

AN APPEAL RELATING TO THE PROPOSED DEVELOPMENT OF UP TO 110
DWELLINGS ON LAND AT HENTHORN ROAD, CLITHEROE, BB7 2PL

CLOSING SUBMISSIONS OF THE APPELLANT

Introduction

1. These closing submissions will follow the issues identified by the Inspector, with some additional topic headings added to aid explanation of the Appellant's position.
2. It is noteworthy that the Council's position at the inquiry is markedly different from that set out in the resolved reason for refusal:
 - a. The reason for refusal, as explained in the Council's Statement of Case, clearly set out an objection to the appeal scheme based on the fact that the appeal site is outside the settlement boundary for Clitheroe and thus breached the restrictive development management test for development in the countryside set out in policy DMG2. That point is not pursued by Mr Plowman and his written and oral evidence accepts that the appeal scheme would comply with DMG2;
 - b. The reason for refusal asserts that the residents on the appeal site development would be "wholly" reliant upon the private car. That is not the case put at the inquiry;

- c. The Council accepts that the part of the reason for refusal which refers to cycling is “unevidenced”.
- 3. The reason for refusal says nothing about bus or train services, but Mr Plowman does.
- 4. It is in this context that the Appellant addresses the issues identified by the Inspector.

Whether the Local Planning Authority can identify a five year supply of deliverable housing land.

- 5. The Council cannot show a deliverable five year supply of housing land. It is agreed that the five year requirement is 2,077 dwellings in the period 1st October 2018 to 30th September 2023, once the base requirement, shortfall and a 5% buffer are taken into account.
- 6. The Council no longer supports the supply figure set out in the last Five Year Supply Statement (2,543 units). Its best case now is that it has a supply of 2,387 units, or 5.75 years. That comes about as a result of concessions made in the period since the statement was produced.
- 7. The Appellant’s figure is that there is a deliverable supply of 2,018 units, or 4.86 years.
- 8. Before exploring the details of the remaining differences between the parties, it is necessary to consider some brief general points.

9. First, the Council displays a rather lax approach to the base date of 30th September 2018. Despite agreeing that that is the base date, it regularly has regard to newer information to support its approach with regard to disputed sites. There are three points to be made about that:

- a. Although the Council is not in the dire position that Mid-Suffolk DC found itself in at the Woolpit appeal¹, where clearly large number of fundamental errors were made by it in its approach to calculating supply, that does not detract from the point that Inspector Stephens clearly concluded in §70 of that decision that seeking to use new evidence to retrospectively justify judgments made at an earlier point in time is a “wholly inadequate” approach. It may, as Mr Manley QC said, be only one decision, but it is a well-reasoned decision from a very senior Inspector which was not challenged;
- b. Not adopting a rigorous approach to the base date and the evidence taken into account has the consequence that the Council only looks again at the sites which Mr Pycroft has disputed. There has been no attempt, so far as the inquiry is aware, to consider other sites in the claimed supply and ascertain whether, unbeknown to Mr Pycroft, some new issue has arisen which affects the deliverability of those sites or the numbers of dwellings to be expected from them in the relevant five year period; and
- c. Insofar as reconsideration of the newer evidence is concerned, it has led the Council to agree with Mr Pycroft in relation to the site at Worthall’s Farm, Read,

¹ CD4.03.

which the Council accepts should be removed from the supply (such agreement being reached before the exchange of evidence) and in relation to the site at Waddington Road, Clitheroe, where the number of expected dwellings is now agreed (a deduction of 50 units from the figure contained in the latest five year supply statement). The Council has also accepted that a 10 unit adjustment is needed in respect of the site at Whalley Road, Barrow. This new material shows that the Council's statement published just last November was not robust and requires amendment.

