decision which has not be impeached in that regard (DL 33); (iii) reviews can occur at whatever frequency the LPA decide, provided it is at least every 5 years.

Counter-Argument (v) – The Drafters of the NPPF can't have expected the introduction of LHN and SM to render reviewed policies out of date:

92. This is simply another species of the conceded proposition that NPPF 73 and fn 37 preclude a consideration of whether a policy is out of date. There is no merit in it for the same reasons.

93. Further, no evidence has been provided on the intention of the framers of the NPPF beyond what appears in the White Paper, which clearly demonstrates that the SM is intended to deliver a significant change in the methodology of LHN. It is quite clear that the SM is intended to have

nationwide and significant consequences. Existing policies being found to be out of date cannot, therefore, be an *unintended* consequence (as BP appeared to suggest). This is also consistent with the effect of the introduction of the OAN (NPPF 2012), the effect of which was to render existing LP policies based on RSS/PPS 3 to be out of date (per ***Hunston*** and ***Gallagher***). There is a clear history of changes in national policy delivering significant changes and the SM is intended to do just that.

94. BP argued that the same argument could be deployed over the country. That may or may not be true. Significant changes in Liverpool or Cheshire East are no relevance on the issue of whether there is a significant change here. Rather, ***Bloor Homes*** and ***Wainhomes*** clearly establish that each LPA/decision-maker must exercise a planning judgment on whether the introduction of the SM (and any consequential changes in housing numbers) has had a significant change rendering their existing policies out of date. A range of planning judgments will emerge but they are aof no materiality to the planning judgment required here.

Counter-Argument (vi) – Cardwell Farm:

95. The Appellant ambitiously suggests that all of the above submissions have been comprehensively addressed by the decision at Cardwell Farm. Reading that DL fairly and in full, it is unanswerable that they haven't.

96. This DL is capable of being a material consideration. However, it is not binding on this Inspector and he is free to disagree with it, providing reasons are given (***North Wiltshire DC v SoSE*** [1993] 65 P&CR 137. South Ribble did not appear at that Inquiry, which heard different evidence/submissions, from different witnesses from a different authority. Further, Preston have indicated that their legal team consider that there are grounds for the decision to be challenged and intend to challenge the

decision. In such circumstances, this Inquiry must reach its own view on the issues above.

97. Further or alternatively, the LPA consider that the decision is legally flawed and/or they simply disagree with it as a matter of judgment (on whether there has been a significant change).

98. The decision fails to address (adequately or at all) whether there has been a significant change in circumstances (despite the issue being raised at DL 32). It fails to take the decision of Dove J on Ground 3 into account at all. The decision therefore fails to take into account material considerations in deciding whether policy 4 is out of date. Further or alternatively, the Inspector fails to give reasons why there has not been a significant change in circumstances, contrary to the submissions of Preston (see DL 32) and the clear conclusions of Dove J (*supra*). In XX, BP was unable to locate where the Inspector has addressed whether there has been a significant change since the 2017 review because it doesn't appear anywhere in the decision.

99. Rather, the Inspector appears to consider whether there has been a second review. That is the question he asks (DL 33) and answers (see DL 34-40). However, there is no requirement for there to be a second review before it can be concluded that there has been a significant change. A planning judgment is simply not limited in that manner. However, to the extent that the Inspector's approach is (somehow) lawful, the LPA submit that the position in South Ribble is materially different (as will be addressed further below):

(i) South Ribble has not made any decision which suggests that the review which underpinned MOU 2 is not a proper basis for decision making (cf DL 39 and 40). The use of the standard method

was not called into question at Pear Tree Lane. On the contrary, it was applied. Rather, it was the re-distribution of the LHN across Central Lancs which was criticised. That is no part of the LPA's case;

(ii) Further or alternatively, since the Pear Tree Lane Inquiry and in the light of evidence at this Inquiry and Cardwell Farm, the LPA has undertaken a further review and concluded that the 5 year supply should be calculated using the LHN (see AD 10). **BP conceded the position was materially different**. This alone is a complete answer to the cost application, which should not be pursued in the light of BP's answers.

100. It follows that the Cardwell Farm decision is not a material consideration of any material weight. Rather, it is flawed and inconsistent with the Pear Tree Lane (PTL) decision and the judgment of Dove J. It leaves the Central Lancs authority in the unhappy position of having inconsistent decisions, resulting in different approaches being taken across the same HMA. This must be addressed (now) in the Courts and at this Inquiry. In Re-X, BP suggested that a refusal here would be the inconsistent decision. It would be consistent with PTL (which uses SM as the basis for the calculation) but inconsistent with Cardwell Farm. Given the significant flaws in the Cardwell Farm decision (now to be addressed in the Planning Court) this is the correct position.

