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Planning Support Statement for the conversion of a triple garage/store to self contained residential bungalow, at Woodgate Lodge, Startifants Lane, Chipping

Introduction

This planning statement is to be read in conjunction with the plans and supporting ecology statement, in relation to the proposal to convert an existing triple garage and store to a self contained bungalow.

The building in question is located within the curtilage of Woodgates Lodge, an imposing stone built dwelling, set back from the public highway, by some 70 metres via a gated access.

The property is set down from the public highway as the land falls from north to south and the main property is surrounded on the south and east side by mature trees and to the west is a mature hedge line which forms the southern and western boundaries to the residential curtilage.

The property is accessed from an existing gated access point which then sweeps down along an access drive ending in a large area of parking and turning that is located to the front of the garage/store which is the subject of this application.

The site is located in the open countryside and in the AONB.

The Proposal

The proposal is for the straightforward conversion of the existing garage/store. It involves no extensions or additions, no raising of the roof, and only involves the building up of the front elevation, which the applicant could do under pd rights without needing the LPA's permission.

Additional openings would be created to the building to provide windows and doors; however, they would be kept to a minimum. In terms of the residential curtilage, no new curtilage is proposed, as the building is already located within an existing residential curtilage, therefore arguments in relation to 'trappings of domesticity' leading to a loss of amenity do not apply as the situation would remain as now.

The proposal does involve the infilling of the front elevation. However, when viewed from the public highway the appearance of the building would remain as now, as the property is side onto the road.

National Planning Policy

The National Planning Policy Framework (NPPF)

The NPPF states as follows:

In Para 7 it states "There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

●● a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and

●● an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.”

8. These roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.

11. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.⁷

12. This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision-making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.

13. The National Planning Policy Framework constitutes guidance⁸ for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications.

14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan making and decision-ta for **plan-making** this means that:

- Local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:
 - Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
 - Specific policies in this Framework indicate development should be restricted.⁹

For **decision-taking** this means:¹⁰

- Approving development proposals that accord with the development plan without delay; and
- Where the development plan is absent, silent or relevant policies are out-

of-date, granting permission unless:

- Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or
- Specific policies in this Framework indicate development should be restricted.⁹

48. Local planning authorities may make an allowance for windfall sites in the five-year supply if they have compelling evidence that such sites have consistently become available in the local area and will continue to provide a reliable source of supply. Any allowance should be realistic having regard to the Strategic Housing Land Availability Assessment, historic windfall delivery rates and expected future trends, and should not include residential gardens.

49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:

- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
- where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
- where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
- the exceptional quality or innovative nature of the design of the dwelling.

Such a design should:

- be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
- reflect the highest standards in architecture;
- significantly enhance its immediate setting; and
- be sensitive to the defining characteristics of the local area.

109. The planning system should contribute to and enhance the natural and local environment by:

- protecting and enhancing valued landscapes, geological conservation interests and soils;

- recognising the wider benefits of ecosystem services;
- minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
- preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
- remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.

111. Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value. Local planning authorities may continue to consider the case for setting a locally appropriate target for the use of brownfield land.

115. Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The conservation of wildlife and cultural heritage are important considerations in all these areas, and should be given great weight in National Parks and the Broads.

Ribble Valley Core Strategy

Key Strategy DS1

In general the scale of planned housing growth will be managed to reflect existing population size, the availability of, or the opportunity to provide facilities to serve the development and the extent to which development can be accommodated within the local area. Specific allocations will be made through the preparation of a separate allocations DPD.

In allocating development, the Council will have regard to the AONB, Green Belt and similar designations when establishing the scale, extent and form of development to be allocated under this strategy. The relevant constraints are set out as part of the strategic framework included in this plan.

Development that has recognised regeneration benefits, is for identified local needs or satisfies neighbourhood planning legislation, will be considered in all the borough's settlements, including small-scale development in the smaller settlements that are appropriate for consolidation and expansion or rounding-off of the built up area.

Through this strategy, development opportunities will be created for economic, social and environmental well-being and development for future generations.

