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# Appeal Decision

Site visit made on 11 August 2020

**by Graeme Robbie BA(Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 November 2020**

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**Appeal Ref: APP/T2350/W/20/3253310**

**Land at junction of Chatburn Road and Pimlico Link Road, Clitheroe**

**Easting: 375365 Northing: 443101**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Mark Wilkinson (Oakmere Homes (NW) Ltd) against Ribble Valley Borough Council.
  - The application Ref 3/2019/0877, is dated 18 September 2019.
  - The development proposed is erection of 39 dwellings with landscaping and associated works, and access from adjacent development site.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of 39 dwellings with landscaping and associated works, and access from adjacent development site at Land at junction of Chatburn Road and Pimlico Link Road, Clitheroe in accordance with the terms of the application, Ref 3/2019/0877, dated 18 September 2019, subject to the conditions set out in the attached Schedule of Conditions.

## Procedural Matters

2. This appeal is against the Council's failure to determine the application for planning permission within the prescribed period. The Council have subsequently resolved, had they determined the application, that they would have refused planning permission for the proposal. A single putative reason for refusal has been set out which, for the avoidance of duplication, is set out in full at paragraph 1.2 of the Council's Statement of Case. I have framed the main issue below accordingly.
3. The appellant has submitted a signed and dated Unilateral Undertaking (UU) prepared under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) (the Act). The UU sets out the appellant's undertaking in relation to affordable housing provision, accommodation for over-55's and the procedures for occupancy eligibility and nomination procedures. It also sets out provisions and amounts for off-site leisure, primary and secondary education and NHS contributions, albeit that the Council have subsequently confirmed that they no longer wish to pursue the matter of NHS contributions. I return to these matters below.

## **Application for costs**

4. An application for costs was made by Oakmere Homes (NW) Ltd against Ribble Valley Borough Council. This application is the subject of a separate Decision.

## **Main Issue**

5. The main issue is whether the proposed development would be in a suitable location for residential development, having regard to local and national planning policies.

## **Reasons**

6. The Council's overarching development strategy is set out at Key Statement DS1 of the Core Strategy (CS), stating that the majority of the borough's new housing will be concentrated within, amongst other areas, the principal settlements, of which Clitheroe is one. Beyond the principal settlements, other settlements are identified as tier 1 and tier 2 villages and settlements, with open countryside lying outwith those designations. The Council's '*Housing and Economic Development – Development Plan Document*' (HED DPD) goes on to set out specific housing allocations.
7. Both parties refer, with reference to other appeals within the borough<sup>12</sup>, to CS policy DMG2 as having a part 1 and (an unnumbered) part 2 (with 6 criteria). I have already dealt with part 1, whilst part 2 deals with development within tier 2 villages and outside the defined settlement areas. Thus, in these areas development proposals must meet one of the 6 criteria set out by policy DMG2. CS policy DMH3 also considers dwellings in the open countryside, which it is agreed is land beyond the defined settlement areas, where residential development must meet certain criteria. Both identify local needs housing to meet an identified need as one of the factors which will attract policy support.
8. Whether or not the second part of CS policy DMG2 should apply in addition to the first part in this instance, the provisions of CS policy DMH3 applies in all cases in the open countryside. It is agreed that the appeal site lies beyond Clitheroe's defined settlement boundary and thus, also by definition, is within the open countryside. CS policy DMH3 therefore applies, regardless of whether the second part of policy DMG2 is engaged in addition to the first part of that policy.
9. There is no dispute that the appeal site lies beyond the settlement boundary for Clitheroe. That settlement boundary does, however, mark the site's southwestern boundary where it abuts both it and a residential development site currently under construction. The settlement boundary, which is located on the opposite side of Chatburn Road and within which lies a recent residential and Clitheroe Community hospital, also runs parallel to the appeal site's Chatburn Road boundary.
10. There are areas of designated existing open space along Chatburn Road on both sides of the road, but they are relatively limited and seen in the context of otherwise continuous residential development along Chatburn Road between the town centre to the southwest and Pimlico Link Road to the north. The

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<sup>1</sup> APP/T2350/W/19/3221189 and APP/T2350/W/19/3223816

<sup>2</sup> APP/T2350/W/20/3248156; APP/T2350/W/17/3186969; APP/T2350/W/17/3174924; APP/T2350/W/17/3185445; APP/T2350/W/19/3235162 and APP/T2350/W/18/3202044

appeal site itself is bounded on one side by, and indeed would be accessed from, a newly built residential development and lies opposite existing development and newly built housing on another.

