



# Land off Kingsmill Avenue, Whalley, Clitheroe, BB7 9PG.

Stage 1 Permission in Principle: Application for up to 4 no. self-build dwellings

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## PLANNING STATEMENT

February 2019



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## REPORT CONTROL

Document	Planning Statement
Project	Land off Kingsmill Avenue
Client	John Townson
Job Number	19-641
File storage	Z:\Client files\19-639 to 19-900\19-641 Whalley Corn Mills, Whalley

### Document Checking

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### Revision Status

Issue	Date	Status	Checked for issue
1	18/03/2019	Draft	JD
2	26/03/2019	Final	JH
3	11/04/2019	Final	DH
4			

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## Appendices

Appendix A – Counsel Advice – March 2018

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## **/1 INTRODUCTION**

- 1.1. PWA Planning is retained by Mr John Townson ('the Applicant') to progress a Stage 1 Permission in Principle (PIP) application for the development of up to 4 no. self-build dwellings ('proposed development') on land off Kingsmill Avenue, Whalley, Clitheroe, BB7 9PG ('application site'). All other matters are reserved for future consideration.
- 1.2. The PIP application is made to Ribble Valley Borough Council (the Local Planning Authority) and relates to the red edge application site boundary defined by the submitted Location Plan.
- 1.3. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. This Planning Statement will look to demonstrate that the proposals accord with the provisions of the relevant policies of the Development Plan, and moreover that there are other significant material considerations which indicate that permission in principle ought to be granted.
- 1.4. This Planning Statement, alongside a review of the site history and relevant policies, provides a description of the proposed development together with an appraisal of the planning merits of the principles of development.
- 1.5. The remainder of this report is structured as follows: -
  - o Section 2 – Site Description;
  - o Section 3 – Planning History;
  - o Section 4 – Permission in Principle;
  - o Section 5 – Proposed Development;
  - o Section 6 – Planning Policy Context;
  - o Section 7 – Planning Policy Assessment;
  - o Section 8 – Conclusions.

## 12 SITE DESCRIPTION

- 2.1. The application site is located off Kingsmill Avenue, to the north of the village of Whalley and has a total site area of 0.15 hectares. The site comprises a portion of land surrounding the existing roundabout on the end of Kingsmill Avenue, which serves as a turning point for the existing residential development.
- 2.2. The majority of the land is located to the north and south of the roundabout. This land is currently occupied by vacant grassland, a number of small garages/sheds and a small proportion of hardstanding.
- 2.3. The surrounding area of the site is characterised to the north, west and south by existing agricultural land. To the east of the site lies 16 existing residential dwellings, along Kingsmill Avenue, which links to Milton Road (B6246). The edge of the settlement of Whalley lies approximately 1.3km from the site.
- 2.4. A location plan showing the site within its wider setting is provided within the supporting documents and for an aerial image of the site within its closer setting please see Figure 1 below.



*Figure 1: Aerial image showing the location of the site (not to scale)*

- 2.5. The site lies within a sustainable location for residential development, with a variety of local services and facilities easily accessible in Whalley, such as bars/restaurants, a primary school, public houses, a health centre, supermarkets and places of worship. The nearest bus-stop is located approximately 150m to the east of the site on Milton Road. This service provides frequent and direct services to the settlements such as Longridge and Whalley. Rail links are available from Whalley train station within 1.5km of the site.
- 2.6. There are no ecological or landscape designations associated with the site. The site is located wholly within Flood Zone 1, where the risk of flooding is at its lowest and there are also no active Tree Preservation Orders associated with the site. A public right of way runs through the centre of the site. With regards to heritage designations, there are no heritage assets within the site or in the site's locality.



### **/3 PLANNING HISTORY**

3.1. The site and its immediate surroundings have been subject to a planning history search on Ribble Valley Council's planning register. Two past planning applications have been identified on the site as noted below:

- **3/2013/1023** *Four semi-detached, three-bedroomed dwellings with associated garden areas and parking (two open market dwellings and two affordable dwellings). Resubmission of application 3/2012/0702. This application was subject to a non-determination appeal (Appeal ref: APP/T2350/W/18/3210850). The appeal was dismissed 22<sup>nd</sup> June 2015.*
- **3/2012/0702** *Residential development of twelve new dwellings, comprising of 1 x detached, 6 x semi-detached and 5 x terraced (1 x market unit and 4 x affordable units), 3 and 4 bedroom with associated garden areas and parking. Refused 11<sup>th</sup> December 2012.*

3.2. Whilst other applications exist locally, there are no other applications evident from the planning register which are deemed relevant to the current proposals to which this planning application relates.

## 14 PERMISSION IN PRINCIPLE

4.1. The PIP consent route is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for proposed development from the technical detail of the development.

4.2. The relevant legislation and guidance on this route is taken from the following:

- Town and Country Planning (Permission in Principle) (Amendment) Order 2017; and
- National Planning Policy Guidance – Permission in Principle

4.3. The former came into force on the 1<sup>st</sup> June 2018, whilst the latter was most recently updated in the same month. As such it is considered, whilst a relatively recent application route, up to date guidance is readily available with regard to such proposals. This section of the statement seeks to summarise the relevant provisions of the above to enable the authority to better understand the proposals.

### Process

4.4. The permission in principle consent route has 2 stages:

- Stage 1: establishes whether a site is suitable in-principle;
- Stage 2: ('technical details consent') is when the detailed development proposals are assessed. This is much like a reserved matters application.

4.5. The process for Stage 1 varies depending on the scale of the proposed development and whether it relates to Greenfield land or land classed as previously developed. For minor forms of development i.e. less than ten units, an application must be submitted to the local planning authority; this applies whether the site is greenfield or previously developed.



4.6. For major development on previously developed land, the site must be entered to the local planning authority's brownfield land register; which in turn grants a PIP. It is not possible to gain a PIP consent for major development on a Greenfield site.

#### Requirements for a Valid Permission

4.7. The requirements for a valid PIP are laid out in Article 5D of the Town and Country Planning (Permission in Principle) (Amendment) Order 2017.

4.8. In order to meet the requirements of a valid PIP application the following information must be provided:

- Completed application form
- A plan to which identifies the land to which the application relates
- The correct application fee (discussed below)

4.9. The scope of permission in principle is limited to location, land use and amount of development. Issues relevant to these 'in principle' matters should be considered at the permission in principle stage. Other matters should be dealt with at the technical details consent stage of the application. Local authorities cannot list the information they require for applications for PIP in the same way they can for applications for planning permission.

4.10. Once a valid application for PIP has been received, the local planning authority should make a decision on the proposal as quickly as possible, and in any event within the statutory time limit of 5 weeks unless a longer period has been agreed in writing with the applicant.