POLICY DMG1: GENERAL CONSIDERATIONS

10.4 IN DETERMINING PLANNING APPLICATIONS, ALL DEVELOPMENT MUST: DESIGN

1. BE OF A HIGH STANDARD OF BUILDING DESIGN WHICH CONSIDERS THE 8 BUILDING IN CONTEXT PRINCIPLES (FROM THE CABE/ENGLISH HERITAGE BUILDING ON CONTEXT TOOLKIT).
2. BE SYMPATHETIC TO EXISTING AND PROPOSED LAND USES IN TERMS OF ITS SIZE, INTENSITY AND NATURE AS WELL AS SCALE, MASSING, STYLE, FEATURES AND BUILDING MATERIALS.
3. CONSIDER THE DENSITY, LAYOUT AND RELATIONSHIP BETWEEN BUILDINGS, WHICH IS OF MAJOR IMPORTANCE. PARTICULAR EMPHASIS WILL BE PLACED ON VISUAL APPEARANCE AND THE RELATIONSHIP TO SURROUNDINGS, INCLUDING IMPACT ON LANDSCAPE CHARACTER, AS WELL AS THE EFFECTS OF DEVELOPMENT ON EXISTING AMENITIES.
4. USE SUSTAINABLE CONSTRUCTION TECHNIQUES WHERE POSSIBLE AND PROVIDE EVIDENCE THAT ENERGY EFFICIENCY, AS DESCRIBED WITHIN POLICY DME5, HAS BEEN INCORPORATED INTO SCHEMES WHERE POSSIBLE.
5. THE CODE FOR SUSTAINABLE HOMES AND LIFETIME HOMES, OR ANY SUBSEQUENT NATIONALLY RECOGNISED EQUIVALENT STANDARDS, SHOULD BE INCORPORATED INTO SCHEMES.

ACCESS

1. CONSIDER THE POTENTIAL TRAFFIC AND CAR PARKING IMPLICATIONS.
 2. ENSURE SAFE ACCESS CAN BE PROVIDED WHICH IS SUITABLE TO ACCOMMODATE THE SCALE AND TYPE OF TRAFFIC LIKELY TO BE GENERATED.
 3. CONSIDER THE PROTECTION AND ENHANCEMENT OF PUBLIC RIGHTS OF WAY AND ACCESS. AMENITY
1. NOT ADVERSELY AFFECT THE AMENITIES OF THE SURROUNDING AREA.
 2. PROVIDE ADEQUATE DAY LIGHTING AND PRIVACY DISTANCES.
 3. HAVE REGARD TO PUBLIC SAFETY AND SECURED BY DESIGN PRINCIPLES.
 4. CONSIDER AIR QUALITY AND MITIGATE ADVERSE IMPACTS WHERE POSSIBLE.

ENVIRONMENT

1. CONSIDER THE ENVIRONMENTAL IMPLICATIONS SUCH AS SSSIS, COUNTY HERITAGE SITES, LOCAL NATURE RESERVES, BIODIVERSITY ACTION PLAN (BAP) HABITATS AND SPECIES, SPECIAL AREAS OF CONSERVATION AND SPECIAL PROTECTED AREAS, PROTECTED SPECIES, GREEN CORRIDORS AND OTHER SITES OF NATURE CONSERVATION.
2. WITH REGARDS TO POSSIBLE EFFECTS UPON THE NATURAL ENVIRONMENT, THE COUNCIL PROPOSE THAT THE PRINCIPLES OF THE MITIGATION HIERARCHY BE FOLLOWED. THIS GIVES SEQUENTIAL PREFERENCE TO THE FOLLOWING: 1) ENHANCE THE ENVIRONMENT 2) AVOID THE IMPACT 3) MINIMISE THE IMPACT 4) RESTORE THE DAMAGE 5) COMPENSATE FOR THE DAMAGE 6) OFFSET THE DAMAGE.
3. ALL DEVELOPMENT MUST PROTECT AND ENHANCE HERITAGE ASSETS AND THEIR SETTINGS.