11. Although located beyond Clitheroe's settlement boundary, the appeal site is well related to it in terms of built form, and its physical and visual relationships. The appeal site is therefore seen very much as a part of Clitheroe and the pattern of development along Chatburn Road. CS policy DMG2 seeks to support the CS's development strategy as set out in Key Statement DS1. To this end, it states that development proposals in principal settlements such as Clitheroe should consolidate, expand or round-off development so that it is closely related to the main built up areas, ensuring that it is appropriate to the scale of, and in keeping with, the existing settlement.
12. In understanding these terms, I concur with the appellant's assessment that it is also necessary to be mindful of the CS's glossary definitions and interpretation of these terms. The site is clearly not within the defined settlement boundary for Clitheroe. However, having regard to the nature and context of the land immediately around it, particularly the adjacent and adjoining residential development and prevailing pattern of development and built form along Chatburn Road, it is not unreasonable to conclude that the proposed residential development of the appeal site would consolidate development in a manner closely related to the main built up area of Clitheroe.
13. The CS Glossary definition of consolidation refers to new developments adjoining the main built up area of a settlement. The proposal would do this. The Glossary does not distinguish between consolidation within or beyond a settlement, just that it adjoins the main built up area. The prevailing pattern of development along Chatburn Road is not one of isolated or sporadic development, even if the glossary definition also includes these, where appropriate, within the definition of consolidation.
14. Rather, development is largely continuous, with depth of development from the Chatburn Road frontage, on both sides of the road along its length from the town centre to the appeal site. I accept that the housing with which the appeal site is contiguous was, at the time of my visit to the site, under construction and the site adjoining that is an allocation in the HED DPD. However, this does not alter my assessment that the appeal site can be sufficiently seen as a consolidation in the terms set out in CS policy DMG2 and the CS Glossary, confers support from the first part of CS policy DMG2.
15. The proposal would provide affordable housing in a mix of sizes and tenures, to which there is no objection from the Council as there is a borough-wide need for affordable housing. This is not, however, the same as housing to meet an identified local need and no case is otherwise made that the proposal would provide local needs housing in the manner sought by CS policy DMH3. Although the borough-wide need for affordable housing is noted by the Council, the presence within the development of balance of the housing as market housing is considered sufficient to outweigh the undoubted benefits of affordable housing. I agree that the proposal would fail to accord with CS policy DMH3 as a consequence in resulting in residential development beyond a defined settlement boundary, and thus in the open countryside, without an identified local need justification.

16. There is no dispute between the parties that the relevant policies in the determination of this application are up to date and can be afforded full weight. Thus, both the proposal's failure to provide housing to meet a local need on the one hand, and it being a form of consolidation on the other, are central to the planning balance to be exercised in this instance. The Council refer to a number of appeal cases<sup>2</sup> which support their contention that both parts of CS policy DMG2 are engaged. However, these largely pre-date the more recent examples<sup>1</sup> cited by the appellant which demonstrates the Council's alternative approach. However, as CS policy DMH3 provides a back-stop to the Council's position regarding criteria against which proposals in the open countryside be judged, the application (or not) of the second part of CS policy DMG2 is not crucial in this instance. However, the absence of evidence to demonstrate that the proposal would specifically meet an identified local need means that the proposal is contrary to CS policy DMH3, albeit that the proposal would also satisfy the general principle of consolidation established by CS policy DMG2, and therefore be an appropriate location in principle for residential development.

