

Gladman House, Alexandria Way
Congleton Business Park
Congleton, Cheshire
CW12 1LB

T: 01260 288800

F: 01260 288801

www.gladman.co.uk

Ms Nicola Hopkins
Ribble Valley Borough Council
Council Offices
Church Walk
Clitheroe
BB7 2RA

8th September 2020

SENT BY EMAIL ONLY

Re: 3/2019/0999 - Outline planning application for the erection of up to 160 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Henthorn Road. All matters reserved except for means of access.

Dear Ms Hopkins,

I write following my discussion with the case officer for the above application, Stephen Kilmartin, on 25th August 2020, in which he indicated that the Council is likely to progress a delegated recommendation of refusal of the application. I am grateful that following Gladman's previous correspondence with the Council on 7th August, Mr Kilmartin pragmatically granted a further extension of time until 24th September to allow for the remaining technical objections to the scheme from statutory consultees to be resolved prior to determination, recognising the delays which have been caused to the progress of the application during the current Coronavirus pandemic have been outside the control of both the applicant and the Council. However, I am writing specifically at this stage regarding the proposed in-principle reason for refusing the application; namely, the assertion that the proposed development conflicts with the development plan for Ribble Valley and specifically policies DMG2 and DMH3 of the adopted Core Strategy.

As you are aware the interpretation of these policies has been the subject of some consideration in recent years through the appeals process. However, Gladman were of the opinion that the matter was settled and that the Council's resolved position was as put forward unambiguously at the Henthorn Road appeal in 2019 and the Examination in Public of the Housing and Economic Development DPD (HED DPD) i.e. that the Core Strategy is permissive of development on the edge of principal settlements, assuming the criteria set out in the policies are met. As such, we were somewhat surprised to learn that the Council's

Directors: D J Gladman BA, K J Gladman MCSP, SRP, J M S Shepherd BSc, CEng, MIEE, G K Edwards DipTP, MRTPI

VAT Registration No. 677 6792 63

Registered Address: Gladman House, Alexandria Way, Congleton Business Park, Congleton, Cheshire, CW12 1LB, Registration No. 3341567

interpretation of its own policy has apparently recently changed, and that it is now considered that the policies are not permissive of development outside settlement boundaries. It is my understanding that the Council is advancing this case in a current pending appeal with respect to Land at the junction of Chatburn Road and Pimlico Link Road, Clitheroe. The purpose of this letter is therefore to request deferral of the determination of this application until such time of the outcome of that appeal is known. This will avoid the need for abortive costs for all parties if the application is refused at this time and a subsequent appeal is lodged.

For context, I now set out the recent history of the Council's interpretation of the key local plan policies.

The Policies

Policy DMG2- Strategic Considerations

Policy DMG2 states that "Development should be in accordance with the Core Strategy Development Strategy and should support the spatial vision". For the purposes of this letter it is assumed that it is not disputed that the proposals before you in this application comply with this element of the policy. The policy then goes on to state 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"

Again, for the purpose of this letter it is assumed that the Council does not contend that the application proposals are not appropriate to the scale of or in keeping with the existing settlement of Clitheroe. The phrases 'consolidate', 'expand' or 'round-off' are defined in the glossary of the Core Strategy:

Consolidation- Refers to 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.

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

Rounding-off- Development which is essentially part of rather than an extension to the built up part of the settlement. It can be defined as the development of land within the settlement boundary (which is not covered by any protected designation) where at least two thirds of the perimeter is already built up with consolidated development.

In considering the interpretation of this policy, it is important to first note that only one of the three criteria outlined above need to be met for a proposal to comply with the policy (as indicated by the use of the word 'or'). It is established that 'rounding-off' applies to development within the settlement boundaries, therefore the applicable criteria for the consideration of the application before the Council are those of consolidation and expansion.

The second limb of the policy refers to development at tier 2 villages and outside the defined settlement areas, and sets out a number of criteria, at least one of which should be met for development to be permissible, such as meeting an identified local need.

Policy DMH3- Dwellings in the Open Countryside and AONB

This policy relates to dwellings in the open countryside and AONB and states that in these areas, residential development will be limited to a number of criteria including development essential for the purposes of agriculture, residential development to meet an identified local need, or the conversion, rebuilding or replacement of existing dwellings.

The Chronology

It is recognised that there is, on the face of it, some tension between the two policies above. It is also acknowledged that the application site lies outside of the settlement boundary for Clitheroe. However, it is important to consider the context of the Council's publicly stated position on the correct implementation of these policies in recent years in order to properly interrogate the position currently taken.

