

LAND OFF KINGSMILL AVENUE, WHALLEY, CLITHEROE, BB7 9PG

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

APPEAL STATEMENT

August 2019

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/1 INTRODUCTION

- 1.1. PWA Planning is retained by Mr John Townson ('the appellant') to lodge an appeal against the refusal of planning application reference **3/2019/0340** for a '*Residential development of four dwellings*' at Land off Kingsmill Avenue, Whalley, Clitheroe, BB7 9PG ('the site') by Ribble Valley Borough Council ('the Council').
- 1.2. The application for planning permission was submitted to the Council on 24th April 2019 and was accompanied by appropriate plans and supporting information. The application was subsequently refused on 24th May 2019. The application had two reasons for refusal, which are provided on the attached decision notice (Appendix A).
- 1.3. This appeal statement, made under Section 78 of the Town and Country Planning Act 1990, has been prepared against the refusal. It should be read in conjunction with the other submitted documents and drawings that formed part of the planning application.

/2 REQUEST FOR HEARING

- 2.1. It is requested by the Appellant that the Hearing Procedure is followed for this appeal under the Town and Country Planning (Hearings Procedure) (England) Rules 2000 (Statutory Instrument 2000/1626), as amended by the Town and Country Planning (Hearing and Inquiries Procedures) (England) (Amendment) Rules 2009 (Statutory Instrument 2009/455) and by The Town and Country Planning (Hearings and Inquiries Procedure) (England) (Amendment) Rules 2013 Statutory Instrument 2013/2137.

- 2.2. It is considered that the Hearing Procedure is the most appropriate form of appeal on this occasion, given the nature of the matters disputed between the Appellant and the Council. Specifically, this relates to the provision of self-build dwellings, whether they comprise local needs housing, the Council's duty to deliver self-build dwellings, and in this instance whether Paragraph 11d)ii of the NPPF should be engaged.

- 2.3. The Appellant believes the Inspector would benefit from allowing all parties to take place in a round table discussion which fully explores the matters of dispute, as set out in the accompanying Draft Statement of Common Ground

/3 PROPOSED DEVELOPMENT

- 3.1. The application site is located off Kingsmill Avenue, to the north of the village of Whalley and has a total site area of 0.15 hectares. The site comprises a portion of land surrounding the existing roundabout on the end of Kingsmill Avenue, which serves as a turning point for the existing residential development. The land is currently occupied by a central roundabout, several small garages/sheds and sections of hardstanding and grass.
- 3.2. The surrounding area of the site is characterised to the north, west and south by existing agricultural land. To the east of the site lies 16 existing residential dwellings, along Kingsmill Avenue, which links to Milton Road (B6246). The edge of the settlement of Whalley lies approximately 1.3km from the site.
- 3.3. The site lies within a sustainable location for residential development, with a variety of local services and facilities easily accessible in Whalley, such as bars/restaurants, a primary school, public houses, a health centre, supermarkets and places of worship. The nearest bus-stop is located approximately 150m to the east of the site on Milton Road. This service provides frequent and direct services to the settlements such as Longridge and Whalley. Rail links are available from Whalley train station within 1.5km of the site.
- 3.4. There are no ecological or landscape designations associated with the site. The site is located wholly within Flood Zone 1, where the risk of flooding is at its lowest and there are also no active Tree Preservation Orders associated with the site. A public right of way runs through the centre of the site. With regards to heritage designations, there are no heritage assets within the site or in the site's locality.

Planning History

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

- 3/2013/1023 Four semi-detached, three-bedroomed dwellings with associated garden areas and parking (two open market dwellings and two affordable dwellings). Resubmission of application 3/2012/0702. This application was subject to a non-determination appeal (Appeal ref: APP/T2350/W/18/3210850). The appeal was dismissed 22nd June 2015.
 - 3/2012/0702 Residential development of twelve new dwellings, comprising of 1 x detached, 6 x semi-detached and 5 x terraced (1 x market unit and 4 x affordable units), 3 and 4 bedrooms with associated garden areas and parking. Refused 11th December 2012.
- 3.6. The application proposed up to 4 no. self-build dwellings. The application was submitted as a Stage 1 Permission in Principle application meaning it was not supported by a proposed site plan or an associated elevation/floorplan drawing. The site boundary is however clearly of a size which would permit the construction of 4 dwellings whilst having the potential to respect the vernacular and enhancing the local sense of character. Technical details such as design and layout are to be saved for any future Stage 2 Technical Considerations application.

/4 RELEVANT PLANNING POLICY

4.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise, meaning any other supplementary / supporting planning documents and government guidance as set out in the National Planning Policy Framework (NPPF) (2019).

4.2. In this instance, the statutory Development Plan for the application site comprises of the Ribble Valley Local Plan adopted on 16th December 2014 and the Ribble Valley Core Strategy 2008-2028, whilst the emerging Ribble Valley Housing and Economic Development - Development Plan Document (HED DPD), NPPF and the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) are material considerations.

4.3. The Case Officer's Report (included in Appendix B) states the following policies are relevant to the application:

- Key Statement DS1 – Development Strategy,
- Key Statement DS2 – Sustainable Development,
- Key Statement H1 – Housing Provision,
- Key Statement H2 – Housing Balance,
- Policy DMG2 – Strategic Considerations and
- Policy DMG3 – Transport and Mobility.