### **Other Matters**

17. There are no objections to the proposal from the Council in terms of the site's layout and relationship with existing housing, or in terms of its internal layout and the relationship of proposed houses to each other. I have not been presented with any further evidence that would lead me to a different conclusion with regard to living conditions of occupiers of existing properties, or those of future occupiers of the proposed dwellings and do not therefore disagree with the conclusion reached by the Council.
18. Nor are matters of design, siting or character and appearance areas of dispute between the main parties. The site is constrained visually, physically and contextually by natural and man-made features and barriers and as such the development of the appeal site would not be out of keeping with the context, built form and development pattern of the immediately surrounding area. Nor would it cause harm to the character or appearance of the site's wider surroundings and thus concur with the Council's assessment that there would be no harm to character or appearance as a consequence. Subject to appropriately worded conditions I am satisfied that the proposed development would make adequate provision for, and avoid harm in terms of, highway and pedestrian safety, and landscape and ecological provision.
19. The signed, dated and completed UU makes provision for a range of matters including affordable housing provision, accommodation for over-55's and the procedures for occupancy eligibility and nomination procedures, in addition to provisions and amounts for off-site leisure, primary and secondary education and NHS contributions. The tests in relation to the use of planning obligations and UUs are set out at paragraph 56 of the Framework and Regulation 122(2) of the Community Infrastructure Regulations 2010 (as amended) (the Regulations) which should meet all of the tests set out therein.
20. The Council have confirmed that they do not wish to pursue the NHS contribution element of the UU, whilst in respect of the education contribution (primary and secondary), Lancashire County Council<sup>3</sup> have revised down their calculation of the education contribution from that previously advised at the

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<sup>3</sup> Local Education Authority

application stage. The UU meets<sup>4</sup> the required education contribution and UU's provisions are in line with the requirements and provisions previously set out by the Council in the officer report and consultation responses. The provisions of the UU would be in accordance with the provisions of CS Key Statement DMI1 and I find no conflict with the Framework or the Regulations in this respect. I have therefore taken the UU, with the exception of its provisions regarding NHS contributions and the excess balance of the education contribution, into account in reaching my decision and I am satisfied that the UU's construction provides sufficient flexibility for such an approach.

### *Planning balance*

21. The proposed development would be located outwith the defined settlement boundary for Clitheroe and thus within the open countryside, as defined by the CS. There is no evidence before me to demonstrate that the proposal would meet an identified local need and the proposal would be contrary to CS policy DMH3. However, the proposal would amount to a form of consolidation provided for and supported by the first part of CS policy DMG2(1). The site is thus well-related to the main built up area and built form of Clitheroe, directly adjoining and adjacent to new and recent residential development where built residential form is more or less continuous from the appeal site to the town centre.
22. Although a reasonable length walk from the town centre's services and facilities, I am satisfied that the broadly level, continuous and well-lit pavements and footways along the wide Chatburn Road corridor would provide a usable and practical alternative to the private car in accessing facilities. I am satisfied that future occupiers would therefore have a choice of means of transport available to them to access those services and facilities, including by bicycle and on foot.
23. The proposal would provide a not insignificant boost to housing supply. The Council's 5+ year housing land supply position is not challenged by the appellant, whilst the Council also consider that they have 'sufficient consents' for residential development. However, a 5-year housing land supply is not a ceiling or a maxima, particularly so in light of the Framework's commitment to significantly boost the supply of homes. That the proposal would boost the supply of homes in a logical location well-related to existing, on-going and recently built residential development in an accessible and sustainable location directly adjacent to the defined settlement boundary in a manner that would consolidate development in a manner provided for by CS policy DMG2(1) weighs significantly and positively in support of the proposal. Moreover, within a borough-wide context where there is a need for affordable housing, whilst the proposal does not satisfy the development plan definition of local needs housing, the delivery of 12 affordable homes would nevertheless go some way to meeting a locally identified need for such affordable homes.
24. There is no suggestion that Clitheroe is otherwise unable to accommodate the 39 dwellings proposed in this instance. Whilst there is no evidence to support the provision of local needs housing as a justification for the proposal, it would contribute towards meeting a borough-wide affordable housing need and would boost the supply of homes within the borough. I give the provisions of both CS policy DMG2 and DMH3 full weight but, having considered the positive aspects

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<sup>4</sup> And exceeds

of the proposal and other benefits arising from it in the planning balance I conclude that the proposal's open countryside location and absence of an identified local need in this instance is outweighed by other material considerations as outlined above.

25. In reaching these conclusions, I am mindful of a number of appeal decisions which have been cited by both parties in seeking to support their respective positions. However, from the commentary provided by both parties in respect of the limited information regarding those proposals, it is clear to me that they do not provide directly comparable circumstances and context to the proposal before me. Moreover, not only do the cases referred to me by the Council in support of the Council's revised position largely pre-date those cited by the appellant, they also demonstrate that other factors come into play, in particularly the relationship of the site to the defined settlement and main built up area, the form and character of the proposal and the character and appearance of the surrounding area. For all of these reasons, I conclude that other development plan policies and material considerations warrant allowing the appeal contrary to the provisions of CS policy DMH3.