#### Planning Considerations

- 4.11. Proposals are determined in accordance with the Development Plan and NPPF. Although the scope of the local planning authority assessment of the first stage is limited to location, land use and amount of development.
- 4.12. The NPPG details that statutory requirements like those related to both listed buildings or protected species are only applicable to Stage 2 Technical Consent applications (Paragraph: 003 Reference ID: 58-003-20190615). As stated above, local authorities cannot list the information they require for applications for PIP in the same way they can for applications for planning permission. Equally it is not necessary to provide a suite of technical reports at Stage 1, like you would for a full or outline application.

#### Implementation Period

- 4.13. Where Stage 1 permission is granted via an application, an applicant would have a further 3 years to apply for the Stage 2 Technical Details. The default duration of the permission is 3 years. The local authority cannot add further conditions to the grant of permission under Stage 1.
- 4.14. Where PIP is granted through allocation on a brownfield land register, the default duration of that permission is 5 years.

#### Determination Time Limits

- 4.15. The statutory time limit for a local authority to determine a Stage 1 application is 5 weeks. The statutory time limits for Stage 2 technical details is also 5 weeks (or 10 weeks for major development on previously developed land). The consultation process for applications is like that of a normal planning application.

#### Summary

4.16. The PIP application is a relatively new route to planning permission and as such examples of such applications are not plentiful. However, from the examples reviewed there does seem to be some confusions as to what matters can be considered.

4.17. In this context it is clear that whilst such applications are to be determined in accordance with the Development Plan, policies related to technical matters do not represent valid considerations for the purposes of a Stage 1 application. In the context of this application it is therefore prudent to note that policies relating to the following matters which could preclude the granting of a standard planning application should not be considered as part of this submission:

- Ecology;
- Transport;
- Heritage.

4.18. These matters will however be considered as part of any future Stage 2 application.

## 15 PROPOSED DEVELOPMENT

5.1. It is proposed to develop land associated with Land off Kingsmill Avenue, Whalley to provide up to 4 no. self-build dwellings. As noted, the application is submitted as a Stage 1 PIP application and the description of development as stated within the application form is as follows:

*"Stage 1 Permission in Principle planning application for the erection of 4 no. self-build dwellings"*

5.2. As the application is submitted as a PIP application, the proposed development is not supported by a proposed site plan or an associated elevation/floorplan drawing. However, the application boundary is clearly of a size which would permit for the construction of 4 dwellings which has the potential to respect the vernacular and enhance the local sense of character. Therefore, any future Stage 2 technical application will seek to ensure the design of the properties will fit well in the rural setting and nearby properties, as will the choice of materials. In addition, any final scheme will also seek to ensure that the amenities of existing and future residents will not be compromised by the proposals.

5.3. Access is likely to be provided via a new access road off Kingsmill Avenue.

## 16 PLANNING POLICY CONTEXT

6.1. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that:

*"Where in making any determination under the Planning Acts, regard is to be had to the Development Plan, the determination shall be made in accordance with the plan unless material considerations indicate otherwise."*

### Development Plan

6.2. In this instance, the statutory Development Plan for the application site comprises of the Ribble Valley Borough Core Strategy 2008-2028 (Adopted 2014). Key policy documents that comprise 'material considerations' include to the National Planning Policy Framework (NPPF), National Planning Policy Guidance (NPPG), Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) and any local supplementary planning guidance documents considered relevant to the proposal.

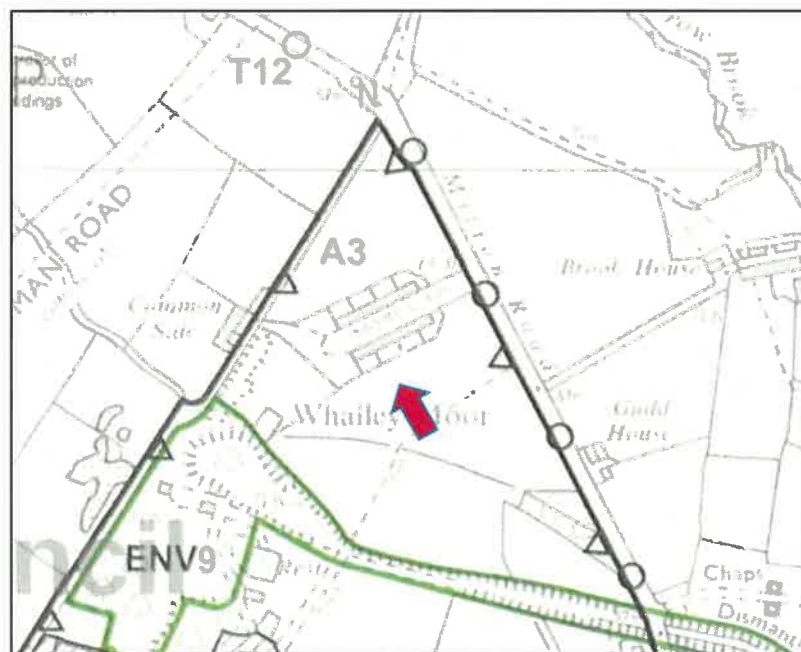


Figure 2: Extract from Adopted Policies Map

- 6.3. According to Ribble Valley Borough Council's policy map, the site is allocated as within Policy A3 Calderstones, however this policy is no longer applicable in accordance with the Core Strategy. Though as this remains the adopted policies map an extract is included above in Figure 2. Within the emerging Housing and Economic Development DPD Proposals Map the site is designated as Open Countryside.

### **Ribble Valley Borough Council Core Strategy 2008 – 2028**

- 6.4. The Ribble Valley Borough Council Core Strategy 2008 – 2028 was adopted in December 2014 and therefore can broadly be regarded as containing relevant and up to date policies in the consideration of this application. It sets out priorities for future planning and development of the borough and is used when determining planning applications. The following policies are considered relevant for a PIP application:

- Key Statement DS1: Development Strategy;
- Key Statement DS2: Sustainable Development;
- Key Statement EN2: Landscape;
- Key Statement H1: Housing Provision;
- Key Statement H2: Housing Balance;
- Key Statement DMG1: General Considerations;
- Key Statement DMG2: Strategic Considerations;
- Key Statement DMH3: Dwellings in the Open Countryside & The AONB.

- 6.5. **Key Statement DS1:** Development Strategy, seeks to outline the locations in which growth will be focused. Whilst the Statement refers to strategic sites already allocated for development, it also infers that in addition to the allocated sites the majority of housing development will be located within the Borough's principal settlements, one of which is Whalley.



