Pickerings Farm Inquiry

APPELLANTS' *OPENING* SUBMISSIONS

Introduction

1. As the Council's planning witness explains,[1] Pickerings Farm is the largest housing allocation in the South Ribble Local Plan, it is a strategically important location and allocation being central to the achievement of the strategy in the Central Lancashire Core Strategy and the Local Plan.
2. The appeal sites (imaginatively, "A" and "B") together amount to some 67% of the allocated area (Allocation "EE" 78.25 ha; "A" 45.88 ha; "B" 6.39 ha; "A" and "B" 52.27 ha). Local Plan Policy D1 indicates 1,350 homes as the "estimated number of dwellings" for the allocation. The appeal applications ("A" up to 920 homes, "B" up to 180 homes) propose up to 1,100 homes, some 82% of the indicative number.
3. Unsurprisingly, there is no, nor could there be an in principle objection to the appeal proposals.
4. The Council refused both applications for identical reasons. There are 11 of them. Some overlap. One of them (RfR 9 concerning sporting provision) has been resolved and the Appellants & the Council have agreed upon a way forward to resolve another (RfR 8 concerning air quality). That leaves 9 RfR which the Inspector has grouped into main issues 1 – 4.

1st main issue: masterplanning, design code, phasing, infrastructure delivery, and implementation programme

5. The 1st main issue draws together RfR 5 and 6.
6. These RfR contend the appeal proposals are contrary to Local Plan Policy C1 which states:

> "Planning permission will only be granted for the development of the Pickering's Farm site subject to the submission of:

[1] Richard Wood Proof paragraphs 8.4, 8.5, 8.6

a) an agreed Masterplan for the comprehensive development of the site. The Masterplan must include the wider area of the Pickering's Farm site which includes the safeguarded land which extends to Coote Lane as shown on the Policies Map, and make provision for a range of land uses to include residential, employment and commercial uses, Green Infrastructure and community facilities;

b) a phasing and infrastructure delivery schedule;

c) an agreed programme of implementation in accordance with the Masterplan and agreed design code. "

7. RfR 5 is that *"The masterplan has not been formally agreed by [the] Council and the version submitted with the two applications does not meet the policy requirements."*
8. RfR 6 is that *"The submitted documentation provides insufficient detail on how the site will be delivered and no detailed phasing plan has been submitted and no programme of implementation has been agreed."*
9. Taking the points step by step: Policy C1 does not require a single planning application to be brought forward for the land which it requires to be included in the Masterplan. Nor could it, as the policy requires (*"must"*) the Masterplan to *"include the safeguarded land which extends to Coote Lane"*. The safeguarded land in question is location "S2" in Policy G3 which provides:

> "Within the borough, land remains safeguarded and not designated for any specific purpose within the Plan period at the following locations: [..]
>
> Existing uses will for the most part remain undisturbed during the Plan period or until the Plan is reviewed. Planning permission will not be granted for development which would prejudice potential longer term, comprehensive development of the land."

   In other words, one cannot make a planning application now for e.g. housing development on the safeguarded land.
10. Given that Policy C1 does not require a single planning application to be brought forward (even for the allocated land) it seems obvious that the underlying purpose of requiring a Masterplan is to ensure that as and when planning applications are made for the development of parts of the allocated site, which after all is in multiple ownerships, there is an overall strategy for the wider area which individual applications should be consistent with, so that the individual parts facilitate rather than inhibit or preclude bringing forward the greater whole.

11. That is precisely what the Masterplan which accompanies the two appeal applications does.
12. RfR 5 seeks to make something of the fact that the Masterplan has not been agreed *by the Council.* This one assumes is a reference to the passage in Policy C1 which speaks of *"an agreed Masterplan"*. The policy does not dictate that the Masterplan has to be "agreed" separate from a planning application, nor that it can only be "agreed" by the Council. Put shortly, if the Inspector concludes in the appeal decision the submitted Masterplan is suitable then that would satisfy the policy.
13. RfR 5 contends that the submitted Masterplan *"does not meet the policy requirements"* which is a reference back to (*"the policy"* referred to is) Policy C1 which is the policy cited at the beginning of the RfR.
14. What then are its requirements and does the submitted Masterplan meet them?
15. The policy requires the Masterplan to include the allocated and safeguarded land. Ours does.
16. The policy requires the Masterplan to *"make provision for a range of land uses"*. Ours does.
17. Including the allocated and the safeguarded land, and making provision for a range of land uses is what the policy means when it says the Masterplan is to be for *"the comprehensive development of the site."*
18. And that's it. There are no other "policy requirements" for the Masterplan set out in Policy C1.
19. RfR 6 draws on those parts of Policy C1 that require *"a phasing and infrastructure delivery schedule"* and *"an agreed programme of implementation."*
20. To the extent the RfR makes the point about the programme not having been "agreed" (as in, agreed *by the Council*) the points made earlier on apply just as much here.
21. The Appellants have submitted a schedule and programme to meet these requirements. It is found at Mr Alsbury's Appendix 2 and is dated July 2022. It was submitted in draft *"for discussion with [the Council]"*. We would welcome any constructive comments the Council wishes to make, but in any event as paragraph 1.3 of the document explains: *"The Appellants would expect there to be an obligation attached to each of the planning permissions which requires a fuller Delivery Strategy*

to be submitted and approved at an appropriate point before the development commences."

22. The submitted schedule and programme does what the policy requires – it is "*a phasing and infrastructure delivery schedule"* and a *"programme of implementation."*
23. The 1st main issue also refers to the design code. The last few words of Policy C1 refer to a design code. We have submitted a design code. None of the RfR criticise it.