10. Second, the Council has not followed the PPG guidance² in testing the judgments made about site deliverability. As Mr Pycroft points out, paragraph 3-047 provides clear guidance that assumptions or judgments about the future supply of housing land should be tested against actual performance on comparable sites. The Council's assessment of future supply is devoid of any reference to comparable sites. Indeed, Ms Horton went so far as to say in the round table session that she does not look at comparison sites when assessing build rates or lead-in times that developers say they will achieve on a specific site. Mr Pycroft has looked at other sites within the Borough being developed by a range of developers and has shown that the Council's delivery assumptions are overly optimistic.

11. Third, the Council has a poor history of predicting future supply. Charts 5.1, 5.3, 5.4, 5.5 and 5.6 in Mr Pycroft's evidence show that the Council has consistently over-estimated delivery when past assumptions about future years' completions are compared to what was actually later achieved in those years.

² Paragraphs 3-036, 3-047 (in particular) and 3-048

12. Against that introduction, the main points of remaining difference can be explored. What follows is a further summary of the main points set out in the evidence and summarised in the tables jointly completed by Mr Pycroft and Ms Horton.

13. Site 01: Higher Standen Farm: The issue here is build rates. There are two problems with the Council's approach. First, the Council shows no sign of having properly compared the build rates asserted by the developer (Taylor Wimpey) with performance in the rest of the Borough. Mr Pycroft's evidence shows that Taylor Wimpey's other site in Ribble Valley (Tootle Green) is being developed at an annual average rate of 29 dpa. That tallies with the evidence which Mr Pycroft has found in relation to other large sites in Clitheroe which are experiencing build rates of 27 and 30 dpa. There is no justification for the Council assuming that a single housebuilder will build the Higher Standen site out at between 50 and 85 dpa. Second, the Council has treated phases 1 and 2 as being built out in timescales that overlap. That expressly contradicts the latest evidence from Taylor Wimpey (email 30th April) that they intend to build from phase 1 into phase 2. There is no adequate evidence to support the Council's contention that the phases will overlap at all, still less that the overlap will be to the degree asserted by the Council. Mr Pycroft is right to conclude that the build rate of 30dpa should be used, leading to the reduction of the Council's claimed supply by a further 158 dwellings.

14. Site 02: Chipping Lane, Longridge. The dispute here is also about build rates. It is a single developer site (Barratt). The Council has increased its build rates in the latest supply statement so that previous five year delivery from this site has risen from between 120 and 150 over a five year period in those earlier assessments to a current contention that delivery would be 246 dwellings in the latest five year period. This contrasts with the development

of Tootle Green, also in Longridge, at an annual average rate of 29dpa. The Council's assessment is far too optimistic and a 30dpa rate should be used instead, reducing the Council's claimed supply by a further 106 dwellings.

15. Site 03: land south-west of Barrow and west of Whalley Road, Barrow. This issue here is lead-in times. Ms Horton's evidence spends time justifying the build rate, which is not in issue. Given that the reserved matters application has not been considered by the Council's Planning Committee, it is too optimistic to assume a favourable decision can be received, that the planning obligation can be finalised, pre-commencement conditions discharged, infrastructure put into the site and that all of these steps will occur in time to deliver the first dwellings in year 2. Mr Pycroft's evidence shows that of the 11 large sites under construction at the base date, they had on average taken 16.25 months from approval of reserved matters of the grant of full planning permission until the delivery of the first dwellings. Ms Horton has not challenged this evidence. Mr Pycroft is right to push delivery back by one year, reducing the Council's supply by 50 dwellings.

16. Site 04: Land off Waddington Road, Clitheroe. Ms Horton agrees with Mr Pycroft's assessment in relation to this site, as set out above. 50 units have to be deducted from the supply set out in the five year supply statement.

17. Site 05: Land off Henthorn Road, Clitheroe. The issue is whether this site meets the NPPF definition of being deliverable. It is a site with only outline planning permission for major development. It is in the hands of a land promoter, not developer. The site has not been marketed, still less has a buyer been found. No reserved matters application has been made, nor is there any evidence of if and when one might be forthcoming. Ms Horton has simply

not adequately addressed the question of whether the site is deliverable. It is not, and 24 units need to be deleted from the Council's supply.