4.4. The aforementioned policies are detailed in full within the Core Strategy included as part of Appendix H within this statement. Within the Decision Notice, the Council refers to the following Development Plan policies within the reasons for refusal:

Key Statement DS1 – Development Strategy

4.5. *'The majority of new housing development will be:*

- *concentrated within an identified strategic site located to the south of Clitheroe towards the A59; and*
 - *the principal settlements of:*
 - *Clitheroe;*
 - *Longridge; and*
 - *Whalley.*
- 4.6. *Strategic employment opportunities will be promoted through the development of:*
- *the Barrow Enterprise Site as a main location for employment; and*
 - *the Samlesbury Enterprise Zone.*
- 4.7. *New retail and leisure development will be directed toward the centres of:*
- *Clitheroe;*
 - *Longridge; and*
 - *Whalley.*
- 4.8. *In addition to the strategic site at Standen and the borough's principal settlements, development will be focussed towards the Tier Villages, which are the more sustainable of the 32 defined settlements:*
- *Barrow;*
 - *Billington;*
 - *Chatburn;*
 - *Gisburn;*
 - *Langho;*
 - *Mellor;*
 - *Mellor Brook;*
 - *Read & Simonstone;*

- *Wilpshire.*

4.9. *In the 23 remaining Tier 2 Village settlements, which are the less sustainable of the 32 defined settlements, development will need to meet proven local needs or deliver regeneration benefits. The Tier 2 Village settlements are:*

- *Bolton-by-Bowland;*
- *Brockhall;*
- *Calderstones;*
- *Chipping;*
- *Copster Green;*
- *Downham;*
- *Dunsop Bridge;*
- *Grindleton;*
- *Holden;*
- *Hurst Green;*
- *Newton;*
- *Osbaldeston;*
- *Pendleton;*
- *Ribchester;*
- *Rimington;*
- *Sabden;*
- *Sawley;*
- *Slaidburn;*
- *Tosside;*
- *Waddington;*
- *West Bradford;*
- *Wiswell;*
- *Worston.*

4.10. *In general, the scale of planned housing growth will be managed to reflect existing population size, the availability of, or the opportunity to provide facilities to serve the development and the extent to which development can be accommodated within the local area. Specific allocations will be made through the preparation of a separate allocations DPD.*

4.11. *In allocating development, the Council will have regard to the AONB, Green Belt and similar designations when establishing the scale, extent and form of development to be allocated under this strategy. The relevant constraints are set out as part of the strategic framework included in this plan.*

4.12. *Development that has recognised regeneration benefits, is for identified local needs or*

satisfies neighbourhood planning legislation, will be considered in all the borough's settlements, including small-scale development in the smaller settlements that are appropriate for consolidation and expansion or rounding-off of the built up area.

- 4.13. *Through this strategy, development opportunities will be created for economic, social and environmental well-being and development for future generations.'*

Key Statement DMI2 – Transport Considerations

- 4.14. *New development should be located to minimise the need to travel. Also it should incorporate good access by foot and cycle and have convenient links to public transport to reduce the need for travel by private car.*

- 4.15. *In general, schemes offering opportunities for more sustainable means of transport and sustainable travel improvements will be supported. Sites for potential future railway stations at Chatburn and Gisburn will be protected from inappropriate development.*

- 4.16. *Major applications should always be accompanied by a comprehensive travel plan.*

Policy DMG2 – Strategic Considerations

- 4.17. *Development should be in accordance with the Core Strategy Development Strategy and should support the spatial vision.*

- 4.18. *1. 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.*

- 4.19. *Within the tier 2 villages and outside the defined settlement areas development must meet at least one of the following considerations:*

- 1. The development should be essential to the local economy or social well being of the area.*

2. *The development is needed for the purposes of forestry or agriculture.*
 3. *The development is for local needs housing which meets an identified need and is secured as such.*
 4. *The development is for small scale tourism or recreational developments appropriate to a rural area.*
 5. *The development is for small-scale uses appropriate to a rural area where a local need or benefit can be demonstrated.*
 6. *The development is compatible with the enterprise zone designation.*
- 4.20. *Within the Open Countryside development will be required to be in keeping with the character of the landscape and acknowledge the special qualities of the area by virtue of its size, design, use of materials, landscaping and siting. Where possible new development should be accommodated through the re-use of existing buildings, which in most cases is more appropriate than new build.*
- 4.21. *In protecting the designated area of outstanding natural beauty the council will have regard to the economic and social well being of the area. However the most important consideration in the assessment of any development proposals will be the protection, conservation and enhancement of the landscape and character of the area avoiding where possible habitat fragmentation. Where possible new development should be accommodated through the re-use of existing buildings, which in most cases is more appropriate than new build. Development will be required to be in keeping with the character of the landscape and acknowledge the special qualities of the AONB by virtue of its size, design, use of material, landscaping and siting. The AONB management plan should be considered and will be used by the council in determining planning applications.*
- 4.22. *For the purposes of this policy the term settlement is defined in the glossary. current settlement boundaries will be updated in subsequent DPDS.*
- 4.23. *This policy assists the interpretation of the development strategy and underpins the settlement hierarchy for the purposes of delivering sustainable development. In*

establishing broad constraints to development the Council will secure the overall vision of the Core Strategy.