- 6.6 **Key Statement DS2:** Sustainable Development looks to mirror Paragraph 11 of the NPPF which details the sustainable development principle that seeks to guide both authorities and developers. The Statement details that:

*"When considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the Framework. The Council will always work proactively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.*

*Planning applications that accord with the policies in this Local Plan (and where relevant, policies in the neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise."*

- 6.6. **Key Statement EN2:** Landscape, mainly focuses on protection of the Forest of Bowland AONB through ensuring development contributes to the conservation of the area by enhancing and protecting the landscape and character. The statement does offer more general coverage by linking the policy to the protection of all landscapes outlining that the Council expects all development to be in-keeping with the character of the local landscape.

- 6.7. In the Council's justification for the policy they state that:

*"The Council will also seek to ensure that the open countryside is protected from inappropriate development. Developers should adopt a non-standardised approach to design which recognises and enhances local distinctiveness, landscape character, the quality of the built fabric, historic patterns and landscape tranquillity."*

- 6.8. **Key Statement H1:** focuses on housing provision; it states that the requirement for new homes will be delivered in line with the Council's Strategic Housing Land Availability

Assessment. Further to this it states the Council will adopt a 'plan-monitor-manage' approach to ensure a rolling five-year land supply is achieved and maintained.

6.9. **Key Statement H2:** Housing Balance, follows on from the above policy to outline that planning permission will be granted when the proposal is in line with local demand as evidenced in the Strategic Housing Market Assessment (SHMA).

6.8. **Policy DMG1:** General Considerations assists in ensuring that development proposals are in line with numerous broad criteria by providing a series of overarching considerations regarding the quality of developments. The policy categorises the criteria under 6 headings which are as follows:

- Design;
- Access;
- Amenity;
- Environment;
- Infrastructure;
- Other.

6.9. **Policy DMG2:** outlines further strategic considerations. The policy assists in the interpretation of the Development Strategy and underpins the settlement hierarchy for the purposes of delivering sustainable development. Part 1 The policy states that:

*"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."*

6.10. **Policy DMH3:** Dwellings in the open countryside outlines that residential development within the open countryside will be limited to the following:

*"Development essential for the purposes of agriculture or residential development which meets an identified local need. In assessing any proposal for an agricultural, forestry or other essential workers' dwellings a functional and financial test will be applied"*

## **Material Considerations**

### ***National Planning Policy Framework 2019***

- 6.13. The NPPF sets out the Government's planning policies for England and how these should be applied. The golden thread running throughout the Framework is the Government's presumption in favour of sustainable development (Paragraph 11) whereby developments which correctly balance the requirements of economic, social and environmental issues should be granted planning permission unless there are strong reasons that permission should not be granted.
- 6.14. Sustainable development is broadly defined in Paragraph 8 of the Framework as having three overarching objectives; economic, social and environmental.
- 6.15. Paragraph 38 directly refers to PIP applications stating:

*"Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area."*

- 6.16. Section 5 details the need to continually deliver a sufficient supply of homes. The section details guidance on affordable homes, small and medium development sites and rural housing amongst other matters. This section of the NPPF represents the most up to date guidance on matters related to housing supply calculations.

6.17. Paragraph 63 makes clear that affordable housing will not be sought for minor developments, as is the case in this instance.

6.18. Paragraph 68 details that 10% of new homes should come from sites which are no larger than one hectare in size, whilst Paragraph 84 within the following section (Building a strong, competitive economy) states:

*"Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport."*

6.19. Section 6 of the Framework is concerned with building a strong, competitive economy, with specific guidance in relation to supporting a prosperous rural economy.

***Town and Country Planning (Permission in Principle) (Amendment) Order 2017***

6.20. The relevant provisions of the Order are summarised in section 4 of this statement.

***National Planning Policy Guidance***

6.21. The relevant provisions of the NPPG are summarised in section 4 of this statement.

***Self-build and Custom Housebuilding Act 2015***

6.22. This application seeks permission for up to 4 self-build dwellings. In this respect, there is a duty for Local Planning Authorities to plan for self-build developments as a recognised local housing need which in turn should feed into the Council's Strategic Housing Market Assessment.

6.23. The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) requires each relevant authority to keep a register of individuals and associations of individuals who are seeking to acquire serviced plots of land in the authority's area for their own self-build and custom housebuilding.

- 6.24. Local planning authorities should use this demand data from the registers in their area, supported as necessary by additional data from secondary sources when preparing their Strategic Housing Market Assessment to understand and consider future need for this type of housing in their area (Planning Practice Guidance, Paragraph: 011 Reference ID: 57-011-20160401).
- 6.25. Relevant authorities must grant permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The level of demand is established by reference to the number of entries added to an authority's register during a base period (Planning Practice Guidance, Paragraph: 023 Reference ID: 57-023-201760728).
- 6.26. Relevant authorities should consider how they can best support self-build and custom housebuilding in their area. This could include (as set out in Planning Practice Guidance, Paragraph: 025 Reference ID: 57-025-201760728):
- Developing policies in their Local Plan for self-build and custom housebuilding;
  - Using their own land if available and suitable for self-build and custom housebuilding and marketing it to those on the register;
  - Engaging with landowners who own sites that are suitable for housing and encouraging them to consider self-build and custom housebuilding and facilitating access to those on the register where the landowner is interested; and
  - Working with custom build developers to maximise opportunities for self-build and custom housebuilding.
- 6.27. Further to guidance within the Planning Practice Guidance, the new NPPF provides further clear guidance that LPA's should provide for self-build demand, as set out within Paragraph 61 of the NPPF. It is clear that the Council's Development Plan is absent of self-build policies, and as set out below, Paragraph 11 of the NPPF is engaged.

## 17 PLANNING POLICY ASSESSMENT

### Principle of Development

- 7.1. The site is allocated within **Policy A3** Calderstones area policy, within Ribble Valley Borough Council's policy map. However, following the adoption of the Core Strategy these policies are no longer applicable. Notwithstanding this, in the context of assessing the principle of the proposals at hand, it is argued that the previous promotion of this land by the Council for development indicates the location is considered, in the context of technical considerations, a logical location for development.
- 7.2. With regarding to the current Development Plan the application site is located within the designated Open Countryside and this ultimately proved to be determinative in the consideration of the previous application (app ref: 3/2013/1023) noted in section 3 of this statement. This application was never formally determined by the Council given an appeal against non-determination was submitted, however in a report to the Planning Committee it was stated that had it been determined then the reasons for refusal would have been as follows:
- 1. The proposed development is contrary to Key Statement DS1 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy submission version as proposed to be modified as it would involve the construction of dwellings in an open countryside location that do not meet an identified local need. As such, the proposal would cause harm to the Development Strategy for the borough as set out in the emerging Core Strategy leading to unsustainable development.*
  - 2. Permission for the proposed development would create a harmful precedent for the acceptance of other similar proposals without sufficient justification which would have an adverse impact on the implementation of the emerging planning policies of the Council contrary to the interests of the proper planning of the area in accordance with the core principles and policies of the NPPF.*