4. ALL NEW DEVELOPMENT PROPOSALS WILL BE REQUIRED TO TAKE INTO ACCOUNT THE RISKS ARISING FROM FORMER COAL MINING AND, WHERE NECESSARY, INCORPORATE SUITABLE MITIGATION MEASURES TO ADDRESS THEM.

5. ACHIEVE EFFICIENT LAND USE AND THE REUSE AND REMEDIATION OF PREVIOUSLY DEVELOPED SITES WHERE POSSIBLE. PREVIOUSLY DEVELOPED SITES SHOULD ALWAYS BE USED INSTEAD OF GREENFIELD SITES WHERE POSSIBLE

INFRASTRUCTURE

1. NOT RESULT IN THE NET LOSS OF IMPORTANT OPEN SPACE, INCLUDING PUBLIC AND PRIVATE PLAYING FIELDS WITHOUT A ROBUST ASSESSMENT THAT THE SITES ARE SURPLUS TO NEED. IN ASSESSING THIS, REGARD MUST BE HAD TO THE LEVEL OF PROVISION AND STANDARD OF PUBLIC OPEN SPACE IN THE AREA, THE IMPORTANCE OF PLAYING FIELDS AND THE NEED TO PROTECT SCHOOL PLAYING FIELDS TO MEET FUTURE NEEDS. REGARD WILL ALSO BE HAD TO THE LANDSCAPE OR TOWNSCAPE OF AN AREA AND THE IMPORTANCE THE OPEN SPACE HAS ON THIS.

2. HAVE REGARD TO THE AVAILABILITY TO KEY INFRASTRUCTURE WITH CAPACITY. WHERE KEY INFRASTRUCTURE WITH CAPACITY IS NOT AVAILABLE IT MAY BE NECESSARY TO PHASE DEVELOPMENT TO ALLOW INFRASTRUCTURE ENHANCEMENTS TO TAKE PLACE.

3. CONSIDER THE POTENTIAL IMPACT ON SOCIAL INFRASTRUCTURE PROVISION.

OTHER

1. NOT PREJUDICE FUTURE DEVELOPMENT WHICH WOULD PROVIDE SIGNIFICANT ENVIRONMENTAL AND AMENITY IMPROVEMENTS.

POLICY DMH4: THE CONVERSION OF BARNES AND OTHER BUILDINGS TO DWELLINGS

10.21 PLANNING PERMISSION WILL BE GRANTED FOR THE CONVERSION OF BUILDINGS TO DWELLINGS WHERE

1. THE BUILDING IS NOT ISOLATED IN THE LANDSCAPE, I.E. IT IS WITHIN A DEFINED SETTLEMENT OR

FORMS PART OF AN ALREADY GROUP OF BUILDINGS, AND

2. THERE NEED BE NO UNNECESSARY EXPENDITURE BY PUBLIC AUTHORITIES AND UTILITIES ON THE PROVISION OF INFRASTRUCTURE, AND

3. THERE WOULD BE NO MATERIALLY DAMAGING EFFECT ON THE LANDSCAPE QUALITIES OF THE AREA OR HARM TO NATURE CONSERVATIONS INTERESTS, AND

4. THERE WOULD BE NO DETRIMENTAL EFFECT ON THE RURAL ECONOMY, AND

5. THE PROPOSALS ARE CONSISTENT WITH THE CONSERVATION OF THE NATURAL BEAUTY OF THE AREA.

6. THAT ANY EXISTING NATURE CONSERVATION ASPECTS OF THE EXISTING STRUCTURE ARE PROPERLY SURVEYED AND WHERE JUDGED TO BE SIGNIFICANT PRESERVED OR, IF THIS IS NOT POSSIBLE, THEN ANY LOSS ADEQUATELY MITIGATED.