Policy DMG3 – Transport and Mobility

4.24. *In making decisions on development proposals the local planning authority will, in addition to assessing proposals within the context of the development strategy, attach considerable weight to:*

4.25. *The availability and adequacy of public transport and associated infrastructure to serve those moving to and from the development –*

- 1. The relationship of the site to the primary route network and the strategic road network.*
- 2. The provision made for access to the development by pedestrian, cyclists and those with reduced mobility.*
- 3. Proposals which promote development within existing developed areas or extensions to them at locations which are highly accessible by means other than the private car.*
- 4. Proposals which locate major generators of travel demand in existing centres which are highly accessible by means other than the private car.*
- 5. Proposals which strengthen existing town and village centres which offer a range of everyday community shopping and employment opportunities by protecting and enhancing their vitality and viability.*
- 6. Proposals which locate development in areas which maintain and improve choice for people to walk, cycle or catch public transport rather than drive between homes and facilities which they need to visit regularly.*
- 7. Proposals which limit parking provision for developments and other on or off street parking provision to discourage reliance on the car for work and other journeys where there are effective alternatives.*

4.26. *All major proposals should offer opportunities for increased use of, or the improved*

provision of, bus and rail facilities.

- 4.27. *All development proposals will be required to provide adequate car parking and servicing space in line with currently approved standards.*
- 4.28. *The Council will protect land currently identified on the proposals map from inappropriate development that may be required for the opening of stations at Gisburn and Chatburn. Any planning application relating to these sites will be assessed having regard to the likelihood of the sites being required and the amount of harm that will be caused to the possible implementation of schemes.*
- 4.29. *The Council will resist development that will result in the loss of opportunities to transport freight by rail.*
- 4.30. *Transport considerations are key to the delivery of sustainable development. The Council has established through this policy those aspects to be given particular regard when determining planning applications.*
- 4.31. *This policy recognises that the recent investment in the local railway infrastructure opens up the possibility of carrying more local and long distance freight in a more sustainable way, potentially removing more lorry based traffic from local roads. It also continues the opportunities recognised to extend passenger service by protecting existing station locations that could be developed to improve use of rail as a modal option.*
- 4.32. *In using this policy, reference will be made to Guidance of Transport Assessments. This should also include an assessment of the impacts on existing bus and rail infrastructure, including level crossings. Where necessary developers will be expected to contribute towards improvements in public transport provision and infrastructure.*

Policy DMH3 – Dwellings in the Open Countryside

- 4.33. *Within areas defined as Open Countryside or AONB on the Proposals Map, residential development will be limited to:*

1. *Development essential for the purposes of agriculture or residential development which meets an identified local need. In assessing any proposal for an agricultural, forestry or other essential workers dwellings a functional and financial test will be applied.*
 2. *The appropriate conversion of buildings to dwellings providing they are suitably located and their form and general design are in keeping with their surroundings. Buildings must be structurally sound and capable of conversion without the need for complete or substantial reconstruction.*
 3. *The rebuilding or replacement of existing dwellings subject to the following criteria:*
 - *the residential use of the property should not have been abandoned.*
 - *there being no adverse impact on the landscape in relation to the new dwelling.*
 - *the need to extend an existing curtilage.*
- 4.34. *The creation of a permanent dwelling by the removal of any condition that restricts the occupation of dwellings to tourism/visitor use or for holiday use will be refused on the basis of unsustainability.*
- 4.35. *The protection of the open countryside and designated landscape areas from sporadic or visually harmful development is seen as a high priority by the Council and is necessary to deliver both sustainable patterns of development and the overarching core strategy vision.*

/5 REASONS FOR REFUSAL AND THE CASE FOR THE APPELLANT

Reasons for Refusal

5.1 For reference, the reasons for refusal are as follows:

- 1. The proposal is considered contrary Key Statement DS1 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that approval would lead to the creation of new dwellings in the open countryside without sufficient justification. The proposed development would create a harmful precedent for the acceptance of other similar unjustified proposals which would have an adverse impact on the implementation of the planning policies of the Council contrary to the interests of the proper planning of the area in accordance with core principles and policies of the NPPF.*
- 2. The proposal would lead to the perpetuation of an unsustainable pattern of development, without sufficient or adequate justification, that does not benefit from adequate walkable access to local services or facilities - placing further reliance on the private motor-vehicle contrary to the aims and objectives of Key Statement DMI2 and Policy DMG3 of the adopted Core Strategy and Section 9 of National Planning Policy Framework, Promoting sustainable transport.*

Case for the Appellant

Reason for Refusal 1

5.2 The first reason for refusal states that sufficient justification has not been provided to justify development within the open countryside. In this context it is pertinent to consider the following:

- The development specific harm generated; and
- The implications of Self-build and Custom Housebuilding Act 2015 (as amended).

- 5.3 Regarding the former the Officer's Report fails to identify what harm would be generated by the proposals and instead relies solely on a general policy conflict to justify the reason for refusal as oppose to considering the proposals in isolation.
- 5.4 In this context, as noted in the submitted Planning Statement, the parameters of the site are unique in so much as single streets of suburban style semi-detached properties seldom exist within the open countryside outside of formal settlement boundaries. This is largely due to the fact the housing was originally built to provide homes for those working at the former Calderstones Hospital. Consequently, it is disputed that the development would set a harmful precedent, given that comparable examples are not likely to be prominent with the Borough. Equally the proposal's association with the established dwellings along Kingsmill Avenue allow for it to be viewed within the context of existing development which is far preferable to more isolated dwelling plots not associated with an established cluster of residential dwellings.
- 5.5 As discussed in subsequent paragraphs, the appeal associated with Hepworth Road, Woodville within the North West Leicestershire District Council area (appeal ref APP/G2435/W/18/3214451) (Appendix E), represents the most recent appeal decision with regards to self-build development. In addition to discussing matters of self-build the Inspector also addresses the matter of open countryside development, with the following excerpts being noteworthy:

"At my visit I saw that the proposed development would involve development of greenfield land on the fringe of the settlement of Woodville. However, the appeal site lies adjacent to the existing built form of Woodville and is bounded by Hepworth Road to the south and east and is well contained within its setting. In my view, it does not form an important area of separation between Woodville and Blackfordby. Development of the appeal site would not extend beyond the southern confines of the existing built form of Woodville and would be considerably set in from the eastern boundary of Woodville's developed footprint along Hepworth Road.