- 7.3. Since the previous application the **Self-build and Custom Housebuilding Act (2015)** (as amended by the Housing and Planning Act 2016) has been introduced. This, when read in conjunction with the NPPF, has clear and significant ramifications on the weight afforded to the Development Plan polices. This is discussed further within this section, however, in summary it is asserted that not only should self-build housing be viewed as local need development but more importantly that the existing Development Plan is silent on matters of self-build and as such Paragraph 11 of the NPPF is engaged and the tilted balance in favour of development is now applicable.
- 7.4. In the context of the above it is therefore considered that the perceived conflicts with **DS1** and **DMH3** ought not prove determinative. The proposed development's location on a roundabout at the end of an existing residential street is considered a logical rounding off point for development in line with the requirements of Policy DS1. The policy states that development which serves to round-off of the built-up area will be considered in all locations where there are there are regeneration benefits or the proposals for local need housing. With further regard to this, it is considered that the existing roundabout does appear anomalous and not a feature generally associated with cul-de-sacs of a modest scale. Equally the land around the feature is overgrown and occupied by deteriorating garages, areas of hardstanding and vehicles. This proposal offers the opportunity to enhance and regenerate this area, whilst also delivering development for which there is a need for, and the Council are obligated to provide.
- 7.5. The parameters of the site are unique in so such much as single streets of suburban style semi-detached properties seldom exist within the open countryside outside of formal settlement boundaries. This is largely due to the fact the housing was originally built to provide homes for those working at the former Calderstones Hospital. Consequently, it is disputed that the development would set a harmful precedent, given that comparable examples are not likely to be prominent with the Borough.
- 7.6. Irrespective of the site's open countryside location, as discussed in the earlier sections of this statement, it is maintained that the site represents a sustainable location for

residential development due to its location to the north of Whalley. Regular bus routes are offered from Kingsmill Avenue bus stop, approximately 150m of the site, which offers quick and easy access to Whalley. Services on offer in the settlement include bars/restaurants, primary and secondary schools, public houses, banks, health centres, supermarkets and places of worship. Rail services are also offered from Whalley to larger settlements in the surrounding area. Whilst it is acknowledged that the appeal associated with the previous submission (appeal ref: APP/T2350/A/14/222/3462), took a different view on the site's sustainability it should be noted that the appeal was assessed under a different framework, which did not promote self/custom build development and indeed predates the Self-build and Custom Housebuilding Act.

- 7.7. **Policy DMH3** Dwellings in the Open Countryside and AONB states planning permission will only be granted for development needed for the purposes of agriculture or residential development which meets an identified local need. In assessing any proposal for essential workers dwellings, a functional and financial test will be applied.
- 7.8. Whilst the council may dispute that scheme represents conventional local need housing, clearly the development will deliver a self-build development catering for a housing need within the Borough, a requirement set out in Government legislation within the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016). In this respect, **Policy H2** recognises the needs for a range of types of housing, in which self-build would ordinarily form part of, however self-build has not been considered within the Council's Development Plan.
- 7.9. Whilst there appears to be some limited conflict with Policy DMH3 of the Core Strategy, it is clear that the Core Strategy seeks to deliver housing in the Whalley the closest principle settlement in this instance, and also seeks to provide for type of housing not currently catered for by the Council's policies.

#### Self-build development

- 7.10. Self-build is a type of housing for which the local planning authority is statutorily obliged to make provision for, as required by the Self-build and Custom Housebuilding

Act (2015) (as amended by the Housing and Planning Act 2016). The two duties in the 2015 Act which are concerned with increasing the availability of land to meet the demand for self-build/custom-build housing are the 'duty to grant planning permission etc.' and the 'duty as regards registers'. The local planning authority must give suitable development permission for enough suitable serviced plots to meet the demand for self-build/custom-build in the area. The level of demand is established by reference to the number of entries added to the authority's register during the base period<sup>1</sup>. The current base period began on 31<sup>st</sup> October 2018 and runs until 30<sup>th</sup> October 2019.

- 7.11. At the end of each base period, relevant authorities have 3 years in which to grant permission for an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that base period. However, at the time of this submission, there does not appear to be any self-build schemes granted by the local planning authority. The local planning authority is therefore falling behind its duty with regards to self-build and custom build housing. The proposed development would make a valuable contribution to this target, in which the Council have a duty to meet by 30<sup>th</sup> October 2019.
- 7.12. In terms of the weight to be afforded to the need for local planning authorities to grant permission for self-build and custom build housing, PWA Planning has taken counsel advice. The view of Anthony Gill (Kings Chambers) in this respect is that the weight to be afforded is significant, verging on overwhelming.
- 7.13. In reaching this view, Mr. Gill explains that a local planning authority has a statutory duty which the 2015 Act imposes into planning functions. In his opinion, this is a higher duty than for other forms of housing. The requirement to provide for other forms of housing is a prescription from national policy that local plans (which statute says should be followed) should provide for housing need of various kinds. Regarding self-build, he finds that the duty requires no such articulation – it is clear upon the face of the 2015

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<sup>1</sup> The first base period begins on the day on which the register (which meets the requirement of the 2015 Act) is established and ends on 30 October 2016. Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period. Subsequent base periods will therefore run from 31 October to 30 October each year.

Act that there is a freestanding duty beyond the duty under s.38(6) to follow the development plan. S.38(6) requires the development plan be followed unless material considerations indicate otherwise. One such material consideration would be an Act of Parliament imposing a specific planning duty to provide planning permission for this specialist form of housing. The weight for a material consideration is a matter for the decision maker, however Mr Gill's view is that these factors indicate that the weight of a duty imposed by a primary piece of legislation from Parliament much be significant, verging on overwhelming.

7.14. In this regard, the Council's Development Plan is absent and silent on self-build and custom build dwelling policies. In such instances, where there are no relevant development policies, Paragraph 11d of the NPPF is applicable, and planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.