In particular, two recent appeal decisions have fully considered the issue of the interpretation of the Core Strategy policies. Importantly, both of these decisions were taken in the context of the Council being able to demonstrate a 5 year housing land supply, such that the "tilted balance" in the NPPF was not engaged. The first relates to Gladman's application at Henthorn Road, for up to 110 dwellings. The appeal was heard at inquiry in May 2019, with the decision being published in June 2019. The second relates to a scheme at Chatburn Old Road, in Chatburn, which was heard at a hearing in late 2019 and the decision was issued in January 2020. Meanwhile, the hearing sessions of the examination of the Housing and Economic Development DPD took place in January 2019, and the DPD was adopted with modifications in October 2019. I will consider each of these events in turn below.

The Henthorn Road Appeal

It is important to note that on two occasions the application for 110 dwellings at Henthorn Road was reported to Planning Committee with a recommendation for approval. Members did not refuse the development on the principle of development. They refused the application on the basis of a perceived

lack of cycling or pedestrian access to the town centre, which they considered would make future residents wholly reliant on the car. This was confirmed by the Council when it entered into a Statement of Common Ground with Gladman in May 2019, in which it was agreed by the Council that the sole area of disagreement between the parties related to the accessibility of the appeal site, and that "if the Inspector concludes that the appeal scheme is accessible then the proposal accords with the development plan and should be approved without delay, as per policy DS2 of the Core Strategy and paragraph 11 c) of the NPPF 2019". By implication, it must be accepted that the scheme was considered to accord with policies DMG2 and DMH3. It is noted that there is no qualification to suggest that a need for the development must be demonstrated in accordance with the second limb of DMG2 or DMH3.

Turning to the appeal decision itself, paragraph 17 of the decision letter confirms that "during the inquiry the Council accepted that Policy DMG2 is permissive of development that adjoins the settlement boundary and confirmed that development outside the settlement limits of Clitheroe would not necessarily conflict with the provisions of this policy" and that "several developments outside of, but adjoining the settlement boundary of Clitheroe had previously been permitted pursuant to the provisions of this policy. As such, the Council conceded that it would not be correct to conclude that the appeal scheme breaches Policy DMG2 and that the principle of residential development on the site would be appropriate." Having found that the accessibility of the appeal site was acceptable, the inspector therefore concurred with the main parties that there would be no conflict with key policies, and that the proposal was therefore in conformity with the development plan, and he allowed the appeal.

It is also relevant that the inspector allowed a partial award of costs against the Council for referring to Policy DMG2 in the reason for refusal and not justifying the conflict with the policy in its evidence at the inquiry. In his costs decision, he stated that "although the proposed development lies outside of the settlement limits of Clitheroe, the Council advised that [Policy DMG2] is permissive of development that adjoins the settlement boundary as this constitutes consolidation and expansion of the settlement". He went on to conclude that he could see no reasonable justification for its inclusion in the reason for refusal. It is further noted that the Council did not consider policy DMH3 to be relevant in the Henthorn Road appeal.

The Chatburn Old Road Appeal

This appeal related to an application for permission in principle for the erection of up to nine dwellings. The appealed application was refused in line with officer recommendation although it should be noted that a subsequent re-submission was recommended for approval by officers, who considered that the proposal would be in accordance with policies DMG2 and DMH3. Nevertheless, in the appeal, the Council sought to argue that only the second part of policy DMG2 applied because the site was located in the countryside outside the settlement boundary of Chatburn. It was contended that the application failed to comply with both DMG2 (second part) and DMH3 as there was no demonstrable need for additional

housing development in that location. This was in spite of the fact that the Council had not engaged the second part of DMG2 in their consideration of the Henthorn Road application/appeal.

In considering the appeal, the inspector noted the conclusions of the Henthorn Road inspector, which had been issued following the submission of the appeal (but prior to the hearing). Following the Henthorn Road decision being issued, the Council had published a "Supplementary Planning Statement" (SPS) which sought to clarify concessions made during that appeal. In this statement, the Council accepted that to 'consolidate' or 'expand' within the meaning of policy DMG2 was not confined to development within settlement limits. The SPS stated that DMG2 was both flexible to and permissive of development outside, but adjoining, major settlements, and that contrary to the assertion of the RfR the second part of DMG2 was not engaged. However, the SPS sought to instead suggest that the appeal site was 'not closely related' to the main built up areas of Chatburn, whereas the RfR had only raised issue with the principle of development in the open countryside. In conclusion, the inspector agreed that DMG2 was flexible and permissive, and rejected the Council's argument that the appeal site was not closely related to the settlement. He therefore accepted that the appeal proposals conformed with DMG2. He also concluded that there would be no conflict with DMH3 on the basis that there was a residual housing requirement for Chatburn that the scheme would help to meet. Thus, the appeal was allowed, and once again costs were awarded against the Council on the grounds of its mis-application of policy DMG2.