18. Small sites and windfall allowance: The Council counts into its five year supply an allowance of a total of 78 windfall units in total in years 3, 4 and 5 and also an allowance of 300 units on small sites which already have planning permission. The Council has no "compelling" evidence for the windfall allowance, as the NPPF requires. It is not in dispute that the basis upon which the Council makes the windfall allowance is an aggregation not just of windfall dwellings which been completed, but also those under construction. As Mr Pycroft sets out, that is a mistaken approach and Ms Horton was good enough to accept during the round table session that "would possibly" change the approach when reassessing windfalls so as remove dwellings under construction. The windfall allowance plainly lacks transparency and has probably been compiled on an erroneous basis. It cannot be reliable. The small sites with planning permission undergo lapses between permission being granted and houses being built, as Mr Pycroft's table 16.1 shows. If, as the Council now say, past delivery on small sites has run at 297 dwellings over the last five year period, there is no evidence to support delivery of 378 units in the next five years. Even the Council's modified contention that 297 units should be used as the figure for small sites completions is not correct. Mr Pycroft says the raw data shows that the true figure is 279. Further, fewer units on small sites had planning permission at the 30th September 2018 base date than did on 1st April 2013 and so this must be allowed for in assessing future trends. The upshot is that Mr Pycroft's figure from small sites/windfalls should be increased by 126 dwellings compared to the figure in his proof, but still a deduction from the Council's figure.

Whether the appeal site provides appropriate access to local services and facilities in terms of minimising the need to travel and offering a realistic choice of non-car travel modes.

19. The elected Members of the LPA concluded that residents of the appeal scheme would be “wholly” reliant upon the car. Mr Plowman does not support that contention. He accepted in evidence that what development plan and national policy both look to achieve is provide a realistic choice of transport mode and provide opportunities for people to use non-car modes of travel.

Walking.

20. The Council adopts an approach of ‘planning by numbers’. There is no hard and fast rule that any specific distance marks a firm threshold between people choosing to walk and choosing to drive. People behave differently. The National Travel Survey confirms that over 80% of journeys of 1.6km (1 mile) or less take place on foot. There will obviously be some groups of people who are more and less willing to do so, but there is no reason to treat the potential population on the appeal site as different from the general characteristics of society as a whole as it might have been if the scheme had been, for example, an extra care facility. Even when dealing with Manual for Streets, Mr Plowman at the round table session approached the 800m figure given for ‘walkable neighbourhoods’ as a threshold, even though the guidance expressly says the 800m figure is not an upper limit, as Mr Helme explained.

21. There is a range of facilities within convenient walking distance of the appeal site, including schools, places of worship, convenience stores and others. It is true that much of the town centre is beyond 2km of the appeal site, but it is to be noted that Mr Stephens dealt with this point in §33 of his decision on the neighbouring site³. There, as here, the LPA relied upon the CIHT guidance. Mr Stephens concluded that the 2000m figure had to be approached “with a degree of realism”. He took into account the fact the most journeys under a mile take place on foot (as we point out here) and that this takes somebody close to the town centre. In any event, he pointed to the existence of facilities closer than 2000m, as we do here. It is submitted that placing too much weight on distance is too simplistic an approach. It is also relevant to consider the qualitative aspects of the route. The Council has no concerns about footway widths or the availability of footways. There is small point about an obstruction at one point on Henthorn Road near the Story Homes development, but (i) there is a footpath on both sides of the road and (ii) to attach any weight to that obstruction as a negative matter one would need to know whether that obstruction is an unlawful one which could be removed or a lawful one which can remain – a point on which there is simply no evidence. The approach to the town centre is level. The footpaths are lit and of sufficient width. It is true that the town centre has inclines, but that is the same for all residents of Clitheroe wherever they live (a point Mr Stephens made in the context of cycling)⁴. The idea that the slightly hilly nature of the town centre is the fact that would put someone off walking to the town centre from the appeal site is simply unevidenced assertion which smacks of needing to find something to say.