### **Conditions**

26. I have considered the Council's list of suggested conditions in light of the Framework and Planning Practice Guidance and, where necessary in the interests of precision and accuracy, have made minor alterations and revisions. I am satisfied that in doing so neither party would be disadvantaged. Where specific condition numbers are referred to these relate to the Council's numbering of suggested conditions.
27. I agree that time limit and plans conditions are necessary and reasonable in order to provide certainty. In addition to the plans condition, further conditions regarding implementation and maintenance of the landscaping proposals, and tree protection during the construction phase are also reasonable and necessary in the interests of character and appearance and the satisfactory appearance of the development upon completion.
28. In order to ensure the satisfactory connection of the hereby approved development into the existing local highway network, conditions regarding details the estate road and cycle link and carriageways are necessary in the interests of highway and pedestrian safety. A condition regarding suitable provision for electric vehicle charging at all properties is reasonable and in the interests of encouraging alternative means of travel, and alternative means of powering vehicles.
29. Additionally, I agree that a Construction Method Statement be imposed to ensure appropriate management of the construction site in the interests of highway and pedestrian safety and the living conditions of occupiers of properties located along the access to the site. To this end, I see no reason why the provisions of suggested condition 12 cannot be included within an expanded condition 5 and I have therefore amended condition 5 and deleted condition 12 accordingly. I have also omitted suggested condition 8 as it has not been demonstrated that it would pass the test of necessity.
30. Finally, there are two conditions regarding surface water drainage measures which in part both duplicate and contradict each other. There is no need for

both conditions, and I accept the appellant's reasoning for the deletion of suggested condition 13.

**Conclusion**

31. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

*Graeme Robbie*

INSPECTOR



### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the proposals as detailed on drawings:

- 067-SL-01 Location plan
- 19-B295 Topographical survey
- 067-P-01 Proposed housing layout
- 067-P-05 Proposed affordable housing layout
- 067-P-06 Proposed housing layout with levels
- c-981-30\_A Proposed landscaping scheme (1 of 2)
- c-981-31\_A Proposed landscaping scheme (2 of 2)
- 067-BOW-P01 Bowfell house type floor plans
- 067-BOW-P02 Bowfell house type elevations
- 067-BOW-SPL-P01 Bowfell (split level) house type floor plans
- 067-BOW-SPL-P02 Bowfell (split level) house type elevations
- 067-CAL-P01 Caldew and Rothay (linked) house type floor plans
- 067-CAL-P02 Caldew and Rothay (linked) house type elevations
- 067-ENN-AG-P01 Ennerdale (attached garage) house type floor plans
- 067-ENN-AG-P02 Ennerdale (attached garage) house type elevations
- 067-GRA-P01 Grasmere house type floor plans
- 067-GRA-P02 Grasmere house type elevations
- 067-GRIZ-P01 Grizedale (bungalow) house type floor plans
- 067-GRIZ-P02 Grizedale (bungalow) house type elevations
- 067-HON-P01 Honister house type floor plans
- 067-HON-P02 Honister house type elevations
- 067-KIRK-P01 Kirkstone house type floor plans
- 067-KIRK-P02 Kirkstone house type elevations
- 067-LOW-P01 Lowther house type floor plans
- 067-LOW-P02 Lowther house type elevations
- 067-ROTH-P01 Rothay house type floor plans
- 067-ROTH-P02 Rothay house type elevations
- 067-THIRL-P01 Thirlmere house type floor plans
- 067-THIRL-P02 Thirlmere house type elevations
- 067-THIRL-SPL-P01 Thirlmere (split level) house type floor plans
- 067-THIRL-SPL-P02 Thirlmere (split level) house type elevations
- 067-WAS-SPL-P01 Wasdale (split level) house type floor plans
- 067-WAS-SPL-P02 Wasdale (split level) house type elevations
- 067-P-04 Proposed street scenes and sections
- 067-P-03 Proposed external materials layout
- 067-P-02 Proposed fencing layout
- SD-FT-02 Proposed timber plot divide fencing details
- SD-FT-08 Proposed timber feather-edge fencing details
- SD-SW-03 Proposed stone wall with timber infill panel details
- 19619-100\_0 General arrangement (highways)
- 19619-101\_0 Contour layout (highways)
- 19619-720\_0 Long sections (highways)
- 19619-730\_0 Standard details (highways)



- 19619-500\_0 Drainage layout
- 19619-510\_0 Drainage long sections
- 19619-530\_0 Drainage details

- 3) The landscaping proposals hereby approved shall be implemented in the first planting season following occupation or use of the development, whether in whole or part and shall be maintained thereafter for a period of not less than 10 years to the satisfaction of the Local Planning Authority.