The HED DPD Examination

During the EiP into the HED DPD, in a discussion regarding housing land supply, a debate was held regarding whether the Core Strategy policies restricted windfall housing developments and the location of new housing. This was in the context of representations from participants that the Council's housing policies needed to be applied flexibly to ensure a 5 year supply could be demonstrated for the duration of the plan period. The Council's view was that the Core Strategy policies do allow for residential development on the edge of existing settlements, and are applied flexibly.

This was agreed by the examining inspector in his report, where he states that the plan can be found sound on the basis that additional flexibility on the 5 year supply position is provided for by the flexible nature of the Core Strategy policies. However, a main modification was recommended to the supporting text to policy HAL to make clear that a stable supply "is achieved by flexible policies in the Core Strategy that enable development to be brought forward in a sustainable manner". This was incorporated into the subsequently adopted DPD.

The Council's Current Position - The Chatburn Road Appeal

In spite of all of the above, the Council is currently contesting the Chatburn Road appeal on the basis that the appeal proposal is contrary to the development plan, and specifically policies DMG2 and DMH3. Like the Henthorn Road and Chatburn Old Road appeals, the proposal in the Chatburn Road is adjacent

to a principal settlement and therefore would fall within the definitions of 'consolidation' and 'expansion' previously acknowledged by the Council to allow it to comply with DMG2. However the Council have now adopted a new interpretation of DMG2, describing it in their Statement of Case for this appeal as being applied "in its truest sense".

The Council's case in this appeal is once again that for proposals outside the settlement boundary, it is the second limb of policy DMG2 which is engaged (a case which was of course rejected by the inspector in the Chatburn Old Road appeal). As such, it is argued that an applicant must demonstrate a specific local need for housing in order for residential development to be permitted outside settlement boundaries. The Council also seeks to track back on its previous assertions that "expansion" and "consolidation" of a settlement allow for development to come forward outside the settlement boundary of principal and tier 1 settlements. The basis for this assertion being that interpreting the policy in the way that the council previously had would "result in significant consequences for the Borough insofar that it would compromise the ability of the authority to appropriately apportion growth to those settlements whereby housing need is evident and would undermine the relevance, to some degree, of the operation and effectiveness of the plan-led system adopted by the authority".

Interestingly, in relation to the Henthorn Road appeal decision, the Council now suggest that the inspector "wrongfully interpreted the policy" despite the fact that the inspector merely followed the Statement of Common Ground which was signed by Gladman and the Council, in relation to the principle of development. It is noted that in the Council's response to the appellant's costs application in the Chatburn Road case, the LPA seeks to suggest that it was incorrect in its own interpretation of the policy, ("it can be considered that at the time of the determination of the Henthorn application, it was at this point that an anomalous interpretation of DMG2 was made by the authority in concessions made during the appeal procedure and Inquiry proceedings"). You were present at that appeal and signed the SoCG accepting that the principle of development was acceptable, so must at that point have accepted the 'permissive' approach to the application of DMG2. However, I note that you are now a signatory to the report to planning committee for the Chatburn Road case, which seeks to cast doubt upon the previous interpretation of the policy, in forming putative reasons for refusal for that case. The approach is a wholly unreasonable approach to the application and interpretation of planning policy; it is in fact the Council's inconsistent approach to its own policies which is damaging faith in the planning system in which consistency of decision making is a key legal principle.

The Applicant's Position

The Council explicitly states that Core Strategy policies which restrict development are applied flexibly in the HED DPD and gave evidence to this effect to the Secretary of State's inspector in the examination of that plan. As such, while it is regrettable that this needs to be re-iterated, I now set out Gladman's position, endorsed by two appeal inspectors in recent cases, as to how policy DMG2 and DMH3 should be correctly

interpreted, and why the current proposals comply with the policies and therefore with the development plan as a whole, such that permission should be granted without delay.

Policy DMG2 is clear that if development proposals in principal settlements consolidate or expand development so that they are closely related to the main built up areas, and are appropriate to the scale of, and in keeping with, the existing settlement, they will be acceptable. The definitions of 'expand' and 'consolidate' are provided in the Core Strategy glossary and clearly do not preclude development from coming forward outside settlement boundaries. This has previously been accepted consistently by the Council, and endorsed by inspectors on appeal. It is clear that the development of 160 dwellings north and south of Henthorn Road would both consolidate and expand development in the settlement. It is closely related both to the existing built form at the allocated Storey Homes site, which is within the settlement boundary, and the 110 dwelling Miller Homes scheme which now has full planning permission with development soon to commence on site. The present application is the final phase of development at Henthorn Road. It is assumed that there is no dispute that the scale of the proposal is appropriate to the main settlement in the borough, and that the proposal is in keeping with its surroundings given that it is adjoined by new development. It is not disputed that the site technically lies outside the settlement boundary, and while there is some tension between the first and second limbs of DMG2, if the second limb were to be applied slavishly in the way the Council now seek to argue it should be, there would be no scope for the policy as a whole to be applied flexibly and no ability to allow for the expansion or consolidation of principal settlements. As such, any conflict must be resolved by the acceptance that open countryside which is well-related to principal and tier 1 settlements is not covered by the second limb of policy DMG2. Again, this is the established position from both the Henthorn Road and Chatburn Old Road appeal decisions. As such, if the second limb is not engaged, there is no requirement to demonstrate a local need for housing in the same way that there would be for an isolated open countryside site. That said, the applicant's Planning Statement goes into some detail at chapter 2 as to our position regarding the need for housing in Clitheroe, the wider Ribble Valley and nationally.