THE BUILDING TO BE CONVERTED MUST:

1. BE STRUCTURALLY SOUND AND CAPABLE OF CONVERSION FOR THE PROPOSED USE WITHOUT THE NEED FOR EXTENSIVE BUILDING OR MAJOR ALTERNATION, WHICH WOULD ADVERSELY AFFECT THE CHARACTER OR APPEARANCE OF THE BUILDING. THE COUNCIL WILL REQUIRE A STRUCTURAL SURVEY TO BE SUBMITTED WITH ALL PLANNING APPLICATION OF THIS NATURE. THIS SHOULD INCLUDE PLANS OF ANY REBUILDING THAT IS PROPOSED;
2. BE OF A SUFFICIENT SIZE TO PROVIDE NECESSARY LIVING ACCOMMODATION WITHOUT THE NEED FOR FURTHER EXTENSIONS WHICH WOULD HARM THE CHARACTER OR APPEARANCE OF HE BUILDING, AND
3. THE CHARACTER OF THE BUILDING AND ITS MATERIALS ARE APPROPRIATE TO ITS SURROUNDINGS AND THE BUILDING AND ITS MATERIALS ARE WORTHY OF RETENTION BECAUSE OF ITS INTRINSIC INTEREST OR POTENTIAL OR ITS CONTRIBUTION TO ITS SETTING, AND
4. THE BUILDING HAS A GENUINE HISTORY OF USE FOR AGRICULTURE OR ANOTHER RURAL ENTERPRISE.

Assessment

In terms of Ribble Valley the adoption of the Core Strategy in Dec 2014 requiring development of 280 dwellings a year. At the time they demonstrated 5.16 years supply. The Core Strategy Examiner concluded, "even allowing for substantial optimism on part of the SHLAA's authors, including in relation to housing density there is significant reserve. In addition, no allowance has been made for windfalls sites. This all adds to the degree of confidence one can place in the Plan and the likelihood that it's deliverability is a reasonable prospect"

The requirement for housing supply is that a minimum of 5 years plus 5%, and where there is a proven record of undersupply a figure of 5 years plus 20 % is required.

The importance of having a 5 year + housing land supply has recently been examined in some detail in the courts.

In March 2016 the Court of Appeal heard the co –joined appeals in the case of Richborough Estates Partnerships LLP v Cheshire East Borough Council and Secretary of State for Communities and Local Government; the eagerly awaited ruling of the Court of Appeal on the full extent of a pivotal provision of the National Planning Policy Framework (NPPF).

In summary, all local planning authorities in England are required to have a minimum five-year supply of housing land. The policy in Paragraph 49 of the NPPF requires all decision makers across the country who are

determining planning applications and appeals to treat “ relevant policies for the supply of housing as not up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

On no less than six occasions, the High Court has sought to grapple with what the phrase “relevant policies for the supply of housing” means, and often with contradictory conclusions. There was a clear need for clarity, and Richborough brought an appeal against one of those High Court judgments in a hearing which took place in January before Jackson, Vos and Lindblom LJ.

Richborough Estates has been seeking planning permission for the delivery of 146 homes on a 16-acre site north of Willaston, near Nantwich in Cheshire for three years. The Site is located in the controversial Green Gap, around Crewe, which the council is presently seeking to upgrade to Green Belt.

A planning application was submitted in September 2013 and an appeal submitted in January 2014. Richborough argued that because the council could not demonstrate a five year supply of housing land, the council’s Green Gap policy should be given reduced weight because it is a “[r]elevant policy for the supply of housing.”

The planning appeal was allowed by Inspector Alan Boyland in August 2014, who accepted the Green Gap policy was a relevant policy for the supply of housing. But the local planning authority, Cheshire East Council, sought to challenge the decision in the High Court on four grounds. The High Court Judge, Mrs Justice Lang rejected three of those grounds, including the suggestion the Inspector was wrong to find the council could not demonstrate a five year supply of housing land. But the High Court judge accepted the argument that the Green Gap policy was not a relevant policy for the supply of housing because it was also concerned with preventing coalescence between Willaston and Crewe, and she quashed the planning permission in a judgment dated February 2015.