A SECOND REVIEW

101. This is a completely separate point to the issue of whether there has been a significant change brought about by the very different housing numbers in South Ribble – a point which the Cardwell Farm decision fails to understand.

2020 Housing Study and MOU 2

102. The process of the second review is set out in detail in the evidence of NI (5.67 *et seq*). The process of review is very similar to MOU 1. It is clearly a robust process of review. He addresses the criticisms of the process from NI 5.79.

103. It appears to be suggested that the conclusion that LHN would be used as the basis for the calculation was prejudged. There is no meaningful evidence of that. NI's evidence was emphatically clear and unchallenged: the LPA's instructed him to produce a Housing Strategy and reached a decision in the light of it. Given the content and timing of MOU 2, that proposition should be uncontroversial, especially in the absence of direct evidence to the contrary.

104. The Appellants argue that the Instruction to Iceni (AD 2) did not include a requirement to consider the basis on which HLS should be calculated. This is an arid lawyers' point. Outputs 1-4 includes all the ingredients required to consider the basis of a HLS calculation (as BP agreed). Further, the Iceni Report clearly concludes that LHN should form the basis of the HLS calculation (CD 1.7 at 3.25). BP conceded it had never been suggested that Iceni had stepped outside their brief. On the contrary, that conclusion has been specifically endorsed. The CLHS therefore constitutes a robust basis for the conclusion that LHN should form the basis of the 5YHLS calculation. It is a "significant change" and a "second review".

105. The Appellant, however, focuses on paragraph 2.14 (CD 1.7). In XX, NI explained that he did not consider that paragraph to be happily worded. He is the author of the report and based placed to explain what he meant. The significance placed on para 2.14 by the Appellant (and Cardwell Farm DL) is misplaced. NI's unchallenged evidence is that he was involved in the production of the SHMA (2017) and MOU 1. He gave evidence at PTL 1,

which concerned this process. There can be no doubt that he was fully aware of this process of review. In such circumstances, he explained that the content of the CLHS would not have changed *at all* had he concluded in 2.14 that there had been a review. There is no evidential basis on which to challenge that conclusion. BP's response was not clear (at least to me). He asserted that the conclusion at 3.25 would have changed but provided no analytical basis for that proposition (it is mere assertion). He appeared to suggest it would have remained as Policy 4 because of the review and the provisions of NPPF 73 and fn 37. This assertion is hopeless (in the light of his previous concessions) and (again) fails to recognise that a planning judgment can be exercised if there has been a "significant change". On that basis, any error in 2.14 (which is not accepted by NI) has no substantive relevance. The CLHS is a robust basis on which to conclude that LHN should form the basis of 5YHLS calculations. Indeed, BP accepted that the conclusion that Policy is out of date and has been superseded by LHN in MOU 2 (see paras 2.4, 3.4, 5.1, 5.2 and 8.1(a)) was a free-standing conclusion which was not impugned by the PTL Inspector.

SRBC's Second Review

106. The decision (AD 10) has been taken. The report stands as the reasons for the decision. The decision *must* be treated as lawfully taken by this Council. VFQC may be interested in the *vires* of the decision, however, this exclusively a matter for the Courts. Further, the LPA have explained the scheme of delegation and are clear that the decision is lawful. It must, therefore, be addressed by this Inquiry (a new issue not addressed at Cardwell Farm).

107. The legal position is that this Inquiry cannot question the decision – that is a matter exclusively for the LPA. It is reasonable to consider whether this is a "review". However, if it is considered to be a review, the decision cannot be questioned (even if the Inspector/Appellant disagrees). This

appears to be common ground (on the basis of a brief exchange with VF QC).

108. It is common ground that there is no prescription on the nature or ingredients of a review. BP agrees (see AD 10 para 2) that the LPA is given "a broad discretion as to the manner in which such a review is undertaken, subject to public law principles". There is no requirement for it to match the 2017 review or to include greater detail than MOU 2. It is in that context that the Appellant must demonstrate with evidence that this cannot constitute a review. That is an intimidatingly high hurdle, which BP's evidence did not carry.

109. His central (repeated points) were that: (i) this is not a robust process; and (ii) this adds nothing to previous assessments. Both propositions are hopeless. A review does not need to provide any primary analysis. It does not need to provide any *new* primary analysis. Rather, all it must do is to consider the *existing* analysis and reach a planning judgment on whether Policy 4 is out of date. This is precisely what the Report and Decision do. Indeed, in the light of paras 10, 20 and 23, BP expressly conceded that "the process was unimpeachable". That is an end to the argument and an end to the issue on 5YHLS.