.....

The Council refers to the need for the planning system to protect and enhance valued landscapes. However, the Council has provided no evidence to demonstrate there are physical attributes associated with the appeal site and its immediate setting that elevate it above ordinary countryside. From the evidence that is before me and from my site visit, the appeal site and its immediate setting do not represent a valued landscape in the context of paragraph 170 of the NPPF.”

- 5.6 The assessment made above is applicable to the appeal at hand, the development will be situated on land which clearly operates as part of Kingsmill Avenue as oppose to making any tangible contribution to the wider open countryside. The application site comprises areas of hardstanding used for the storage of vehicles or sheds/garages, with a minor roundabout sitting centrally. The development would unquestionably be viewed in the context of the existing line of dwellings and given the developed nature of the site would not constitute an additional incursion into the open countryside. On the contrary, whilst designated as open countryside the site’s contribution to the landscape is at best neutral.
- 5.7 As such notwithstanding the site’s location within the open countryside, the policy conflict with DS1 and the previous application associated with the site, it is clear that the proposal would not induce an unacceptable level of harm, would not set a precedent and is not situated in a location of any significant prominence whereby the weight given to such a conflict, in the context of this proposal, ought not prove determinative.
- 5.8 Further to the above it’s clearly material to the application to give significant weight to the Self-build and Custom Housebuilding Act 2015 (as amended). Initially we request the Inspector has regard to the section 7.10 through to section 7.25 of submitted Planning Statement, which outlines in detail the obligation the Council are under to provide sufficient consents to meet the identified demand for such dwellings. The sections are included below:

Self-build development

- 5.9 *Self-build is a type of housing for which the local planning authority is statutorily obliged to make provision for, as required by the Self-build and Custom Housebuilding Act (2015) (as amended by the Housing and Planning Act 2016). The two duties in the 2015 Act which are concerned with increasing the availability of land to meet the demand for self-build/custom-build housing are the 'duty to grant planning permission etc.' and the 'duty as regards registers'. The local planning authority must give suitable development permission for enough suitable serviced plots to meet the demand for self-build/custom-build in the area. The level of demand is established by reference to the number of entries added to the authority's register during the base period. The current base period began on 31st October 2018 and runs until 30th October 2019.*
- 5.10 *At the end of each base period, relevant authorities have 3 years in which to grant permission for an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that base period. However, at the time of this submission, there does not appear to be any self-build schemes granted by the local planning authority. The local planning authority is therefore falling behind its duty with regards to self-build and custom build housing. The proposed development would make a valuable contribution to this target, in which the Council have a duty to meet by 30th October 2019.*
- 5.11 *In terms of the weight to be afforded to the need for local planning authorities to grant permission for self-build and custom build housing, PWA Planning has taken counsel advice. The view of Anthony Gill (Kings Chambers) in this respect is that the weight to be afforded is significant, verging on overwhelming.*
- 5.12 *In reaching this view, Mr. Gill explains that a local planning authority has a statutory duty which the 2015 Act imposes into planning functions. In his opinion, this is a higher duty than for other forms of housing. The requirement to provide for other forms of housing is a prescription from national policy that local plans (which statute says should be followed) should provide for housing need of various kinds. Regarding self-build, he finds that the duty requires no such articulation – it is clear upon the face of the 2015 Act that there is a freestanding duty beyond the duty under s.38(6) to follow the development*

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

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

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

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

In these circumstances, for decision-taking, Framework paragraph 11 d) states that: where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Local

Plan Key Statement DS2 takes a similar approach in setting out that the Council will grant permission in such circumstances unless material considerations indicate otherwise."

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

5.16 *Further to the above, the advice includes the following relevant statements:*

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

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

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

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

5.18 *Considering the NPPF in the round, it is important to note that Paragraph 7 of the NPPF is clear that the purpose of the planning system is to contribute to the achievement of sustainable development. At Paragraph 8 it states that: "Achieving sustainable development means that the planning system has three overarching objectives which are*

interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives)”.

- 5.19 *The first objective is with regards to the economy, where the planning system should help to build a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places at the right time to support growth, innovation and improved productivity. The second objective is a social objective where by the planning system should help to support strong, vibrant and healthy communities by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities’ health, social and cultural well-being. Finally, an environmental objective, whereby the planning system should contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, mitigating and adapting to climate change and minimising waste and pollution.*
- 5.20 *The proposals would see the development of a parcel of land which benefits from links to the settlement of Whalley. The scheme would deliver up 4 no. self-build dwellings, of which the scale and appearance will be saved for a future Stage 2 technical details submission. Given the nature of the scheme as a minor development, of self-build in nature, it is considered more than likely that before and during construction, the development would contribute to the local economy directly through the employment of local companies to facilitate the build. This would include planners and architects/designers as part of the Stage 2 application process, local contractors involved in the physical build and the local supply chain through the provision of materials. Once occupied, new residents of the proposals would use and support the growth of local services. It is considered that the proposed development would therefore assist in achieving the economic aims of sustainable development.*
- 5.21 *The application is not accompanied at this stage by the technical assessments which would allow for adherence to the environmental aims of sustainable development to be*