Richborough challenged Mrs Justice Lang’s decision in the Court of Appeal. Permission to appeal was given by Lord Justice Sullivan in May 2015 without the need for an oral hearing, with his Lordship observing that not only did Richborough’s appeal have a good prospect of success, but “the ambit of ‘relevant policies for the supply of housing’ in paragraph 49 of the NPPF is rightly described in the Appellant’s Skeleton as an issue that is of critical importance to the application of national policy throughout the country.”

After hearing the case in January, the Court of Appeal issued judgment in Richborough’s case, together with a conjoined appeal by Suffolk Coastal District Council who argued Paragraph 49 did not even apply to settlement boundary policies, a point clearly decided by Ouseley J in *South Northamptonshire v SCCLG and Barwood*. Suffolk Coastal DC secured permission to appeal from Lord Justice Sullivan a week after Richborough. Both cases were heard together and Lord Justice Lindblom handed down the lead judgment.

The key conclusion from the Court of Appeal is that Paragraph 49 should be interpreted widely (as Mr Justice Ouseley had decided in the South Northamptonshire case) and it applies to all policies which are restrictive of where housing development can go. So if an LPA cannot demonstrate a five-year supply of housing land then its settlement boundary policies and countryside protection policies cannot be judged as up to date. The Court of Appeal made clear that the phrase “should not be considered up-to-date” in Paragraph 49, has the same meaning as “out of date” in Paragraph 14 of the NPPF. So if there is no five-year supply of housing land, environmental protection policies are to be seen as out of date.

The Court of Appeal rejected the narrow interpretation of Paragraph 49, which suggested that it only applies to policies about the quantum and distribution of housing as argued for by Cheshire East Council, and accepted by Mrs Justice Lang in both this case and in her Judgment *William Davis v SSCLG and North West Leicestershire*. The Court of Appeal rejected that narrow view. It came to its Judgment because, read in its proper context, including the national policy to boost significantly the supply of housing, paragraph 49 is about the delivery of housing and ensuring local planning authorities are not able to use environmental policies to restrict housing when they cannot themselves even demonstrate the minimum five-year supply of housing.

This is a seminal statement on the extent of Paragraph 49 and defines the relationship between housing and environmental policies, with far reaching implications.

The final case is of *Cheshire East BC v SSCLG & Renew* [2016] EWHC 571 (Admin) concerning the operation of paragraph 14 of the National Planning Policy Framework and the presumption in favour of sustainable development.

The judgment included the following consideration of paragraph 14.

"18. My point of departure is not an analysis of the first instance decisions to which I was referred but my own approach to paragraphs 6-8 and 14 of the NPPF, assisted as I have been by the submissions of Mr Richard Honey for the First Defendant and Mr Jeremy Cahill QC for the Interested Party.

19. Although there may be cases where sustainable development 'jointly and simultaneously' achieves economic, social and environmental gains (as per the optimistic language of paragraph 8 of the NPPF), I have already said that it must be obvious that in most situations there will be somewhat of a trade-off between competing desiderata. It follows that a balance must be struck, but on what basis? In my judgment, the answer is to be found in the language of paragraph 14 of the NPPF. Where the second bullet point applies, because the development plan is absent, silent or relevant policies are out-of-date, the proposal under scrutiny will be sustainable development, and therefore should be approved, unless any adverse impacts significantly and demonstrably outweigh the benefits.

20. In the absence of paragraph 14, decision makers would be unable to decide how tensions between the competing desiderata should be reconciled. If, for example, the economic and social merits only slightly outweighed the environmental, what then? The answer is not to be found in paragraphs 6-8. The framers of

the NPPF rightly thought that guidance in this regard was necessary. The guidance they have provided in the form of paragraph 14 is to say that the proposal should be approved as sustainable development unless the adverse impacts clearly and significantly outweighed the benefits. (my emphasis)

21. On this approach, the effect of paragraph 14 is that proposals which would otherwise have been refused because their planning merits were finely balanced should be approved – subject to the first indent of the second bullet point being made out. Another way of putting the matter is that the scales, or the balance, is weighted, loaded or tilted in favour of the proposal. This is what the presumption in favour of sustainable development means: it is a rebuttable presumption, although will only yield in the face of significant and demonstrable adverse impacts.