7.15. It remains the view of PWA Planning that the above position was confirmed as part of an appeal within Ribble Valley Borough Council which related to 1no. self-build plot in Wiswell (app ref: APP/T2350/W/18/3210850). Within the appeal decision the inspector states as follows:

*"However, subsequent changes to national policy and guidance together with The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) 'the Act' do in my view, regardless of the Council's position in respect of housing supply, mean that the development plan policies cited in respect of the appeal scheme are out-of-date as they are based on delivering housing across the Borough in certain locations and where they meet at least one of several considerations.*

*In these circumstances, for decision-taking, Framework paragraph 11 d) states that: where there are no relevant development plan policies, or the policies which are most important for determining the application 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. Local Plan Key Statement DS2 takes a similar approach in setting out that the Council will grant permission in such circumstances unless material considerations indicate otherwise."*

- 7.16. The above excerpt is thought to be fairly clear in confirming that Paragraph 11 is engaged however it is understood that the Council do not consider as such. Further to the above appeal additional legal advice has been sought in relation to both the Inspector's conclusions and the Council's position on refusing to accept the Development Plan is silent on matters of self-build proposals. Whilst Mr. Gill acknowledges, that the manner in which the appeal decision is written is peculiar, he does confirm that *"the policies are out of date because they are silent on the duties imposed by the 2015 Act"*.

- 7.17. Further to the above, the advice includes the following relevant statements:

*"For self-build provision to have the weight of any other form of specialist housing it simply needed to be included in the NPPF as it is at para.61. The passing of the 2015 Act is something more significant.*

*I consider that the Council's plan would be considered, on appeal, to be out of date or silent and therefore the tilted balance in the proposal's favour would be engaged. The site specifics in general are in the proposal's favour on a sustainability basis.*

*I consider that a strong argument can be made for significantly greater weight to be given to the self-build issue. I consider Inspector McGlone has failed to consider the importance of self-build as evidenced by the duty under the 2015 Act."*

- 7.18. Evidently, it is clear that the Council's stance is, at best, questionable. Copies of both sets of Legal Opinion are included within Appendix A and B respectfully.

- 7.19. Considering the NPPF in the round, it is important to note that Paragraph 7 of the NPPF is clear that the purpose of the planning system is to contribute to the achievement of sustainable development. At Paragraph 8 it states that: *"Achieving sustainable development means that the planning system has three overarching objectives which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives)"*.
- 7.20. The first objective is with regards to the economy, where the planning system should help to build a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places at the right time to support growth, innovation and improved productivity. The second objective is a social objective where by the planning system should help to support strong, vibrant and healthy communities by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being. Finally, an environmental objective, whereby the planning system should contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, mitigating and adapting to climate change and minimising waste and pollution.
- 7.21. The proposals would see the development of a parcel of land which benefits from links to the settlement of Whalley. The scheme would deliver up to 4 no. self-build dwellings, of which the scale and appearance will be saved for a future Stage 2 technical details submission. Given the nature of the scheme as a minor development, of self-build in nature, it is considered more than likely that before and during construction, the development would contribute to the local economy directly through the employment of local companies to facilitate the build. This would include planners and architects/designers as part of the Stage 2 application process, local contractors involved in the physical build and the local supply chain through the provision of materials. Once occupied, new residents of the proposals would use and support the



growth of local services. It is considered that the proposed development would therefore assist in achieving the economic aims of sustainable development.

- 7.22. The application is not accompanied at this stage by the technical assessments which would allow for adherence to the environmental aims of sustainable development to be demonstrated. It should be again reiterated that such matters are not relevant to the application at hand.
- 7.23. The location of the site is considered sustainable in the context of the NPPF given it lies in close proximity to the settlement of Whalley. Suitable transport links to the larger settlements of Clitheroe and Blackburn are available, either by car or via the bus route close to the site.
- 7.24. The Framework also clarifies support for small to medium sized sites in Paragraph 68, detailing that 10% of a Council's housing requirement should be delivered on sites no larger than 1 hectare. PWA Planning are not aware of any statement made by the Council which suggests they are in a position to meet this requirement. As such it stands to reason that 10% of the annualised requirement, will need to come forward as windfall sites that the Council are yet to account for. Consequently, the application at hand can be considered to make a valuable contribution in aiding the Council to meet this requirement.
- 7.25. Given the above, it is considered that the proposed development would constitute sustainable development in the context of the NPPF and Policy DS2 of the Core Strategy. Furthermore, the above analysis would also suggest the proposals can be viewed positively in the context of the adopted Development Plan.

### **Design and Technical Considerations**

- 7.26. Further to the information detailed in Section 4 of this statement it is again important to reiterate that design and technical matters are not appropriate/relevant considerations to the application at hand. The nature of PIP applications infers that

development could be permissible at Stage 1 but subsequently fail to gain Stage 2 consent. Whilst this is correct, concerns regarding technical matters such as heritage or ecology should not form part of the determination of this application. It is only when the Council have the technical information provided as part of a Stage 2 application that an informed position on such matters can be reached.

### **The Planning Balance**

- 7.27. This section of the Planning Statement has succinctly detailed how the proposed development can be adjudged as acceptable in the context of the Development Plan and the Framework. With regard to development within the countryside the proposal can be considered positively in that the application site represents a development plot with close ties to the settlement of Whalley and the development on Kingsmill Avenue. Equally the proposal will support development within the wider area and represent an acceptable scale of development for the site.
- 7.28. Whilst a conflict with the Development Plan has been identified by virtue to the location of the site in the countryside, the proposal constitutes a scheme far preferable to sporadic development in more rural areas or smaller settlements. Furthermore, it would also contribute to meeting local needs, and helping the Council to discharge its statutory duties under the Self-build and Custom Housebuilding Act 2015, through the provision of self-build dwellings, further demonstrating compliance with the requirements set by the aforementioned policies.
- 7.29. Notwithstanding this, irrespective of the policy conflict, it's important that if the Council are not minded to support the application, that they are able to demonstrate where the harm is generated through the development. The proposal is wholly situated with the area which currently forms part of the street scene and is considered brownfield land, as such it is clearly a preferable development plot to similarly located greenfield locations. The development would round of the existing street in a logical manner and is not considered to induce any negative impacts which would outweigh the benefits.

7.30. This Stage 1 PIP application asks the Council to consider the submission in the context of location, land use and amount of development and in relation to all three variables, the proposals are considered acceptable in principle.

## **/8 CONCLUSION**

- 8.1. PWA Planning is retained by Mr John Townsend to progress a PIP application for up to 4 no. self-build dwellings at Land off Kingsmill Avenue, Whalley, Clitheroe, BB7 9PG.
- 8.2. The site is located in an area rural in nature, but with close ties to the settlement of Whalley. Although the site is currently designated as countryside where development is not generally focused, the site is considered to be located in a sustainable location and the council has a lack of planning policies relating to self-build. The proposed development is considered to constitute sustainable development and the limited harm as a result of the scheme is not considered to demonstrably outweigh the benefits of the scheme which include significant social and economic benefits.
- 8.3. At this first stage of PIP development, it is only the relevant location plan and application form that are submitted alongside this application. Other relevant technical considerations are not applicable at this stage, with this information to be submitted at the technical consideration stage of the application.
- 8.4. The works would result in a number of key benefits which are deemed relevant to the determination of the application, namely: -
- Delivery of up to 4no. much needed new homes, assisting the Authority in meeting its objectively assessed needs;
  - Support for existing businesses and suppliers in the area during construction, contributing to the local economy;
  - A significant contribution to local needs housing through the provision of self-build plots, including self-build;
  - A small yet valuable contribution to meeting housing need within Whalley;
- 8.5. For the reasons identified within this Statement, it is considered that PIP for the proposed development should be granted, and the application is commended to the authority.