This maintenance shall include the replacement of any tree or shrub which is removed, or dies, or is seriously damaged, or becomes seriously diseased, by a species of similar size to those originally planted. All trees/hedgerow shown as being retained within the approved details shall be retained as such in perpetuity.

- 4) During the construction period, all trees to be retained shall be protected in accordance with British Standard BS 5837:2012 or any subsequent amendment to the British Standard.
- 5) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. For the avoidance of doubt the submitted information shall provide precise details of:
- A. The siting and location of parking for vehicles of site operatives and visitors;
  - B. The siting and location for the loading and unloading of plant and materials;
  - C. The siting and locations of all site cabins;
  - D. The siting and location of storage of plant and materials used in constructing the development;
  - E. The management of surface water and pollution prevention measures during each construction phase;
  - F. The siting and locations of security hoarding;
  - G. The siting location and nature of wheel washing facilities to prevent mud and stones/debris being carried onto the Highway (For the avoidance of doubt such facilities shall remain in place for the duration of the construction phase of the development);
  - H. The timings/frequencies of mechanical sweeping of the adjacent roads/highway;
  - I. Periods when plant and materials trips should not be made to and from the site (mainly peak hours but the developer to identify times when trips of this nature should not be made);
  - J. The highway routes of plant and material deliveries to and from the site;
  - K. Measures to ensure that construction and delivery vehicles do not impede access to adjoining properties;
  - L. Days and hours of operation for all construction works; and
  - M. Contact details for the site manager(s).

The approved statement shall be adhered to throughout the construction period of the development hereby approved.

- 6) No residential unit hereby permitted shall be occupied until details of arrangements for the future management and maintenance of proposed

carriageways, footways, footpaths, landscaped areas and bin storage areas not put forward for adoption within the site have been submitted to and approved in writing by the Local Planning Authority. Following occupation of the first residential unit on the site, the areas shall be maintained in accordance with the approved management and maintenance details.

- 7) The new estate road and shared pedestrian / cycle link between the site and Chatburn Road shall be constructed in accordance with the Lancashire County Council Specification for Construction of Estate Roads to at least base course level before any development takes place within the site.
- 8) All garage facilities shall have facility of an electrical supply suitable for charging an electric motor vehicle.
- 9) The existing gated field access opposite the hospital access shall be physically and permanently closed and the existing verge/footway and kerbing of the vehicular crossing shall be reinstated in accordance with the Lancashire County Council Specification for Construction of Estate Roads prior to any development commencing on site.
- 10) No development shall commence until final details of the design and implementation of an appropriate surface water drainage scheme have been submitted to and approved in writing by the local planning authority. Those details shall include:
  - A. A final surface water drainage layout plan; appropriately labelled to include all pipe/structure references, dimensions, design levels, finished floor levels and external ground levels (in AOD);
  - B. A full set of flow calculations for the surface water drainage network. The calculations must show the full network design criteria, pipeline schedules and simulation outputs for the 1-in-1 year, 1-in-30 year and 1-in-100 year return period; plus an appropriate allowance for climate change and urban creep. The calculations must also demonstrate that surface water run-off from the development does not exceed the existing pre-development surface water runoff rates and volumes for the corresponding rainfall intensity;
  - C. A final site plan showing all on-site surface water catchment areas, i.e. areas that will contribute to the proposed surface water drainage network;
  - D. Confirmation of how surface water will be managed within the non-drained areas of the site, i.e. gardens and public open space;
  - E. A final site plan showing all overland flow routes and flood water exceedance routes, both on and off site;
  - F. Details of any measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses; and
  - G. Final details of how the surface water drainage network will be managed and maintained over the lifetime of the development.

The drainage scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings, or completion of the development, whichever is the sooner.

Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

**\*\*end of schedule\*\***