³ CD4.09

⁴ CD4.09 §31.

22. Mr Helme's evidence, with which Mr Plowman did not disagree, is that walk distances from many parts of the appeal site to local facilities and services are shorter than from many parts of the neighbouring site allowed on appeal. The residents of both schemes would use the same routes to and from the town. What the Council has never done is explain why pedestrian accessibility is acceptable from the neighbouring site but not from the appeal site. The same is true of the Story Homes site. It is true that each case has to be approached on its own merits, but the Council has not properly explained why the merits of these two neighbouring sites are materially different from the pedestrian accessibility merits of the appeal site. Decisions ought to be taken in a consistent way. In truth, there is no rational reason to treat the appeal site differently from the two neighbouring sites.

Cycling.

23. Mr Plowman's written evidence accepts that all of Clitheroe is within an easy cycling distance of the appeal site. He accepted during the round table discussion that he had no concerns about the qualitative aspects of the available routes. He expressed some concern (which the LPA had not previously raised) about the absence of cycling facilities in the town and so the Appellant's planning obligation includes an obligation to make such provision. The Council accepts that that contribution could be put to good use.

24. There is clearly no issue relating to cycling which amounts to a defect of the appeal scheme, still less a material part of a reason for refusal.

Bus provision.

25. This is not an issue which the Council's Planning Committee has ever expressed concern about. It appears for the first time in Mr Plowman's evidence. The appeal scheme would provide funding for the continued subsidy of what is now the number 2 service for a five year period. Importantly, that five year period would follow on from the five year period of subsidy secured by the scheme on the neighbouring site. The evidence is that that initial subsidy runs from December 2016 to December 2021 and so the contribution offered by the Appellant could be used to extend that service from December 2021 for another five years, securing the service until December 2026. That is a security of service which of many places would be rightly envious in the present climate of uncertainty around bus provision. It is perfectly usual for bus subsidies to be time-limited as proposed here. Of course no-one can say what would happen at the end of the period, but the appeal scheme, together with the neighbouring and Story Homes schemes would together provide an additional $270 + 110 + 130 = 510$ homes' worth of potential customers, which could only increase the prospect of the service being self-supporting at the end of the subsidy period.

26. The Council now takes a point about the adequacy of the bus stop provided or to be provided as part of the neighbouring scheme. Whatever the Council's views, LCC and Inspector Stephens concluded that a "Quality Bus Stop" at the neighbouring site would suffice. If the stop which is there now is not of that standard that can only be (i) in breach of planning control, in which case RVBC can take enforcement action if they conclude it expedient or (ii) because LCC have accepted that such a stop does not need to be provided. There is no evidence RVBC have ever sought to intercede with LCC to upgrade the stop. Further still LCC and, crucially, RVBC have never asked for a contribution to be made in order to provide such a shelter. At worst, the absence of a shelter at the stop can only be a very minor matter to weigh against the appeal scheme, as Mr Lewis explained in RX.

27. Again, the Council has totally failed to explain why the appeal site should be treated differently from the neighbouring site or the Story site as regards access to bus services and infrastructure. With the subsidy and bus stop in place, Mr Stephens concluded that bus accessibility would be “good”⁵. LCC’s consultation response on the application was to the same effect⁶. The Story Homes site’s access to bus services was obviously considered to be acceptable when the Council granted planning permission. There is no basis for forming a different view on this site.