## **Appendices**

**Appendix A – Counsel Advice – March 2018**

**Appendix B – Counsel Advice – February 2019**



## **Appendix A – Counsel Advice – March 2018**



**Re: land adjacent to John Smith Playing Field, Chaigley Road, Longridge**

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**ADVICE**

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1. I am asked to advise Mr Andrew Billington in respect of a planning application (ref:3/2017/1100) on land 'adjacent to John Smith Playing Field, Chaigley Road, Longridge, PR3 3TQ' ('the Site') for 'up to 15 self-build dwellings (30% affordable self build) including access'.
  
2. The application was submitted to Ribble Valley Borough Council ('the Council') on 20<sup>th</sup> November 2017 and is due to be determined by the Council's planning committee on Thursday 8<sup>th</sup> March 2018. I have been provided with the officer's report to committee ('the Report') which recommends refusal for three reasons. I am asked to advise on the first reason:
  - '1. The proposal is considered contrary to Key Statements DS1, DS2 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that the approval would lead to the creation of new residential dwellings in the defined open countryside, located outside of a defined settlement boundary, without sufficient justification which would cause harm to the development strategy for the borough leading to the creation of an unsustainable pattern of development

contrary to the core aims and objectives of the adopted Core Strategy and the NPPF presumption in favour of sustainable development’.

3. Those instructing me disagree with this characterisation. They contend that the application provides for a local need for self-build housing opportunities. Further the provision of such allocations and opportunities is a duty upon the Council since the coming into force of the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016).

4. Section 1 of the 2015 Act requires:

s.1(1) Each relevant authority must keep a register of—

(a) individuals, and

(b) associations of individuals,

who are seeking to acquire serviced plots of land in the authority's area for their own self-build and custom housebuilding.

5. Further section 2 provides:

2 (1) Each of the authorities mentioned in subsection (2) must have regard to each register under section 1 that relates to its area when carrying out the functions mentioned in subsection (4).

...

(4) The functions referred to in subsection (1) are functions relating to—

(a) planning;

6. The 2015 Act continues:

2A Duty to grant planning permission etc

(1) This section applies to an authority that is both a relevant authority and a local planning authority within the meaning of the Town and Country Planning Act 1990 (“the 1990 Act”).

(2) An authority to which this section applies must give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period.

(3) Regulations must specify the time allowed for compliance with the duty under subsection (2) in relation to any base period.

(4) The first base period, in relation to an authority, is the period—

(a) beginning with the day on which the register under section 1 kept by the authority is established, and

(b) ending with 30 October 2016.

Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period.

(5) In this section “development permission” means planning permission or permission in principle (within the meaning of the 1990 Act).

(6) For the purposes of this section—

(a) the demand for self-build and custom housebuilding arising in an authority's area in a base period is the demand as evidenced by the number of entries added during that period to the register under section 1 kept by the authority;

(b) an authority gives development permission if such permission is granted—

(i) by the authority,

(ii) by the Secretary of State or the Mayor of London on an application made to the authority, or

(iii) (in the case of permission in principle) by a development order, under section 59A(1)(a) of the 1990 Act, in relation to land allocated for development in a document made, maintained or adopted by the authority;

(c) development permission is “suitable” if it is permission in respect of development that could include self-build and custom housebuilding.

(7) A grant of development permission in relation to a particular plot of land may not be taken into account in relation to more than one base period in determining whether the duty in this section is discharged.

(8) No account is to be taken for the purposes of this section of development permission granted before the start of the first base period.

(9) Regulations under subsection (3)—

(a) may make different provision for different authorities or descriptions of authority;

(b) may make different provision for different proportions of the demand for self-build and custom housebuilding arising in a particular base period.

7. Section 2B provides that a council can apply for an exemption from its s.2A duty subject to conditions prescribed in Regulations. I do not understand the Council to have applied for such an exemption and in light of Regulation 11 of the Self-build and Custom Housebuilding Regulations 2016/950 I do not see that the Council could apply for such an exemption

8. The Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016/1027 provide at Regulation 2. Time for compliance with duty to grant planning permission:

The time allowed for an authority to which section 2A of the Act (duty to grant planning permission etc) applies to comply with the duty under subsection (2) of that section in relation to any base period is the period of 3 years beginning immediately after the end of that base period.

9. Therefore, the Council has a duty to grant sufficient planning permissions to account for the demand arising in each base period for self-build plots as recorded in its self-build register. The base periods are twelve months running from the 31<sup>st</sup> October each year. There have been two base period end dates since the 2015 Act came into force: 30<sup>th</sup> October 2016 the most recent base period ended on 30<sup>th</sup> October 2017. The Council has a duty to grant sufficient permissions within three years of those base period end dates for demand arising within those periods.

10. The duty exists under the Act and the metric of how the demand is measured is prescribed by the Act. No alternative measure of demand is provided.

11. The Council should maintain a self-build register and it is the measure of demand. It would seem to me that it is also the obvious, and statutorily prescribed, measure of the need for a specialised form of housing. Just as councils are required to understand their market and affordable housing need they are also required to understand the need for

other specialist housing such as that for the elderly or in this case those wishing to self-build.

12. The 2015 Act is unusual in clearly specifying how such demand is to be understood. Section 2(4) of the 2015 Act is important in confirming that the duty towards self-builders and the requirements of the Act relate to planning functions. Therefore, it seems clear to me that whilst the 2015 Act addresses the issue as 'demand' the Act also prescribes how 'need' for such specialist housing is to be understood for planning purposes.

13. The primacy of the 'demand' metric under the 2015 Act is confirmed in the NPPG:

**What is the relationship between the register and the Strategic Housing Market Assessment?**

Local planning authorities should use the demand data from the registers in their area, supported as necessary by additional data from secondary sources (as outlined in the housing and economic development needs guidance), when preparing their Strategic Housing Market Assessment to understand and consider future need for this type of housing in their area. Plan-makers will need to make reasonable assumptions using the data on their register to avoid double-counting households.

