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EP ref: 18-406

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Dear Ms Howell

Re: PINS ref: 3223816 – Land to the south of Chatburn Old Road, Chatburn

We write on behalf of the Appellant in response to the LPA's supplementary statement and costs rebuttal, which we received on 25th July 2019.

Background

On 10th July, the Inspectorate confirmed that the procedure had changed and the appeal would now be dealt with by way of a hearing. In doing so, the Inspectorate asked both parties to confirm their availability by 17th July 2019. The LPA also had the opportunity to respond to the Appellant's costs application at the same time.

On 18th July, the LPA then wrote to the Inspectorate to ask for the opportunity to submit a supplementary statement to:

"clarify its position and interpretation of Policies DMG2 and DMH3 following the Henthorn Road appeal decision (PINs ref T2350/W/19/3221189) that was issued on the 19 June 2019, the day following the submission of the Council's written representations for this appeal case. This would provide additional clarification for the Appeal Inspector and may further narrow the issues on which the Council and



the appellant disagree so as to support the LPAs request for this appeal to be dealt with by written representations.”(our emphasis)

The Inspectorate agreed and set a deadline for the LPA's supplementary statement of 25th July 2019. On 25th July, the LPA submitted its supplementary statement and a costs rebuttal. The Appellant has now been given the opportunity to respond to both and does so as follows.

Policy DMG2: Strategic Considerations

For ease of reference, the second part of policy DMG2 states:

“Development proposals in the principal settlements of Clitheroe, Longridge and Whalley and the Tier 1 villages should consolidate, expand or round-off development so that it is closely related to the main built up areas, ensuring this is appropriate to the scale of, and in keeping with, the existing settlement”

From the outset, the LPA's supplementary statement explains that the LPA considers there is a requirement for it to “clarify” its position regarding policy DMG2. However, the LPA has now in fact completely changed its case regarding policy DMG2. Its statement of case (received 26th June 2019) clearly explains that the LPA's view at that time was that development which “expands”, “rounds off” or “consolidates” could only apply “inside” the settlement boundary. The supplementary statement now confirms this is no longer the LPA's case.

The LPA's supplementary statement now states that the LPA agrees the appeal proposals would comply with the definition of “expansion” as set out in the Glossary on page 138 of the Core Strategy, which is defined as:

“limited growth of a settlement generally it should be development which is in scale and keeping with the existing urban area”

The LPA's supplementary statement also confirms that development which meets the definition of “expansion” (and “consolidation”) is not confined to being within the settlement boundaries “in certain circumstances”. It cites the lack of a five year housing land supply being one example or “other material considerations”. However, policy DMG2 does not state that the definitions of expansion, consolidation and rounding-off only apply when there is an absence of a five year housing land supply or there are other material considerations. Indeed, in allowing the Henthorn Road appeal, Inspector Normington concluded there was a five year housing land supply but granted outline planning permission for up to 110 dwellings on the edge of Clitheroe because the proposal accords with policy DMG2¹.

However, the LPA now advances a new case that the appeal proposal accords with the definition of expansion but is still contrary to policy DMG2 because in the LPA's view, it is not “*closely related to the main built up areas of Chatburn*”. We disagree for the following reasons.

Firstly, the “main built up areas” of Chatburn are not defined. However, the main built up areas include those within the settlement boundary. As shown on the plan appended to **EPR1** of our statement in response to the LPA's statement of case, the appeal site adjoins the settlement boundary and one of the main built up areas of Chatburn. Indeed, part of the appeal site is located within the settlement boundary.

Secondly, the appeal site is adjacent to the built up area because it is adjacent to the residential dwellings that front on to Crow Trees Brow to the south east of the site, to the residential dwellings that front on to Chatburn Old Road to the north east of the site and to the 10 new residential dwellings located to the immediate north of the site.

Thirdly, policy DMG2 does not require development that meets the definition of “expansion” to be adjacent to the main built up areas of Chatburn; it simply requires the proposal to be “closely related”

¹ Please refer to the appeal decision appended to this letter

to them. Whilst the term "closely related" is not defined in the Core Strategy, the appeal site is clearly closely related to the main built up areas of Chatburn. As well as being adjacent to existing residential development as described above, it is connected to the village centre by Chatburn Old Road. Indeed the LPA agrees that the site is in a sustainable location in relation to its proximity to the services and amenities located in the centre of the village². The services and amenities are within walking distance of the appeal site.

In summary, the LPA now agrees that the proposed development meets the definition of "expansion". The Appellant's case is that the proposed development is in accordance with policy DMG2, which allows for the expansion of Tier 1 Villages such as Chatburn where it is closely related to the main built up areas and of an appropriate scale and in keeping with the existing settlement.

Furthermore, as the Inspector is aware, the Appellant's case is that as well as meeting the definition of "expansion", the appeal proposal accords with the definition of "consolidation", which is defined as follows on page 136 of the Core Strategy:

"Locating new developments so that it adjoins the main built up area of a settlement and where appropriate both the main urban area and an area of sporadic or isolated development".

Policy DMH3: Dwellings in the Open Countryside & the AONB

The LPA's supplementary statement also refers to policy DMH3 which limits residential development in the open countryside to that which meets an identified local need. We have already addressed this policy in our statement of case and in our response to the LPA's statement. However, in summary, policies DMG2 and DMH3 should not be applied in isolation. As the LPA now accepts, policy DMG2 allows for the expansion and consolidation of development beyond the existing settlement boundaries and therefore in the open countryside, it follows that policy DMH3 should not then restrict the same development allowed under policy DMG2. The LPA itself explained to the HED DPD Inspector that both policies would need to be applied flexibly. That was also the LPA's case at the Henthorn Road public inquiry as that site is also located within the open countryside but the appeal was allowed because it complied with policy DMG2.