With regard to DMH3, again it is acknowledged that there is some internal tension between the flexible application of policy DMG2 and the slavish application of DMH3. It is therefore considered that if development is supported by the first rung of DMG2, then it cannot be right to seek to restrict it through the application of DMH3. DMH3 works in tandem with the second limb of DMH2 to control isolated development in the open countryside. The proposals before the Council are not isolated development in the open countryside. As such, it is submitted that any conflict must be resolved in favour of DMG2. The Council has themselves in the recent past accepted that DMH3 cannot be applied in isolation from DMG2 as doing so would restrict development from coming forward in sustainable locations outside settlement boundaries.

Build, Build, Build

Further to the point regarding housing need, the Government's impetus on housing development to both address the national housing crisis and support economic recovery following the COVID-19 pandemic

and the associated recession (the deepest on record) cannot be denied. This is evident from the opening sentence of the Secretary of State's Written Ministerial Statement from May 2020 where he stated:

"The planning system has a vital role to play in enabling the delivery of housing and economic growth that will support the UK's economic growth"

A month later when announcing the New Deal for Britain, the Prime Minister summarised the approach as "Build, Build, Build". The importance of the delivery of housing in the economic recovery was further evident in the recent Secretary of State decision at Nantwich¹. In this decision the Secretary of State acknowledged that Cheshire East could demonstrate a five year housing land supply but took into account that nationally it is a government policy imperative to boost the supply of housing, as set out at paragraph 59 of the Framework. In his decision he acknowledged:

"Weighing in favour of the proposal, the provision of market housing in a sustainable location is afforded significant weight....The provision of affordable housing to help meet a need in Cheshire East is also given significant weight....The economic benefits in terms of direct and indirect employment during its construction and expenditure into the local economy of the proposal are given medium weight"

Ribble Valley does not exist in a vacuum. The proposed development provides the same opportunity to boost local employment along with providing much needed market and affordable housing in a sustainable location. This should be afforded significant weight in the determination of this application.

Conclusion

It is apparent that the current Chatburn Road appeal will have some significance in testing the Council's new interpretation of their policies. As such, as suggested Gladman consider that a pragmatic solution would be for the determination of this application be delayed until such time as a decision has been issued in that case. This would also allow sufficient time for the remaining technical objections to be resolved; it is considered that the odour objection should be lifted as a result of the recently submitted Odour Assessment, and following an on-site meeting on 26th August we are also confident that a solution to the remaining issues identified by LCC Highways is imminent.

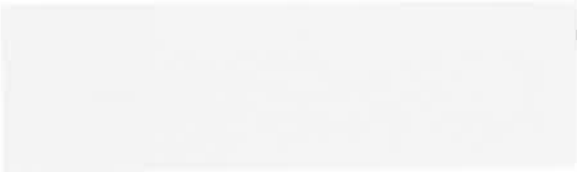
Clearly, should the LPA proceed to determine the application at this stage utilising an untested interpretation of its own policy, Gladman will have no choice but to appeal the application and make an application for a full award of costs on the basis of the Council's unreasonable behaviour, namely the inconsistent interpretation of its own policies, which would lead to the need to prepare a costly and unnecessary appeal for an application which constitutes sustainable development and for which we are confident all technical matters can be satisfactorily resolved if given the time to do so. The existence of a

¹ APP/R0660/A/13/2197532 & APP/R0660/A/13/2197529

five year housing land supply is not a cap and there is no restriction in national policy on sustainable development coming forward to meet the identified national and local housing need. When the outstanding technical objections are resolved, the Council will not be able to point to any tangible, demonstrable harm which would flow from this development other than their assertion that "enough consents" have been granted.

I sincerely hope that the authority will take the sensible option of agreeing a further extension of time for the determination of this application as I am sure that residents of the Ribble Valley would not appreciate the prospect of further costs being awarded against the authority, along with the further loss of confidence in the planning system which is being caused by this Council's inconsistent position with regard to the application of its own policies.

Yours Sincerely,



Christien Lee
Planning Manager
Gladman Developments