- demonstrated. It should be again reiterated that such matters are not relevant to the application at hand.*
- 5.22 *The location of the site is considered sustainable in the context of the NPPF given it lies in close proximity to the settlement of Whalley. Suitable transport links to the larger settlements of Clitheroe and Blackburn are available, either by car or via the bus route close to the site.*
- 5.23 *The Framework also clarifies support for small to medium sized sites in Paragraph 68, detailing that 10% of a Council's housing requirement should be delivered on sites no larger than 1 hectare. PWA Planning are not aware of any statement made by the Council which suggests they are in a position to meet this requirement. As such it stands to reason that 10% of the annualised requirement, will need to come forward as windfall sites that the Council are yet to account for. Consequently, the application at hand can be considered to make a valuable contribution in aiding the Council to meet this requirement.*
- 5.24 *Given the above, it is considered that the proposed development would constitute sustainable development in the context of the NPPF and Policy DS2 of the Core Strategy. Furthermore, the above analysis would also suggest the proposals can be viewed positively in the context of the adopted Development Plan.*
- 5.25 Notwithstanding, the above the following paragraphs seek to address matters raised within the Officer's Report.
- 5.26 Within the Officer's Report it is emphasised that the Council believe they are only obliged to provide for self/custom build units, if such proposals come forward within the locations of the Borough, they deem appropriate. In this context it is worth stressing that, given the Self-Build Register allows for individuals to stipulate where they wish to build home, if the Council don't direct development accordingly then they will never be in a position to truly meet the identified need given the granting of such consents within locations where said demand does not exist will not result in a reduction in individuals on the Self-

build Register. It is therefore asserted that the Council ought to revisit their position on this matter, if indeed they intend on adhering to their obligations.

- 5.27 The above assertion is further supported by the fact, it is now approximately 3 months from the conclusion of the upcoming monitoring period and to our knowledge the Council have failed to issue a single consent for self-build development.
- 5.28 In reaching the decision to refuse the application the Council have given insufficient weight to the stipulations of the Self-build and Custom Housebuilding Act 2015 (as amended). As noted throughout the Planning Statement, PWA Planning, in relation to a separate application, obtained two lots of counsel advice on the matter of self-build development (Appendices F and G) and we would implore the inspector give detailed consideration to both sets of advice, which are included within the supporting documents.
- 5.29 Within the first set of advice Mr. Gill of Kings Chambers explains that a local planning authority has a statutory duty which the 2015 Act imposes into planning functions. In his opinion, this is a higher duty than for other forms of housing. The requirement to provide for other forms of housing is a prescription from national policy that local plans (which statute says should be followed) should provide for housing need of various kinds. Regarding self-build, he finds that the duty requires no such articulation – it is clear upon the face of the 2015 Act that there is a freestanding duty beyond the duty under s.38(6) to follow the development plan. S.38(6) requires the development plan be followed unless material considerations indicate otherwise. One such material consideration would be an Act of Parliament imposing a specific planning duty to provide planning permission for this specialist form of housing. The weight for a material consideration is a matter for the decision maker, however Mr Gill's view is that these factors indicate that the weight of a duty imposed by a primary piece of legislation from Parliament must be significant, verging on overwhelming.
- 5.30 Considering the above it is our position that the obligations set out in the Self-build and Custom Housebuilding Act 2015, carry more weight than the provisions of the adopted development plan. Notwithstanding this, it is also well established as part of a previous

appeal regarding self/custom build development in Wiswell (APP/T2350/W/18/31210850) (Appendix C) that the Council's Development Plan is silent on the matter of such development and as such Paragraph 11d)ii of the NPPF is engaged and the policies most relevant to the determination of the application can be considered out of date. In the context of the appeal at hand this would extend to all of those policies noted in the decision notice, given they were deemed pertinent enough as to warrant direct reference within the reasons for refusal.

5.31 Henceforth, irrespective of whether the proposals are in conflict with the Development Plan, the proposals should only be refused whereby the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of doing so. The Council have failed to identify harm of such a scale and as such there is no evidence to justify the refusal of planning permission.

5.32 It is therefore surprising, in the face of the aforementioned appeal that the Council still maintain the Development Plan is not silent on such matters and in this context we impress the need to give regard to the provided counsel advice and the conclusions of the aforementioned Wiswell appeal. Within the Officer's Report the Council also seem to infer they have met the self-build obligation on the basis they have granted "*a significant number of large-scale and windfall consents that would be capable of accommodating self-build plots*". The previously mentioned appeal within North West Leicestershire District Council area (appeal ref APP/G2435/W/18/3214451) clarified that this is not a position the Council can adopt, and the burden of proof lies solely with the Council. Paragraphs 22 and 23 of the aforementioned appeal responds as such:

"The Council confirms that as at April 2019, there are 54 individuals on the Council's Self-Build and Custom Housebuilding Register and that as of April 2019, it has permitted 4 plots in the period since 31 October 2016. Since 31 October 2016 the Council has permitted an additional 133 single plot dwellings which have been distributed across the District.4 However, the Council has not provided any information to suggest that there are provisions in place to ensure that any of the 133 single dwelling permissions would

be developed in a manner that accords with the legal definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended).

To my mind this raises considerable doubts as to whether any of the single dwelling permissions would count towards the number of planning permissions the Council has granted for serviced plots and thus whether these consents would actually contribute towards the delivery of self-build and custom housebuilding in the District. Importantly, the S.106 Agreement submitted with the appeal proposal contains provisions to ensure that the proposed dwellings on the appeal site would meet the definition of self-build and custom housebuilding. There is no evidence before me of a similar mechanism which would secure the delivery of self-build and custom housebuilding on the plots referred to in Appendix 3 of the Council's Statement. I consider it would be unreasonable to include any of the single dwelling permissions within the calculation of self-build and custom housebuilding permissions granted in the District."