110. He refused nonetheless to accept that it was a "review". In the light of his concession on the process being unimpeachable, that it unsupportable dogma. This is unanswerably a review. Reading paras 1-5 especially, no other conclusion can be reached. The issue was whether it was a "robust process" in the terms of Cardwell Farm DL 33. Once that concern is conceded, the decision unanswerably constitutes a review.

111. Thereafter, there are minor criticisms which are characterised by frustration not substance e.g. the report is too short and not detailed, there

are no background papers/appendices and it has been delayed. So what? There is no requirement to the contrary. The Courts have been emphatically clear that the contents of reports are matters for the judgment of professional officers written to a knowledgeable readership. The report gives exactly the right amount of detail and reaches a clear (and unchallengeable) decision. Accordingly, LHN should form the basis of the 5YHS calculation.

HOUSING LAND SUPPLY

112. **It follows that this LPA has a 10-13 year housing land supply**. There is no arguable requirement for the development of safeguarded land (SL). Indeed, BP agreed that there is plenty of time (10 years) in which to adopt a new development plan, at which the need for SL can be considered (in accordance with G3 and NPPF 139(c) and (d).

113. Even where there is a 10-13 year supply, the Appellant argues there is a need for this development to meet an unmet need of 453 (plus HRT disputed sites). That proposition is hopelessly flawed:

(i) It relies on Policy 4 which is out of date. This point adds nothing;

(ii) The Appellant's calculation is flawed. It takes a 5 year supply to look over a 6 year period. The table at CD 1.18 p.18 looks at sites which are *deliverable* at 1/4/2020. If you wish to look over 6 years, you must consider sites which would be deliverable at 1/4/2021 (the next 5 year period) or look additionally at sites which are *developable* and therefore could additionally deliver in the Plan period. The 453 figure is simply wrong;

(iii) Indeed, a number of sites have been excluded from the Council's Position Statement (CD 1.18) which have outline planning permission and which are making good progress and can contribute to 2026 (see GB at HRT):

(a) Land between Heatherleigh and Moss Lane – pp on 18th December 2020 (after the base date) for 121 homes;

(b) Moss Side Test Track – allocated site with hybrid pp (7/11/2019). Detailed application being prepared for phase 3;

(c) Land between Altcar Lane and Shaw Brook Road – outline pp for (21/9/17) and detailed pp for 246. Makes a contribution to 5YHLS but could deliver in Y6 (outstanding 154);

(d) There is potential for 1,096 dwellings on such sites. Even if all of them do not deliver in Y1-6 (to 2027), a significant number will, as well as in the early years of the next plan period;

(iv) Allocated site H (Vernon Carus Site) is allocated for 300 homes. Submitted hybrid application: full pp for 117 and opp for 184. Could contribute in plan period and immediately thereafter;

(v) Pickerings Farm – allocation for 1,100. An outline application for 1,100 homes has been submitted. It is common ground that Pickerings Farm will deliver (either in Plan period or early part of next plan period);

(vi) There is capacity for 1,323 on additional allocated sites where there is a live planning application before the Council (ReX of NI)

114. It follows that BP's claimed shortfall of 453 is simply wrong. There is no need for housing on safeguarded land to meet any shortfall to the end of the Plan period. If (which is denied) there is, it is agreed that it will be met (in any event) in the early part of the next plan period. The high point of any "need" is therefore a temporary/interim one (XX of SH), which will be met in any event. There is no requirement for SL on this basis. Rather, the development of SL, identified to meet "longer term development needs" well beyond the end of the Plan period, is the antithesis of the development plan policy G3.

115. Finally, it is argued (SH at 6.84 *et seq*) that the practical effect of the "radical redistribution" of LHN across the HMA is that SRBC must meet the unmet needs of CBC, consistent with MOU 2 (6.7). That proposition is unconstrained by any (or any robust) analysis:

(i) SH conceded that this was a plan-making decision (SH at 6.94 and in XX). If the LHN need figure is applied, there is no basis for this Inspector to undertake a manual re-distribution of the LHN across the HMA. That would be clearly unlawful (per ***Hunston***). This is not an issue to be considered at this Inquiry;

(ii) SH's point is based on the contention that CBC have been resistant to releasing SL in the eLP (SH at 6.93). That is another point to be considered through the ELP process. No material weight can attach to the eLP at this stage;

(iii) SH conceded it was necessary to consider CBC's action plan. This is addressed in detail by GB (at 7.7 *et* seq) but not the Appellant;

(iv) GB's analysis demonstrates (Table 7.3) that the Chorley SHELAA has capacity for 3,940 units. This (alone) is a 6.6 year supply (3940/597=6.6yrs). Therefore, CBC are able to meet their own needs (GB at 7.14);

(v) The LPA have undertaken an assessment of 5YHLS across the HMA. The Appellant has not. The analysis demonstrates that there is a 7.5 year supply across the HMA (see GB section 7 and NI Table 7.26).