28. There is an appropriate range of local services and facilities, including town centre services which are accessible by a realistic choice of non-car modes from the appeal site. That is unsurprising given the location of the site on the edge of the Borough’s main settlement. The Council has simply not stopped to think about the implications of its case at this inquiry. If a site like the appeal site is not appropriately accessible, then what hope would there be for any site in or on the edge of lower order settlements with a narrower range of services? Again, the decision on the neighbouring site has highly material conclusions within it: Mr Stephens concluded that:

“The development of [a] site immediately adjacent to the built up area of Clitheroe would in principle be ‘sustainable’ because that is where the predominance of services and facilities are to be found. That is in part because such a location would reduce reliance upon the private car.”⁷

⁵ CD4.09 §32.

⁶ CD3.07 [page 28 of 30 in CD3] fourth para on page.

⁷ CD4.09 §27.

29. The Council has singularly failed to explain why that conclusion does not apply equally to the appeal site.

30. The Council's case requires the conclusion to be reached that there is some qualitative difference between the accessibility merits of, on the one hand, the neighbouring site allowed on appeal and the Story Homes site and, on the other, the appeal site. They can point to nothing with any reasonable basis. That, it is submitted, is because no such rationale exists.

Whether the appeal site is appropriately located in terms of national and local policy.

31. This point is set out in the reason for refusal and Statement of Case, but was not pursued in the evidence. The Council is right not to pursue it. Indeed, Mr Plowman accepts that the appeal scheme accords with DMG2⁸. However, as it has been identified as a main issue and as two Inspectors have concluded that the location of a site outside the settlement boundary creates a breach of policy DMG2, the point needs to be dealt with. The Council's position at the inquiry is right for the following reasons:

- a. Part 1 of policy DMG2⁹ provides that development proposals "in" the principal settlements of Clitheroe, Longridge, 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. Those quoted terms are defined in the Core Strategy glossary¹⁰. "Rounding off" requires the site to be in the settlement boundary,

⁸ See his proof §§2.5 and 6.13 and his answers in cross-examination.

⁹ CD6.01 page 88.

¹⁰ CD6.01 page 136, (consolidation), page 138 (expansion) and page 141 (rounding off).

but consolidation includes development which adjoins the main built up area. Expansion allows for limited growth of a settlement. Part 1 of the policy is not therefore permissive only of development which is within the settlement boundary;

- b. The Council's Statement of Case points to the restrictive approach to development which applies in tier 2 villages and "outside the defined settlement areas". The Statement of Case highlighted the reference to settlement areas. But that was to misunderstand the plan. Settlement areas are not the areas within the settlement boundaries. As Mr Lewis points out, footnote 28 of the CS¹¹ says that there are 40 villages in Ribble Valley but only 32 of them are categorised as defined settlements where development would be acceptable. Development in the remaining 8 villages would not be acceptable. Therefore, the second part of DMG2 does not apply a restrictive approach to development outside the settlement boundary of (among other places) Clitheroe, but applies a restrictive approach to development *in* the Tier 2 villages and *in* the 8 villages which are not defined settlement areas;
- c. The Council has made it plain that it permits development outside the settlement limits of Clitheroe. Indeed, the CS identified a residual requirement for sites at Clitheroe but does not allocate enough land to meet that requirement¹². Further, the committee report for this application and the update report both claimed that there was a five year supply but also accepted that the scheme accorded with

¹¹ CD6.01 page 173

¹² Se Mr Lewis proof, page 38, figure 2.

DMG2¹³. The Council also made it plain that the approach to the settlement limits was a flexible one when it participated in the HED DPD examination hearings¹⁴ and produced a list of sites where housing had been permitted outside the settlement limits of Clitheroe¹⁵. The approach is confirmed in the Main Modifications to the HED DPD¹⁶ and by the fact that the HED DPD does not allocate enough land to meet the Clitheroe requirement¹⁷. The Council needs to be flexible as regards the settlement limits of Clitheroe in order to be able to provide enough housing.

32. There is no indication in the decision letters at Read¹⁸ and Longridge¹⁹ that the two Inspectors in those cases had these issues drawn to their attention. In particular, they do not address the CS definitions of expansion or consolidation. Indeed, Mr Wildgoose's decision at Longridge finds that policy DMG2 was breached even though he describes the appeal site in that case as "adjoining" Longridge. Mr Plowman confirmed that the Council does not invite the Read and Longridge decisions to be followed in this respect. In all of the circumstances, the Council's concession is correctly made and it would not be correct to conclude that the appeal scheme breaches policy DMG2.