5.33 As such, unless any planning permission is accompanied by a S106 enforcing that dwellings meet the definition of self/custom build as detailed in the act, they cannot be adjudged as counting toward the Council's provision of such units. The applicant would be happy to enter in to such a legal agreement should this appeal be allowed.

5.34 In summary, PWA Planning's stance with regard to the first reason for refusal is best summarised as follows:

- The Council have failed to give sufficient weight to the Self-build Custom Housebuilding Act 2015 (as amended);
- No harm which would outweigh the benefits of the proposal has been identified;
- The proposal should be viewed in the context of the existing street scene, which itself is rather unique;
- The Council have shown no signs of being able to meet the obligation to provide sufficient self-build consents by 30th of October 2019;

- The Development Plan is silent on matters of self/custom building and as such Paragraph 11d)ii of the NPPF is engaged.

The Second Reason for Refusal

- 5.35 The second reason for refusal states the proposal would lead to the perpetuation of an unsustainable pattern of development without sufficient justification that does not benefit from adequate walkable access to local services and facilities.
- 5.36 Within the Officer's Report reference is made to the previous appeal associated with the site (Appeal Ref: APP/T2350/A/14/2223462) (Appendix D). Some of the quoted excerpts relate more to the site's rural location from a landscape impact perspective, these matters have been addressed as part of the first reason for refusal, with our main observation being that in the context of the site locality the proposals would not generate an unacceptable level of harm.
- 5.37 In relation to the other quoted sections of the appeal, it remains the view of the Appellant that insufficient weight was given to the fact the site does represent a developed area and as such can be treated more favourably than other open countryside development in greenfield locations. Equally with regard to the Wiswell appeal referred to by the Council a fundamental difference is the fact the appeal site in this instance lies approximately 150m from the closest bus stop. This permits for a more favourable view with regard to site connectivity to neighbouring settlements. Paragraph 13 of the Wiswell appeal reads as follows:

"Although the lane is a public footpath, it is not lit and its gradient would mean that journeys made on foot and by bicycle would not be suitable for every potential future occupant. The nearest bus stop is around a mile away, albeit school bus services stop centrally within the village. Future occupant's journeys to and from the bus stop would be along an un-lit lane with no footway. I recognise that roads nearby do not have footways and there are no records of accidents, but journeys outside of the village would be especially unattractive during the hours of darkness or during inclement weather.

Hence, despite the site's proximity to the public right of way network and the Southern Loop Cycle Route (Lancashire Cycleway Route 91), the proposed development would not minimise the need to travel; offer choice for people to walk and cycle; or provide convenient links to public transport. Future occupants would be heavily reliant on journeys by private car."

- 5.38 Both Kingsmill Avenue and Mitton Road benefit from footways and street lighting thus suggesting any walk to the adjacent bus stop or local centre would be far more attractive a proposition than that outlined at the Wiswell site. More importantly a walk to the nearest bus stop would be negligible in length which provides direct services to Clitheroe, Whalley, Chipping and Longridge at a frequency which is reasonable to service the site appropriately. Collectively this suggest there is sufficient access to sustainable methods of travel (walking, cycling, bus) as to warrant a different conclusion to that reached in the Wiswell decision. This in turn permits for more weight to be given to Paragraph 84 of the NPPF which acknowledges that not only should previously developed sites be promoted but that "*Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport*".
- 5.39 The application site sits at the end of an establish residential street in what is an obvious rounding off point for development. The proposal is contained within the existing fenced boundaries of the street and consequently it raises the question what additional harm would be induced through development. This is not an isolated development but a minor proposal for 4no. units within the confines of a residential street. As such it is asserted that matters of sustainability should not prove as determinative as they would on a scheme which doesn't benefit from a clear and fundamental link to an existing residential street scene.
- 5.40 Notwithstanding all of the above, arguably the most pertinent point remains that the previous appeal was assessed under a different framework, which did not promote self/custom build development and indeed predates the Self-build and Custom

Housebuilding Act. Thus, the appeal at hand is materially different to that previously dismissed and furthermore the increasing likelihood that the Council will fail to meet its obligation to such housing ought to be given overwhelming weight when considering the proposal at hand.

Conclusions

- 5.41 It is not considered that there are any technical considerations which would preclude the grant of planning permission for the proposed development.
- 5.42 The proposal is considered to constitute local need housing, however, as discussed within this statement, should the Inspector be minded to disagree, Paragraph 11d)ii should be engaged given the Development Plan is silent on self-build policies, and therefore such applications should only be refused where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, which as discussed within the preceding assessment is not considered to be the case.

/6 **CONDITIONS**

6.1. Government advice on the imposition of conditions in planning permissions is to be found in NPPF Paragraph 206 and expanded upon in PPG: Use of Planning Conditions. The guidance states that conditions should only be imposed where they are:

- Necessary;
- Relevant to planning;
- Relevant to the development to be permitted;
- Enforceable;
- Precise; and
- Reasonable in all other respects.

6.2. The Appellant would simply request that regard is had to the above should the Inspector look to allow the appeal and as such put forward the necessary conditions.