LPA's response to the Appellant's application for costs

The LPA's response to the Appellant's application for costs relies on the fact that following the publication of the Henthorn Road appeal decision on 19th June 2019 the LPA has had to take necessary steps to "clarify" its position in relation to policy DMG2. However, this should not have been required. The LPA had already clarified its position regarding policy DMG2 long before the Henthorn Road appeal decision was issued yet it still sought to change its position in its statement of case. We set out the following timetable of relevant events for ease of reference.

- **22nd and 23rd January 2019** – The HED DPD examination hearing sessions took place. The LPA explained to the Inspector that policies DMG2 and DMH3 allowed residential development beyond the existing settlement boundaries and therefore additional residential allocations in the HED DPD are not required³.
- **30th January 2019** – the committee report for the resubmitted PiP application was published and confirmed that officers considered the appeal proposal would be in accordance with policy DMG2 because it accords with the definition of "expansion"⁴.

² Please refer to paragraph 5.2.4 of the officer's report for the appeal application appended at **EP2** of our statement of case and paragraph 5.4.5 of the officer's report for the resubmitted application appended at **EP1** of our statement of case

³ Please refer to paragraphs 5.4.6 to 5.4.8 of the officer's report for the resubmitted application appended at **EP1** of our statement of case

⁴ Please refer to paragraph 5.4.10 of the officer's report for the resubmitted application appended at **EP1** of our statement of case

- **7th February 2019** – the resubmitted PiP application was presented to the Planning Committee but members were minded to refuse permission contrary to the recommendation by officers.
- **1st March 2019** – the appeal was submitted before the deadline to do so. A draft Statement of Common Ground was submitted with the LPA which sought agreement in terms of the definition of “expansion”. The LPA has still not responded to this.
- **14th March 2019** – the resubmitted PiP application was refused at Planning Committee contrary to the recommendation by officers.
- **10th April 2019** – evidence was exchanged for the Henthorn Road appeal. The LPA did not address the alleged breach of that proposal in relation to policy DMG2.
- **8th to 10th May 2019** – the public inquiry for the Henthorn Road appeal took place. During the inquiry, the LPA accepted that policy DMG2 is permissive of development that adjoins the settlement boundary⁵.
- **18th June 2019** – the LPA submitted its statement of case, which then alleged that “expansion” is not allowed beyond settlement boundaries.
- **19th June 2019** – the Henthorn Road appeal decision was published⁶
- **26th June 2019** – the Appellant received the LPA’s statement of case.
- **9th July 2019** – the Appellant responded to the LPA’s statement of case.
- **25th July 2019** – the LPA submitted its supplementary statement, which now accepts that the proposal accords with the definition of “expansion” and that development which accords with the definition is allowed beyond settlement boundaries. However, the LPA now claims that the appeal should be refused because it is not “closely related” to the “main built up areas” of Chatburn.

We maintain that the LPA has behaved unreasonably. It refused to approve the resubmitted PiP application by referring to the same policies that it had previously informed the HED DPD Inspector allowed development beyond settlement boundaries in settlements such as Chatburn. As a result, the appeal was made. Furthermore, at the Henthorn Road public inquiry, the LPA conceded that policies DMG2 and DMH3 were permissive of development beyond settlement boundaries. Despite this, the LPA then submitted a statement of case over 5 weeks after the Henthorn Road inquiry took place which claimed that “expansion” was not allowed beyond the settlement boundaries. The Appellant then had to incur additional costs to rebut the LPA’s statement of case only for the LPA to now concede that the proposed development complies with the definition of “expansion” which is allowed beyond the settlement boundaries.

The LPA now seeks to suggest that there are two “fundamental differences” between the appeal case and the Henthorn Road appeal. These are addressed below.

Firstly, the LPA refers to the “comparative locations” of Clitheroe and Chatburn. This is surprising because policy DMG2 allows for expansion and consolidation adjacent to both the principal settlements (e.g. Clitheroe) and Tier 1 villages such as Chatburn.

Secondly, the LPA now claims that the appeal proposals are not closely located to the main built up areas of Chatburn. Within this context, we invite the Inspector to compare the location of the appeal

⁵ Please refer to paragraph 17 of the enclosed appeal decision and paragraphs 11 and 12 of the costs decision appended at **EPR3** of our response statement

⁶ Please see enclosed

site to the main built up areas of Chatburn⁷ with the location of the Henthorn Road appeal site in relation to the main built up areas of Clitheroe⁸.

There are no fundamental differences between the appeal case and the Henthorn Road appeal in terms of the application of policy DMG2.

The Appeal Procedure

For the reasons set out in our letter dated 9th July 2019, we maintain that a hearing is necessary. Following the Inspectorate's e-mail dated 22nd July 2019, we understand that the appeal will be dealt with by way of a hearing so that issues in relation to housing land supply can be explored. Within this context, we note that neither the LPA's statement of case nor its supplementary statement have addressed the detailed points we made in our appeal statement about there being a shortfall of 13 dwellings against Chatburn's minimum housing requirement set out in the Core Strategy.

We also consider that the Inspector may wish to ask questions in terms of how the LPA applies policies DMG2 and DMH3.

Our understanding is that the hearing will take place the week commencing 7th October 2019. We look forward to receiving confirmation of this.

In the meantime, should you or the Inspector require any further information, please do not hesitate to contact me.

Yours sincerely
Emery Planning

Ben Pycroft

Ben Pycroft BA (Hons), DIP TP, MRTPI
Associate Director

Enc Henthorn Road appeal decision

Cc Client

⁷ Please refer to appendix **EPR1** of our response statement to the LPA's statement of case dated 9th July 2019

⁸ Please refer to appendix **EPR4** of our response statement to the LPA's statement of case dated 9th July 2019