33. There is no reason to think that, if the appeal scheme is appropriately accessible, that the location of the appeal site outside of but adjoining the settlement limit of Clitheroe offends against any aspect of the NPPF.

¹³ CD2.20 §51.3 and §5.1.13 and CD2.18 page 33.

¹⁴ Mr Lewis's proof page 40 §6.1.47.

¹⁵ CD7.05

¹⁶ CD7.04 page 3, section 1, fifth para.

¹⁷ Mr Lewis' proof page 42 §6.1.49.

¹⁸ CD4.02

¹⁹ CD4.01

The effect of the proposal upon highway safety and capacity.

34. The Council takes no issue on this. That is not for the want of trying. When Members first resolved to refuse the application, contrary to officer advice, they wished to include a highways reason for refusal²⁰. As the Highway Authority did not object to the application, the Borough Council contacted consultants. Officers told Members at the meeting on 19th January 2019 that no fewer than five consultants had been approached and all five declined to defend the proposed reason for refusal. As a result, it was not pursued.

35. Local people have concerns about the proposal upon highway safety and capacity. That is not uncommon, but the simple truth is that there is no objective evidence to support their concerns, still less to show that the safety effect of the scheme would be unacceptable or that any residual capacity effects would be “severe” as the NPPF requires. To be fair, none of the local people who addressed the inquiry contended that the effects of the scheme met the NPPF threshold for refusal.

36. Messrs Bennett and Helme, from the vantage point of their metaphorical hot tub, were in complete agreement that the scheme would create no unacceptable capacity or safety concerns. Every aspect of the scheme’s highway impact from access design, link capacity, junction capacity, footway provision, trip generation, accident records and all other material matters have been carefully considered by Mr Helme and conscientiously checked by Mr Bennett and other officers at LCC. As an example of the robustness of Mr Helme’s approach, Mr Bennett stated that when LCC’s officers looked for themselves to find an

²⁰ As set out in paragraph 2.3.1 of Mr Lewis’ proof.

appropriate sample of sites from the TRICS database, they actually arrived at trip rates for the development which were *lower* than those which Mr Helme had used. LCC's main concern was about the performance of the Henthorn Road/Thorn Street junction. The modelling of the performance of that junction was found to be robust by LCC and was checked by site observations conducted over an appropriate peak hour periods.

37. The evidence before the inquiry shows unequivocally that there is no highway safety or capacity reason to refuse planning permission for the appeal scheme. The LPA and the five consultants they approached were right not to pursue it.

The effect of the proposed development upon ecological interests.

38. There is no concern about this issue from the Council, but it has been raised by third parties. As a result, the Appellant has prepared a short written representation from FPCR. In summary, it shows:

- a. Appropriate baseline surveys were conducted at application stage;
- b. Any potential impacts through water run-off into the River Ribble (a non-statutory Biological Heritage Site within 1km of the site) can be avoided by adopting appropriate construction practice;
- c. The site is largely poor semi-improved grassland with a small section of moderately species-rich grassland in the south-east corner. The latter is of local importance only, given its small area. Nevertheless, the illustrative development

framework shows that the site can be developed for up to 110 dwellings whilst protecting this area. Enhanced planting of greenspace and tree planting, together with the retention of the vast majority of the boundary hedges and additional hedgerow planting provides an opportunity to create a net gain in the hedgerow resource on site;

- d. Disturbance to bats could be minimised by retaining the habitat of importance to protected bat species, together with the adoption of an appropriate lighting scheme and buffering of planting. Bat boxes could be provided to make more roosting habitat available for bats. As a result, no negative impacts on bats would occur;
- e. Impacts on birds can be appropriately mitigated by the appropriate timing of works and the retention of trees on site. There is scope to provide improved foraging habitat for barn owls;
- f. The site and two ponds within 500m of it were surveyed for the presence of Great Crested Newts. None were found; and
- g. Overall, appropriate mitigation and scheme design at reserved matters stage could create a net gain in biodiversity on site. A matrix demonstrating as much is set out in Appendix A to the FPCR written statement.