116. Accordingly, the proposition that SL in SRBC is required to meet the needs of CBC is unsupportable. On the contrary, the HLS evidence demonstrates that there is a very healthy HLS in SRBC, which will continue strongly into the next plan period.

SAFEGUARDED LAND

117. SH places strong reliance on the identification of the site as part of a strategic location in Policy 1. Properly understood, this does not support the development of the site at this time. Rather, it *constrains* development of the site.

118. Policy 1 embodies a balanced approach to locating growth. SH agrees that if you are not a location for growth, Policy 1 seeks to protect the character of suburban and rural areas. The site forms part of the settlements south of the River Ribble (Policy 1(iii)) where "some" greenfield development will be acceptable in the Strategic Location. The Plan is clear that this is a broad location, which does not define the focus for growth to a site level (CD 1.1 at 5.26). Local Plans will define the locations for growth *and* the areas to be safeguarded/protected (5.27). It is imperative that their infrastructure is comprehensively planned (5.49). In that context, it is agreed (XX of SH) that not all of the strategic location is identified for growth. If a site is *not* identified in the strategic location (through the LP), you default to the policy of protecting the character of rural areas (XX of SH). Accordingly, as the site was not identified for growth in the LP, it derives no support from Policy 1.

119. During the LP EIP, the site was expressly considered by the EiP Inspector, who referred (CD 1.14 at IR 48 and 49) to 2 important issues:

(i) The role the site plays in separating Pemwortham, Farington and Lostock Hall (IR 48);
(ii) The requirement for comprehensive development. Both points are clearly related.

120. Policy G3 was produced, examined and adopted in the light of the NPPF with which it is consistent (see NPPF 129(c) and (d)).

121. The LP (CD 1.2) makes it clear (as SH agreed) that SL is not "currently required" (10.33). **In those circumstances, SH agreed that the key issue in the determination of this case is whether SL is "required"**.

122. SH could not (reasonably) dissent from the proposition that if there is a 10-13 year supply, it was not required. Accordingly, this Appeal turns on whether there is a 5YHLS.

123. Indeed, SH agreed that:

(i) The main benefits of the development are market and affordable housing and the associated benefits;
(ii) These are the inevitable impacts of housing on SL;
(iii) If the inevitable impacts of housing on SL could justify consent on SL, policy G3 and NPPF 129 would be rendered otiose. It follows that housing development on SL must be "required". In the light of the 5YHLS, it is not.

124. **SH accepts that there is a conflict with G3 and a conflict with the statutory development plan as a whole. There is, therefore, a statutory presumption that planning permission should be refused (s.38(6))**. In circumstances where there is a 5YHLS, that is a fundamental conflict with the development plan, which should be afforded significant (and decisive) weight in the tilted balance. Indeed, the central material consideration on which SH relies is the absence of a 5YHLS (XX of SH).

COMPREHENSIVE DEVELOPMENT

125. The development site forms part of a larger area of safeguarded land which sits between a number of settlements. A central element of South Ribble Local Plan is to comprehensively plan growth through a masterplan-led approach which determines land use, green infrastructure,

and coordinates and facilities the delivery of necessary infrastructure alongside development. This is *central* to how the Council defines and delivers sustainable development. The principle of "comprehensive development" in Policy G3 should be understood in these terms. It is fully consistent with the NPPF. It should be afforded full weight, even in circumstances where there is not a 5YHLS. SH agrees it is a "freestanding principle".