/7 CONCLUSION

- 7.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan unless material considerations indicate otherwise. It has been demonstrated in this statement that the relevant Development Plan policies are out of date and the proposal is compliant with the relevant provisions of the NPPF and the Self-build and Custom Housebuilding Act 2015 (as amended). It is considered that the proposed dwellings will not generate any harm and is sustainable.
- 7.2. It is the opinion of PWA Planning that the proposal does not result in any significant adverse effects and does therefore comprise sustainable development in the context of Paragraph 11. In particular, the site:
- Can be developed without harm to neighbouring land uses;
 - Forms part of an existing residential street;
 - Provides for access to sustainable methods of transport;
 - Has good existing vehicular access that does not require mitigation measures;
 - Would provide self-build plots (a statutory legal duty the Council must provide for as per previous legal advice provided to the Council).
- 7.3. As such, this proposal is considered to deliver a sustainable form of housing development as is required by the NPPF. The scale of development and its context in relation to its location is considered acceptable and any harm would not be sufficient to significantly and demonstrably outweigh the benefits.
- 7.4. Therefore, when taking the aforementioned arguments into account, it is considered that the proposed development facilitates the Council meeting their obligation toward self-build housing and is consistent with the NPPF and hence that the Council were wrong to have refused to grant planning permission. The Inspector is therefore respectfully requested to uphold the appeal and to grant planning permission, subject to appropriate conditions.

APPENDICIES

- APPENDIX A DECISION NOTICE
- APPENDIX B OFFICER'S REPORT
- APPENDIX C 'WISWELL DECISION'
- APPENDIX D PREVIOUS APPEAL DECISION -
APP/T2350/A/14/2223462
- APPENDIX E HEPWORTH ROAD, WOODVILLE APPEAL -
APP/G2435/W/18/3214451
- APPENDIX F COUNSEL ADVICE (1ST)
- APPENDIX G COUNSEL ADVICE (2ND)
- APPENDIX H RELEVANT PLANNING POLICIES

APPENDIX A DECISION NOTICE

RIBBLE VALLEY BOROUGH COUNCIL

Development Department

Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA

Telephone: 01200 425111

Fax: 01200 414488

Planning Fax: 01200 414487

Town and Country Planning Act 1990

Town and Country Planning (Permission in Principle)

(Amendment) Order 2017

REFUSAL OF PLANNING PERMISSION (PERMISSION IN PRINCIPLE)

APPLICATION NO: 3/2018/00340

DECISION DATE: 24 May 2019

DATE RECEIVED: 27/09/2018

APPLICANT:

Mr John Townson
c/o Agent

AGENT:

Mr Joshua Hellowell
PWA Planning
2 Lockside Office Park
Lockside Road
Preston
PR2 2YS

DEVELOPMENT PROPOSED: Residential development of four dwellings

AT: Land off Kingsmill Avenue Whalley BB7 9PG

Ribble Valley Borough Council hereby give notice in pursuance of the provisions of the Town and Country Planning Act 1990 Town and Country Planning (Permission in Principle) (Amendment) Order 2017 that permission **has been refused** for the carrying out of the above development for the following reason(s):

- 1 The proposal is considered contrary Key Statement DS1 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that approval would lead to the creation of new dwellings in the open countryside without sufficient justification. The proposed development would create a harmful precedent for the acceptance of other similar unjustified proposals which would have an adverse impact on the implementation of the planning policies of the Council contrary to the interests of the proper planning of the area in accordance with core principles and policies of the NPPF.
- 2 The proposal would lead to the perpetuation of an unsustainable pattern of development, without sufficient or adequate justification, that does not benefit from adequate walkable access to local services or facilities - placing further reliance on the private motor-vehicle contrary to the aims and objectives of Key Statement DMI2 and Policy DMG3 of the adopted Core Strategy and Section 9 of National Planning Policy Framework, Promoting sustainable transport.

P.T.O.

Note(s)

- 1 For rights of appeal in respect of any reason(s) attached to the decision see the attached notes.
- 2 The Local Planning Authority operates a pre-planning application advice service which applicants are encouraged to use. The proposal does not comprise sustainable development and there were no amendments to the scheme, or conditions that could reasonably have been imposed, which could have made the development acceptable and it was therefore not possible to approve the application.
- 3 For the avoidance of doubt, this decision relates to the following plans:


Land off Kingsmill Avenue (scale 1:1250 A4)

**NICOLA HOPKINS
DIRECTOR OF ECONOMIC DEVELOPMENT AND PLANNING
Appeals to the Secretary of State**

- If you are aggrieved by the decision of your local planning authority to refuse permission in principle for the proposed development, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.
- If you want to appeal against your local planning authority's decision then you must do so within 6 months of the date of this decision notice
- Appeals must be made using a form which you can obtain online from www.gov.uk/government/organisations/planning-inspectorate or from the Planning Inspectorate at Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN
- The Secretary of State can allow a longer period for making an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in making an appeal
- The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted permission in principle for the proposed development having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order
- In practice the Secretary of State does not refuse to consider appeals solely because the local planning authority based their decision on a direction given by the Secretary of State

APPENDIX B OFFICER'S REPORT

Report to be read in conjunction with the Decision Notice.

Application Ref:	3/2019/0340	 <p>Ribble Valley Borough Council www.ribblevalley.gov.uk</p>
Date Inspected:	30/04/2019	
Officer:	AB	
DELEGATED ITEM FILE REPORT:		REFUSAL

Development Description:	Residential development of four dwellings.
Site Address/Location:	Land off Kingsmill Avenue, Whalley BB7 9PG

CONSULTATIONS:	Parish/Town Council
<p>The Parish Council objects to this PIP. The proposed development is in open countryside and is not within, or immediately adjoining, a settlement boundary. It would also set a precedent for further development at that location.</p> <p>There has been significant and continuing build within Whalley and the impact on the infrastructure has yet to be fully appreciated. Adding to this problem, even on a small scale, must be considered carefully.</p>	

CONSULTATIONS:	Highways/Water Authority/Other Bodies
LCC (Highways):	
No objection. Further consideration will need to be given at the technical details stage.	