Paragraph: 011 Reference ID: 57-011-20160401

Revision date: 01 04 2016

14. From the foregoing it is apparent that the Council must rely upon the register as its measure of need. It is allowed, under the guidance, to carry out secondary research 'as necessary' but such licence as granted by the guidance is not sufficient to trump the requirement to rely upon the register and does not excuse the Council from failing to fulfil its duties under the 2015 Act whilst such research, if any is proposed, is pending.

15. Those instructing have proceeded on the basis that the proposal complies with the local plan under DMH3 as, in spite of seeking development in an area the Council contends to be open countryside, it is within the exception for the meeting of identified local need. The Council has not accepted that submission, in the officer report, as it is contended that self-build is not a local need for the purposes of the local plan.
16. In this, I think the Council has a serious risk of falling into error for the following reasons:
17. The Council has a statutory duty to provide development plots of those who wish to self build. It is a statutory duty which the 2015 Act imposes into planning functions.
18. I would note that this is in fact, arguably, a higher duty than for other forms of housing. The requirement to provide for other forms of housing is a prescription from national policy that local plans (which statute says should be followed) should provide for housing need of various kinds. That is, the duty to provide for housing need in general is the result of a duty articulated through guidance and then by the operation of s.38(6).
19. Here, the duty needs no such articulation, it is clear upon the face of the 2015 Act. From that it is a freestanding duty beyond the duty under s.38(6) to follow the local plan. Section 38(6) requires the local plan be followed unless material considerations indicate otherwise. One such material consideration would be an Act of Parliament imposing a specific planning duty to provide planning permission for this specialist form of housing. The weight for a material consideration is a matter for the decision maker but the weight of a duty imposed by a **primary piece of legislation from Parliament** must be significant verging, I would hazard, on overwhelming.
20. From the officer's report and telling comments that 'concerns have been conveyed verbally in respect of potential implications for the Local Authority resultant from the Self-Build Act' and that 'further work may need to be commissioned in respect of the



obligations the act places on the authority’ and ‘works have not commenced on such matters’ (para.5.1.10) it would appear the Council has not considered the significant implication of this Act or if it has it is only just beginning but one senior officer (Head of Housing and Regeneration) has begun to recognise the impact of this duty.

21. I note that para.5.1.10 raise concerns over ‘future implications given the timescales and obligation for granting a suitable number of self-build consent to match the level of demand which is reflected within the self-build register’. I would only observe that these are not future implications: it is a live statutory duty and there is a self-build application before the Council now. The duty is material under the planning acts and the 2015 Act reiterates that it must have regard to that demand in exercising its planning functions.

22. Further, even ignoring that the Council is now under a legal duty to provide plots for self-builders, I consider that the officer’s local plan analysis is short sighted. There is a specialist form of housing need (self-build) which those instructing me submit falls within the terms of DMH3. If, as the report states, that analysis is not accepted what then does the current local plan have to say about self-build and addressing that need: where is the relevant policy?

23. The officer report relies upon no other provisions of the extant plan. Such a policy would be, if it existed, central to the consideration of this application. Rather, there is no specific policy. If this need has no policy provision and it does not fall within the terms of DMH3 then the local plan is ‘silent’ as per the second bullet point of the decision making provisions of para.14 of the NPPF and the tilted balance is the relevant decision making test:

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.

24. The Report does not analyse the decision on the basis that it is either plan compliant with DMH3 (the submissions of those instructing me) or that the plan is silent on self-build and as such permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of doing so.
25. The adverse impacts are particularised in the reasons as development beyond a disputed development boundary and an alleged visually and morphologically anomalous development affecting the appearance and character of the area and landscape. Those adverse effects would have to outweigh significantly and demonstrably the Council comply with its legal duty under the 2015 Act to meet a specialised housing need along with the numerous benefits particularised in the planning statement that accompanied the application<sup>1</sup> and the context of a local planning authority with a marginal housing land supply.
26. Under either analysis the Report is legally wrong. I advise accordingly, if I can be of any further assistance please do not hesitate to contact me.

ANTHONY GILL

6<sup>th</sup> March 2018

KINGS CHAMBERS

MANCHESTER, LEEDS, AND BIRMINGHAM

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<sup>1</sup> Para.7.4



## **Appendix B – Counsel Advice – February 2019**

**Re: the Stables at John Smith Playing Field, Longridge**

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**ADVICE**

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1. I am asked to advise Mr Andrew Billington with regard to his pursuit of a self-build planning permission from Ribble Valley Borough Council ('the Council'). I previously advised Mr Billington by an advice dated 6<sup>th</sup> March 2018. At that time I advised that the Council was taking an erroneous approach in its consideration of self-build housing.
2. Those instructing me have resubmitted Mr Billington's application on the basis that the Council does not have a five year housing land supply and also has taken an erroneous approach to self-build housing. In doing so they rely, in part, on a Decision Letter from Inspector Andrew McGlone (dated 10<sup>th</sup> December 2018) which addressed, amongst other things, self-build in the Council's area ('the Wiswell decision').

3. The Council now claims to have a five year housing land supply and has advised that it considers Insp McGlone misinterpreted its housing policies. As such they will not accept the submission of those instructing me that the tilted balance under NPPF para.11 applies.
4. I am asked to advise with regard to the Council's continued recalcitrance as to the significance of its self-build policy approach (or lack thereof).
5. I have previously advised that the Council was failing to comply with its duty under Self-build and Custom Housebuilding Act 2015<sup>1</sup> ('the 2015 Act') to deliver the identified need for self-build housing through the granting of permission for self-build plots. The failure of the Council to do so and the absence of any policy within its local plan to do so are sufficient to engage the tilted balance under para.11 (the disbenefits of the proposal must significantly and demonstrably outweigh the benefits).
6. Further, I emphasised the significant weight that must be applied to the delivery of self-build provision in that planning balance (I consider it of the utmost weight) because it is a duty to deliver imposed directly by primary legislation of Parliament rather than a duty articulated through s.38(6) and the local plan. I remain of that opinion.
7. I think the principle is akin to the interests of the child in planning decisions which is a primary consideration which no other material consideration can attract greater weight than due to it being enshrined in the UN Convention of the Rights of the Child. The impact of the self-build duty arising from primary legislation has a *similar* effect in making it an *elevated material consideration*<sup>2</sup>.

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<sup>1</sup> As amended by the Housing and Planning Act 2016

<sup>2</sup> I am not suggesting it has the same weight as the interests of children.