126. SH asserts (optimistically) that this is "the most logical location" for housing development (SH at 6.61). That proposition absurd:

(i) There has been no alternative site's assessment undertaken to support that proposition;

(ii) The site is located in SL which is protected from development in the Plan period;

(iii) The Inspector previously identified land south of Coote Lane to be better related to the urban area and should be a logical first phase of development (DL 70) and SH agreed;

(iv) SH himself concedes this would not "normally" be considered to be a logical location for housing;

(v) The proposal would constitute an isolated pocket of development. That is abundantly clear from the aerial photography and will be confirmed on site. That is the view of local residents, officers, NI and the previous Planning Inspector (DL 71): "*... an isolated pocket of development* …". It is the only rational conclusion to reach on the evidence;

(vi) This is a significant point because it would justify refusal even if there is not a 5YHLS;

(vii) SH argues the local morphology is ribbon development (SH at 7.13). That might arguably be fair but: (a) this is not a proposal for ribbon development; (b) this proposal is totally inconsistent with a

ribbon morphology; (c) the area is not characterised by isolated suburban housing estates; (d) this is (in fact) the most isolated pocket of land in S2, S3 and S4 (see SoCG at p.5); (e) it is the least logical extension to any of the 3 settlements;

(viii) This proposal is, therefore, the antithesis of a comprehensive approach to development in G3;

(ix) Indeed, the proposal is only justified to meet a need on an interim basis (until Pickerings Farm is developed), yet the Appellant relies on Pickerings Farm to demonstrate it is not isolated. The proposal is irreconcilably inconsistent and irrational.

127. The grant of planning permission does not represent good planning or sustainable development. It forms only a part of the wider safeguarded land parcel bounded by Penwortham Way, Brook Lane, Chain House Lane, Church Lane and the Rail Line. The development of the site would prejudice the ability for the comprehensive, planned development of this wider land parcel. Indeed, this was the express conclusion of the previous Inspector and there is no reason to reach a contrary view.

128. The potential for development of parts of the safeguarded land in this area, together with the Pickerings Farm allocation, provides potential for coalescence of Penwortham, Lostock Hall and Farington and erosion of their separate identities. This was referenced in the Local Plan Inspector's Report as part of the justification for safeguarding land in this area (allocation S3, which includes the appeal site). It reinforces the need for careful consideration to be given to the planning of development across the safeguarded land in this area.

129. If consented, in the absence of a MPlan for EE and/or S2 and/or S3 and/or S4, there is a risk (see illustrative MP for this site and HE site (SH 1), with the EE/S2 Mplan) that there will be a continuous built form of

development from Penwortham to Farington, without any natural separation, which would protect the distinct identities of the 3 settlements. This was the central concern of the EiP IR and the basis for the clear development plan requirement for comprehensive development. Indeed, the result of the 2 MPlans is that the only green area left is the land south of Coute Lane, which is precisely the area which the Inspector considered (DL 70) to be the logical first phase of development. This approach (of planning by appeal) is the antithesis of the Plan led and approach and the antithesis of the requirement for comprehensive development. Indeed, this same development has been previously rejected for precisely this reason.

130. A comprehensive approach is also considered important to the coordination of services and infrastructure, which is of particular significance given existing provision and the potential scale of change in this area having regard to the development of the Pickering's Farm site to the north and for the effective engagement of local communities in the planning process. Again, these points were specifically endorsed in the previous decision letter which remains a material consideration in the absence of any relevant challenge (see CD 6.1 DL 59). There is, therefore, a further conflict with Policy G3, which endures and justifies refusal <u>even if</u> there is not a 5YHLS.

<u>PLANNING BALANCE</u>

131. The LPA identify benefits related to the provision of market and affordable housing and economic benefits, akin to those which would arise from any similar scheme of this size. They cannot justify the development of safeguarded land (even in the tilted balance) when there is a 10-13 year supply; land is not required and there is a fundamental conflict with the development plan. The provision of on-site open space and contributions to play space; a time-limited financial contribution to bus services and

matters related to the site location and accessibility are neutral in the planning balance.

132. In contrast, significant harms arise. There is a conflict with Policy G3 and the statutory development plan as a whole. Harms arise from comprehensive development, the principle of achieving well-designed places and ability to coordinate infrastructure and services. There are moderate harms to the principle of and confidence in the plan-led system and effective engagement of local communities. Such adverse impacts would significantly and demonstrably outweigh the benefits. Further, material considerations would further support the refusal of consent because the proposal is not sustainable development, for the purposes of the NPPF, having applied the tilted balance.

133. This proposal has attracted very significant local opposition, based on land use planning grounds. It has been recommended for refusal twice by Professional Officers and unanimously rejected twice by the Local Planning Authority. It has previously been refused by the Planning Inspectorate, for reasons which remain material (in the light of the decision in the ***Wainhomes*** case). It plainly does not constitute sustainable development and should be refused.

CONCLUSION

134. It is, therefore, the LPA's case that planning permission should be refused.

GILES CANNOCK QC
Kings Chambers
19th March 2021