22. In practice, there will be questions of fact and degree. If, for example, the planning advantages are assessed to be non-existent, the presumption is likely to be easily displaced. The stronger the planning benefits are assessed to be, the more tenaciously the presumption will operate and the harder it will be to displace it.

23. In my judgment, this is not, and cannot be, a question of assessing whether the proposal amounts to sustainable development before applying the presumption within paragraph 14. This is not what paragraph 14 says, and in my view would be unworkable. Rather, paragraph 14 teaches decision makers how to decide whether the proposal, if approved, would constitute sustainable development.

24. I do not fully understand the reference in some of the authorities to sequential decision making or to decisions being made about the sustainability of development somewhere along the notional road. The whole point of paragraph 14 is to lead decision makers along a tightly defined and constrained path, at the end of which the decision must be: is this sustainable development or not? If what is being said in these authorities is that decisions about the weight to be given to each of the paragraph 7 NPPF dimensions should be made before paragraph 14 is considered and applied, then I would have no difficulty at all, because these are logically prior planning judgments which fall to be made on all the evidence.

25. Nor do I believe that it is necessarily helpful to say that paragraph 14 does not apply to development which is not sustainable. If, having applied the paragraph 14 algorithm, that is the conclusion which is reached, I have no difficulty with this formulation. However, a decision maker will only know if a proposal is sustainable or not by obeying the processes mandated by the paragraph. An integral part of the process is a positive weighting in favour of sustainable development in the sense that the proposal will be assessed as such unless the planning harm clearly and significantly outweighs the planning gain.

26. In short, paragraph 14 is about process, not outcome. There is no circularity in the foregoing analysis, because if the adverse impacts do significantly and demonstrably outweigh the benefits (when assessed against the rest of the NPPF), then the proposal will not amount to sustainable development, and will be refused. Indeed, Mr Hunter's argument seems to me to place an almost insurmountable hurdle against development being sustainable, because he fails to explain how the concept should be applied outside the scope of paragraph 14. It is a freewheeling exercise of discretion without parameters. Moreover, I agree with Mr Honey that it is difficult to understand on what basis paragraph 14 would have any practical utility if it only applied to cases where the development had already been found to be sustainable, and to my mind Mr Hunter's "enhanced presumption" is a completely incoherent and unworkable concept, also one being nowhere to be found in the policy wording.

27. Further, the possibility of a prior or extrinsic assessment of sustainable development is quite inconsistent with the first bullet-point in paragraph 14. No explanation was provided by Mr Hunter as to how and why the two bullet points might work differently.

28. Mr Honey made the good point that the meaning of sustainable development is not rigidly to be determined solely by reference to the indented methodology. As I have pointed out, it is always subject to material considerations indicating otherwise, thereby introducing an element of flexibility both ways. If, taking just one example, the impact or harm is substantial but not such as significantly and demonstrably to outweigh the benefits, then the decision-taker has sufficient flexibility to refuse permission, provided of course that the other material considerations, if any, are carefully defined and assessed.

29. This point disposes of Mr Hunter's argument based on later provisions of the NPPF, but his argument is also defeated by the application of the second indent in paragraph 14. If, for example, the proposal falls within one of the specific policies restricting development, then the presumption either is very readily rebutted, or its effect is heavily diluted to reflect the precise provisions of the restrictive policy in question.

30. Although I would agree that paragraph 6 of the NPPF does not mention paragraph 14, that latter paragraph is highlighted in the text and, furthermore, must refer back to paragraphs 6-8 on account of the clause, "when assessed against the policies in this Framework taken as a whole". So, paragraph 14 is the driver to correct decision-taking, not paragraphs 6-8."

The Judge refused an application by Cheshire East BC to appeal to the Court of Appeal.