8. In the decision of Inspector McGlone he addresses self-build in the following places. He does not define self-build provision as a main issue at his para.5 but rather refers to local plan compliance and the access sustainability of the site for future residents (a site specific issue).
9. He then notes (para.8) that the focus of the dispute between the parties is as to whether the proposal was 'local needs housing'. The local plan defines that as need arising in the parish or surrounding parishes that is evidenced by the Housing Needs Survey for the parish, the 'Housing Waiting List' and the SHMA. In the Wiswell appeal the Council maintained there was no Housing Waiting List for Wiswell and the two other documents did not support the proposal. The Inspector found conflict with DS1, DMG2, and DMH3 (para.10).
10. The appellant in Wiswell argued that the Council's local plan is 'silent' on self-build. The Inspector at para.16 concludes that the local plan 'is not silent on the Council's approach for development proposals for housing in the Borough, particularly in relation to their location. Hence the local plan contains a body of policy relevant to the proposal at hand to enable the scheme to be judged against' (para.16).
11. I consider this conclusion by Inspector McGlone is **erroneous**. To ignore the absence of policy on the particular specialist housing by relying on other housing policies is wrong: would the Inspector draw the same conclusion if the local plan did not contain an affordable housing or gypsy and traveller policy in such a case?
12. In para.17 Inspector McGlone went on to conclude that with the 2015 Act made the plan policies cited in the appeal scheme out of date for the purposes of the tilted balance under para.11. This, it seems to me is a peculiar route to the same destination: the policies are out of date because they are silent on the duties imposed by the 2015 Act. Policy DS2 is the engrossment of para.11 (para.14 NPPF2012) into the Local Plan.

13. The Inspector addressed the self-build provision at para.19. He notes the requirement to establish local registers and ‘the need to have regard to the demand in their local register and give enough suitable development permissions to meet the identified demand when exercising their planning and other relevant functions’.

14. The NPPF2018 provides at para.60:

*60. To determine the minimum number of homes needed, strategic policies should be informed by a local housing need assessment, conducted using the standard method in national planning guidance – unless exceptional circumstances justify an alternative approach which also reflects current and future demographic trends and market signals. In addition to the local housing need figure, any needs that cannot be met within neighbouring areas should also be taken into account in establishing the amount of housing to be planned for.*

15. It continues:

*61. Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers<sup>25</sup>, people who rent their homes and people wishing to commission or build their own homes<sup>26</sup>).*

16. Footnote 26 confirms the provisions of the 2015 Act that require both a register and the duty to provide sufficient suitable permissions to meet the identified self-build demand. The Inspector cites this part of the NPPF at para.19. It appears to me that no point was made to the Inspector as to the import of the self-build duty **arising from primary legislation**. He certainly does not address that in the Decision Letter.



17. For self-build provision to have the weight of any other form of specialist housing it simply needed to be included in the NPPF as it is at para.61. The passing of the 2015 Act is something more significant.
18. The Inspector addressed the demand arising from the appellant in Wiswell and noted that 'the Council does have some time yet' to grant a permission addressing his entry on the register. At para.21 the Inspector gave the housing impact (of one dwelling) and providing for the appellant's need 'moderate positive weight'.
19. Weight is a matter for decision makers but in the Wiswell appeal it seems to me that in assessing the weight to attach to the self-build provision and the out of date local plan on that issue the Inspector omitted to take account of a material fact (the duty deriving from primary legislation) in determining the weight to give to the self-build nature of the proposal.
20. The Council, in the Wiswell appeal, relied upon the definition of local need within the local plan (page 140):

*LOCAL NEEDS HOUSING – Local needs housing is the housing developed to meet the needs of existing and concealed households living within the parish and surrounding parishes which is evidenced by the Housing Needs Survey for the parish, the Housing Waiting List and the Strategic Housing Market Assessment.*

21. The NPPG provides with regard to self-build registers and Strategic Housing Market Assessments:

**What is the relationship between the register and the Strategic Housing Market Assessment?**

Local planning authorities should use the demand data from the registers in their area, supported as necessary by additional data from secondary sources (as outlined in the [housing and economic development needs guidance](#)), when preparing their [Strategic Housing Market Assessment](#) to understand and

consider future need for this type of housing in their area. Plan-makers will need to make reasonable assumptions using the data on their register to avoid double-counting households.

Paragraph: 011 Reference ID: 57-011-20160401

Revision date: 01 04 2016

22. The SHMA relied upon by the Council is particularly old having been prepared in 2008. Along with being generally out of date, it specifically does not take account of the self-build register as required following the 2015 Act and its amendment.
23. The Local Plan and its evidence base does not address or consider self-build and is silent on this form of specialist housing contrary to the provisions of NPPF para.61 and the requirements under the 2015 Act. In its silence it is out of date and so is the Council's evidence base (in the SHMA dramatically so).
24. If, at appeal, the Council continues to maintain that the self-build duty is not effective because it would negatively affect many councils nationally it will be ignoring not simply policy but the clear terms of statute. Such a wilfully wrong-headed argument will not necessarily tell in the planning balance and justify a consent (they are different parts of the decision making process) but it would waste the time of both parties and the Inspector and potentially (depending on how far the Council pushed such a fallacious argument) lead to costs meriting at least a partial costs application.
25. The Wiswell appeal was dismissed but clearly on site specifics. The Wiswell site was outside a low tier settlement (Tier 2). In this case the site is on the edge of a significant settlement in the local plan (a Principal settlement two tiers above

Wiswell). Its location is only half a mile from Market Place in the centre of Longridge.

26. I consider that the Council's plan would be considered, on appeal, to be out of date or silent and therefore the tilted balance in the proposal's favour would be engaged. The site specifics in general are in the proposal's favour on a sustainability basis.

27. I consider that a strong argument can be made for significantly greater weight to be given to the self-build issue. I consider Inspector McGlone has failed to consider the importance of self-build as evidenced by the duty under the 2015 Act.

28. I think the appeal proposals are strong in locational and landscape terms. As such I would struggle to see on what other bases<sup>3</sup> the Council could sustain a refusal at appeal in light of the para.11 tilted balance.

### **Other Matters**

29. I am instructed that the Council carries out an annual reregistration for the self-build register. That is, they purge the register each year. I would advise that that is egregious behaviour contrary to the operation of the register mechanism. The register duty comes about on a triennial basis. I read the duty as arising three years after you are on the register in one base period. Strictly speaking I do not think three years continuous entry on the register is required. However, I can foresee the Council contending otherwise that the need needs to be continuous or sustained for three years. If that interpretation is pursued by the Council, to annually purge the register so that accruing three years of need is unnecessarily difficult is to, intentionally or otherwise, ignore a component of housing need and a duty under the law.

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<sup>3</sup> I have only ever advised on one RfR in this case.

30. I advise accordingly. If I can assist further please do not hesitate to contact me.

ANTHONY GILL

KINGS CHAMBERS

6<sup>th</sup> February 2019

MANCHESTER, LEEDS, AND BIRMINGHAM



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