2nd main issue: whether or not the proposed development would have a severe adverse impact on the local highway network

24. This main issue combines RfR1 and RfR2 both of which contend that *"it has not been demonstrated that the proposed development would not have a severe adverse impact on the local highway network."* The double negative is telling.
25. The phraseology is drawn from NPPF paragraph 111 which mandates:

> *"Development should only be .. refused on highways grounds if .. the residual cumulative impacts on the road network would be severe."*

26. The Framework does not define what it means by "severe" and so it is used in its ordinary meaning rather than as a term of art. The OED tells us "severe" means "very great".
27. Underpinning these RfR is the County Council's view that the Appellants' Transport Assessment isn't (to put it bluntly) fit for purpose. A year on from the submission of the applications the County Council's witness, Mr Stevens, has put forward his own "Traffic Assessment" as part of his proof of evidence which (again to put it bluntly) we do not regard as fit for purpose. There is little point summarising why the Appellants' and the County Council's analyses are so far apart. This will be explored in evidence given and tested during the inquiry.
28. What seems more pertinent is one shouldn't be distracted by all this from the simple point that applying the Appellants' analysis, the proposed development would not give rise to severe impacts on the road network, but even were one to apply the County Council's alternative analysis, it does not demonstrate the proposed development would cause severe impacts on the road network either.

3rd main issue: the effect of the proposed improvements to the Bee Lane bridge on the safety of pedestrians and cyclists

29. The 3rd main issue draws from part of RfR 3.
30. NPPF 111 sets *"an unacceptable impact on highway safety"* as the threshold of refusal.
31. Policy 7 of the Neighbourhood Plan includes the Bee Lane Bridge as part of the "Penwortham Cycle and Walking Route" which is to be *"safeguarded for a dedicated circular route for cyclists and walkers."* In other words, as a matter of planning policy more use is planned to be made of the bridge by cyclists and walkers.
32. The appeal proposals would similarly lead to more use of the bridge by cyclists and walkers. There would be some (not much) additional vehicular traffic on the bridge too.
33. The Appellants' witness, Mr Axon, considers the existing "shared surface" arrangement would be acceptable in terms of the safety of pedestrians and cyclists. However, he has produced an option for the segregation of the carriageway from the bridge parapets and pedestrians (similar to the existing arrangement at the nearby Coote Lane railway bridge) which an independent Safety Risk Assessment has rated "low risk" and thus "acceptable" in safety terms. As Mr Axon explains, this is simply one way (i.e. not the only way) of improving the existing situation.

4th main issue: whether or not the proposal makes adequate provision for highways improvements, with particular regard to the Cross Borough Link Road and the Bee Lane bridge

34. This main issue is a synthesis of points raised in RfR 3, 4, 7 & 10 (and perhaps RfR 11 as well).
35. In relation to the Bee Lane bridge, the improvements already referred to would be adequate for all users of the bridge.
36. Turning to the CBLR this part of the case made against the appeal proposals by the Council seems to combine a misunderstanding of what the Local Plan requires on the one hand, and what we propose on the other.

37. The CBLR has its genesis in ideas generated so long ago it was the same decade as the referendum to *join* the EU.
38. Beginning with the Local Plan: Policy A2 "protects" land from physical development for the delivery of the CBLR, part of which (shown diagrammatically on the Policies Map) runs through the Pickerings Farm allocation. And that's all that is required by policy in the Local Plan. Paragraph 4.21 of the supporting text in the Plan explains this section *"will be provided through developer contributions".* As a matter of law, supporting text cannot impose requirements on developments.[2]
39. Neither the policy, nor the supporting text (not that it could anyway) requires the developer of part of the allocated site, even a large part of it as per appeal application "A", to build or pay for the whole of the stretch of the CBLR as it passes through the allocated site, let alone a new bridge across the WCML (which is one of the options, the other is improving the existing [Bee Lane] bridge, mentioned in paragraph 6.11 of the supporting text in the Local Plan).
40. In terms of the appeal applications, the Masterplan safeguards a route for the CBLR as it would cross the allocated site. The appeal schemes would deliver, as in build, those parts of the road – some 1.08km - as it crosses appeal site "A"[3] at a cost to the Appellants of over £5m. This would amount to some 89% of the CBLR as it crosses the larger, allocated, site, leaving in the order of 130 metres to be built on the in-between land. In anyone's book this should amount to a substantial contribution to the delivery of the CBLR. The appeal schemes would also pay an estimated £7.6m in CIL which could, of course, to some or other extent be spent on delivering the rest of the CBLR including for example paying for or contributing towards a new bridge over the railway.
41. It is a travesty to suggest that the Appellants aren't doing their bit towards delivering the CBLR. They are.
42. Nor is there any basis for saying that it is necessary in the sense meant by Regulation 122 of the CIL Regs. for the entire[4] length of the CBLR as it crosses the allocated site to be delivered in order for the appeal proposals not to cause a severe impact on the road network.

[2] R (Cherkely Campaign Ltd) v Mole Valley DC [2014] EWCA Civ 567
[3] It doesn't impinge on appeal site "B"
[4] Or indeed any part of it.

43. In overall conclusion, the determination which would be in accordance with the development plan (when read as a whole) would be to allow both appeals. Material considerations do not indicate otherwise than this. Should the conclusion be reached, contrary to the Appellants' case, that the appeal proposals do not accord with the development plan then in those circumstances material considerations, and in particular the extensive public benefits (discussed by Mr Alsbury in Section 7 pages 35 – 38 of his proof of evidence) would indicate otherwise such that the appeals should be allowed nonetheless. The 30% affordable housing (i.e. up to 330 affordable homes) is a hugely worthwhile public benefit in its own right.

Chris Katkowski QC

Constanze Bell

23rd August 2022

Kings Chambers