There is other recent caselaw as well, for example which supports this approach:

Wychavon District Council v Secretary of State for Communities & Local Government & Anr [2016] EWHC 592 (Admin)

Coulson J:

4. THE CORRECT APPROACH

20. In my view, in the sort of circumstances that arose in the present case, the correct approach required the decision-maker to ask a number of questions in sequence.

21. First: is there is a development plan? It is only if there is a development plan that s.38(6) of the 2004 Act comes into play.

22. Second: if there is a development plan, is it absent or silent or are relevant policies out-of-date? That question needs to be asked in order to see whether the approach set out in the second bullet point of paragraph 14 comes into play.

23. Third: if there is a development plan which is not silent and/or relevant policies are not out-of-date, then the decision-maker has to decide whether or not the proposed development is in accordance with the development plan. If it is in accordance with the plan, the proposed development must be approved without delay.

24. Fourth: if the proposed development is not in accordance with the development plan then the decision-maker has to undertake the balancing exercise referred to in s.38(6). In other words, the decision-

maker must start with the statutory priority of the development plan, and therefore a presumption against granting planning permission, and balance against that other material considerations that may indicate the contrary result. That is also in accordance with paragraphs 11 - 13 of the NPPF.

25. Fifth: if the development plan is silent or the relevant policies are out-of-date then the decision-maker must grant permission unless one or other of the two alternative limbs in the second bullet point in paragraph 14 of the NPPF applies.”

Brownfield or Greenfield

The case of Dartford Borough Council v Secretary of State for Communities and Local Government (CO/4129/2015) has had implications for owners of residential gardens.

Dartford was seeking to quash a decision by a planning inspector, who found that only residential gardens “in built up areas” are greenfield land, whereas others, in the countryside, are previously developed land (also known as “brownfield”).

The High Court (Charles George QC sitting as a Deputy High Court Judge) handed down judgment in Dartford Borough Council v Secretary of State for Communities & Local Government (CO/4129/2015).

The principle issue before the Court was whether the definition of “previously developed land” (commonly known as “brownfield land”) within the NPPF and Planning Policy for Traveller Sites (“PPTS”) excluded all private residential gardens, or just those “in built up areas”.

The Deputy Judge held that the wording of the exemption to previously developed land, within the NPPF was significant. It reads “land in built-up areas such as: private residential gardens” (underlining added). As such, the Deputy Judge found that only residential gardens within the “built-up area” were exempt from the definition of previously developed land whereas, residential gardens outside “built up areas” were “brownfield”.

The Court held there to be a rational explanation for the distinction, namely that undeveloped land in the urban area was at more of a premium and thus required greater protection. Although such a consideration did not feature in the Written Ministerial Statement or Letter to Chief Planning Officers on the issue of “garden grabbing” which accompanied the amendments to national policy in 2010, those documents had to be read alongside the wording of the amendment to national policy (then contained within PPS3 “Housing”) which, in common with the NPPF, preceded the exclusion of residential gardens with the phrase “land in built-up areas”.

Ashley Bowes, of Cornerstone Barristers who acted for Dartford BC in the case commented:

“The decision is significant. It holds that residential garden land, outside “built-up areas” is “brownfield” land not, as had widely been understood, “greenfield” land. That finding has consequences in terms of its priority for development. Paragraph 111 NPPF provides that brownfield land is where development ought to be prioritised.

Therefore having regard to the application site, that is the subject of this application, the site is now to be considered as brownfield and one where the NPPF provides development should be prioritised.

The site lies in an AONB, however, in terms of design and physical appearance the proposal would meet all the relevant policy tests in terms of not harming the AONB. Whilst the proposal is not strictly in accordance with the precise wording of Local Plan Policy DMH4 in that it has not been used as agricultural or as a business, neither of those are to be found in the NPPF. The re-use of existing buildings where they are readily capable of conversion is seen as sustainable in the NPPF, and the site is a brownfield site .

In terms of residential domesticity the proposal uses the existing residential curtilage, and as such there is no change to the current situation. The proposal ensures existing amenity levels are maintained.

The proposal will be an additional windfall site helping to ensure the LPA meets its targets for deliverability of residential development.



RTPI

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