39. There is thus no justification for withholding planning permission on ecological grounds.

On the contrary, it is common ground that the ecological impact of the scheme would be beneficial.

The benefits of the appeal scheme.

40. The appeal scheme would bring considerable benefits.

41. The appeal scheme would bring benefit from additional market housing. That is a benefit of the scheme even if, contrary to the Appellant's case, there is a deliverable five year supply. Mr Plowman was given a more than fair chance to engage with the question of how weighty a benefit it was. He eventually said it deserved "some" weight, which is an unhelpful answer. The grudging way in which he approaches the issue is, however, a good indicator of the inadequacy of his planning balance exercise. If there is not a five year supply, logically the weight to be given to the benefit would increase, but adding to "some" weight does not really admit of a clear idea of what that weight should be.

42. Further, the Council is not going to be able to provide the amount or proportion of housing development at Clitheroe in the CS period that the CS envisages. This is the product of the Council accepting that delivery from the Higher Standen site has slipped, compared to what the CS expected. Providing more housing at Clitheroe, the Borough's main settlement, in the CS period than would otherwise be the case and which would bring the situation closer into line with what the CS set out to achieve is a further important aspect of the benefits of the appeal scheme. It is one which Mr Plowman's evidence omits to consider at all.

43. The Council has an unmet affordable housing need. The backlog is getting worse not better. The Council's affordable housing need for the first five years of the CS was 114 dpa – a figure which was never reached in the five year period or since²¹. Indeed, the Council has only met the monitoring figure of 75 dpa in 3 of the 12 years of the CS period to date. But that 75 monitoring figure must not be confused with the figure representing the need. The Council has no current means of providing the additional 853 affordable homes needed over the rest of the CS period to meet even that monitoring figure: see Mr Lewis' §10.3.4.

44. The appeal scheme would provide 30% affordable housing, as policy requires. Mr Plowman accepted that compliance with that policy is not a neutral matter or the mitigation of harm, but a benefit. His proof does not engage with any of the material issues relevant to weighing this as a benefit and ascribes no specified amount of weight to it as a benefit. It is clearly a very important and significant benefit of the appeal scheme.

45. The appeal scheme would provide a policy-complaint proportion of housing for the over 55s, a type of housing for which Mr Plowman accepts the CS identifies an unmet need (see policy DMH1²²). Remarkably, that topic is not mentioned even once in Mr Plowman's evidence – further evidence of his inadequate approach to weighing the scheme's benefits.

46. It is common ground that the scheme would bring biodiversity benefit²³. That benefit is not addressed or weighed in Mr Plowman's evidence.

²¹ Mr Lewis' proof, table 4 on page 63 to 64.

²² CD6.01 page 102.

²³ General SoCG page 10 §4.4.15.

47. It is common ground that the open space provision on site is a benefit of the scheme²⁴.

That benefit is neither addressed nor weighed in the balance in Mr Plowman's evidence.

48. Mr Plowman accepted that the bus subsidy whilst CIL-compliant, would also benefit residents of existing areas along the route of the number 2 service. He neither acknowledges nor weighs that benefit either.

49. The appeal scheme would bring the economic benefits listed in the Appellant's opening. Mr Plowman's evidence clearly downplays these by labelling them as Borough-wide "generic" benefits. Even that is not right, as some of the benefits would arise in the specific context of spending power exercised in the Clitheroe area. But his evidence also overlooks the fact that it is common ground that the economic benefits deserve "significant" weight²⁵.

50. If Mr Plowman does not engage properly with what the benefits are or express views about the weight to be given to them, he cannot hope to present a reliable judgment on where the planning balance lies.

The Harm which the appeal scheme would cause.

51. The only harm which the Council alleges is the supposed lack of accessibility of the appeal site by non-car modes. Mr Lewis obviously acts on the judgment expressed by Mr Helme

²⁴ General SoCG page 10 §4.4.23.

²⁵ General SOCG page 10 §4.4.16.

on those matters and Mr Plowman acts on his own judgment. The Inspector will form his own view, but the Appellant's contention is that the site is appropriately accessible.

52. But it is noted that although it forms no part of the Council's case, Mr Lewis has acknowledged and taken account of the harm caused by the loss of a greenfield site. Mr Lewis has conscientiously weighed all material harm in his assessment of where the balance lies.

The Planning Balance

53. If there is a five year supply, then there is no question of the tilted planning balance applying. The Appellant accepts that policies DMI2 and DMG3 (which are the only applicable policies left which apply to the reason for refusal as now pursued by the Council) are consistent with the NPPF. If the site is appropriately accessible, as the Appellant contends, then the appeal scheme accords with the Development Plan, no material considerations indicate that permission should be refused and section 38(6) of the Planning and Compulsory Purchase Act 2004, policy DS2 of the CS and paragraph 11(c) of the NPPF would require permission to be granted. Mr Plowman accepted that that is the case whether or not there is a five year supply.

54. If the Appellant's case on accessibility is not accepted either in part or at all, then it would obviously be likely to follow that policies DMI2 and DMG3 were breached. It is then a matter of planning judgment whether that breach of those policies amounts to a breach of the Development Plan when taken as a whole, given the scheme's benefits and compliance with other policies of the Development Plan. If there is a five year supply and the policies

are breached, then such a conclusion would, it is accepted, be likely to lead to the dismissal of the appeal. If, however, there is not a five year supply, then the tilted planning balance applies. The extent of defect in the site's accessibility would have to be weighed against the benefits and a conclusion reached about whether the harm significantly and demonstrably outweighed the benefits.

55. It is in this latter scenario that Mr Plowman's evidence becomes most confused. In §6.15 of his proof, having weighed benefits (in an incomplete way) and his evaluation of harm, he concludes that the matter is finely balanced. If the matter is finely balanced, then it cannot possibly be the case that the burden of the tilted planning balance is met. Mr Manley QC tried to recast the issue in XXm of Mr Lewis as one where the thing that was finely balanced was not the weighing of harm and benefit, but the judgment of whether the harm significantly and demonstrably outweighed the benefit. The argument is ingenious, but suffers from the defect from being entirely at odds with what Mr Plowman actually said. He was XXd about his phrase 'finely balanced' and he clearly said that he was addressing the question of where the balance of harm and benefits lay, not the question of whether the threshold of the tilted planning balance was met.

56. Mr Plowman's assessment is that the appeal scheme is not sustainable development. But he accepted in XXm that he only addressed sustainability through the lens of access. He later tried to say that he had addressed the other aspects of sustainability, whether they be social, economic and environmental, but there is no indication that he has done so. Sustainability is a multi-faceted concept and accessibility is only one part. For example, contributing towards general or affordable housing need is an important aspect of sustainability too, but one which Mr Plowman does not address. The incomplete approach

he takes to assessing sustainability is further evidence of his inadequate approach to assessing the overall merits of the appeal scheme.

Conclusion

57. None of what is set out in the previous section should detract from the Appellant's main case. The appeal site is appropriately located both as regards strategic development plan policy in DMG2 and in site specific terms. Specifically, it is able to offer a choice of non-car modes of travel to and from local services and facilities. It is a sustainably located site and the appeal scheme would be sustainable development.

58. The appeal ought to be allowed.

MARTIN CARTER

Counsel for the Appellant

10th May 2019

Kings Chambers

Leeds – Manchester – Birmingham.