CONSULTATIONS:	Additional Representations.
<p>14 objections have been received in relation to the proposed development and raise the following concerns:</p> <ul style="list-style-type: none"> ▪ Too many vehicles on the Avenue already. ▪ Sewerage works too small to take any more dwellings. ▪ Acceptance of this proposal would set a precedent. ▪ School and doctors in Whalley already at capacity. ▪ This is the third occasion this applicant has applied to build on this land. ▪ The build would encroach onto agricultural land and open countryside. ▪ Substantial housing development in Whalley itself fits better with the current housing strategy and is more closely linked to public transport. ▪ Unsustainable form of residential development in the open countryside. ▪ No identified local housing need. ▪ Kingsmill Avenue is at the very edge and gateway to an area of outstanding natural beauty. ▪ Local amenities are located 1.7 miles away and there is very limited availability of public transport from Kingsmill Avenue. ▪ Do not believe the proposal fits the current description of self-build. ▪ Gather that proposed new access would be via Turkey Lane, an unmade single track. ▪ Junction to Mitton Road is already dangerous. ▪ Loss of light and view affecting existing residential properties. ▪ Previous application was rejected due to inadequate septic tank and foul drainage. ▪ No mains sewage and gas to Kingmill Avenue. ▪ Due to self-build nature the build time would be extended. 	

RELEVANT POLICIES:

Ribble Valley Core Strategy:

Key Statement DS1 – Development Strategy
Key Statement DS2 – Sustainable Development
Key Statement H1 – Housing Provision
Key Statement H2 – Housing Balance
Policy DMG2 – Strategic Considerations
Policy DMG3 – Transport and Mobility

National Planning Policy Framework**RELEVANT PLANNING HISTORY:**

3/2013/1023 - Four semi-detached, three-bedroomed dwellings with associated garden areas and parking (two open market dwellings and two affordable dwellings). Resubmission of application 3/2012/0702. Refused. Dismissed at appeal.

3/2012/0702 - Residential development of twelve new dwellings, comprising of 1 x detached, 6 x semi-detached and 5 x terraced (1 x market unit and 4 x affordable units), 3 and 4 bedroom with associated garden areas and parking. Refused.

ASSESSMENT OF PROPOSED DEVELOPMENT:**Proposed Development for which consent is sought:**

Permission in Principle is sought for the erection of 4 self-build dwellings at land off Kingsmill Avenue, Whalley. Kingsmill Avenue was developed in the 1950's as staff accommodation for the former Calderstones Hospital. The application site is a portion of land surrounding a roundabout at the western end of the small terrace of houses north of Calderstones and in the open countryside. The land is mainly greenfield although it includes an area containing a number of timber garages and sheds. The application site is located around 2.3km from the town centre of Whalley which has a range of services and facilities.

The permission in principle (PiP) consent route is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for proposed development from the technical detail of the development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed.

The scope of permission in principle is limited to location, land use and amount of development. Issues relevant to these 'in principle' matters should be considered at the permission in principle stage. Other matters should be considered at the technical details consent stage. In addition, local authorities cannot list the information they require for applications for permission in principle in the same way they can for applications for planning permission. It is not possible for conditions to be attached to a grant of permission in principle nor can planning obligations be secured and its terms may only include the site location, the type of development and amount of development.

The technical detail stage will provide the opportunity to assess the detailed design of the scheme to ensure that any impacts are appropriately mitigated and that the contributions to essential infrastructure, for example, are secured. If the technical details are not acceptable, the local authority can refuse the application.

Observations/Consideration of Matters Raised/Conclusion:

The application proposes a residential development of 4 self-build dwellings. As stated above, the scope of permission in principle is limited to location, land use and amount of development; the detailed design of the scheme will be considered at technical detail stage.

Principle of Development

Having regard firstly to the matters of land use and amount of development, it appears reasonable to suggest that the site could accommodate four dwellings with associated private amenity space and parking. The County Highways Officer has raised no objections at

this stage but his written response does highlight some of the highway related issues that would have to be considered at technical details stage.

Detailed plans of the site layout and house types are not provided at this stage of the PiP application process and therefore any impact on adjacent land uses cannot be fully considered. However, the site is located next to existing residential development and bounds open agricultural land. There are no obvious concerns at this stage in terms of the compatibility of the proposed use with neighbouring land uses.

The development plan for the Borough is the Ribble Valley Core Strategy which was formally adopted in December 2014. Having regard to the October Housing Land Availability Survey (HLAS) (published 19 November 2018) it is considered that the Council can demonstrate a 6.1 year supply of housing land with a 5% buffer. The use of a 5% buffer is supported by the recently published revised NPPF. The relevant policies for the supply of housing contained in the adopted Core Strategy can be afforded full weight and the presumption in favour of sustainable development is not engaged.

Key Statement DS1 states that:-

'The majority of new housing development will be concentrated within an identified strategic site located to the south of Clitheroe towards the A59 and the principal settlements of Clitheroe, Longridge and Whalley.'

In addition to the strategic site at Standen and the borough's principal settlements, development will be focused towards Tier 1 Villages, which are the more sustainable of the 32 defined settlements.

The application site lies in an area defined as open countryside and is detached from principal settlements and Tier 1 Villages. Core Strategy Policy DMG2 (Strategic Considerations) states that:-

Within the Tier 2 Villages and outside the defined settlement areas development must meet at least one of the following considerations:

- 1. The development should be essential to the local economy or social wellbeing of the area.*
- 2. The development is needed for the purposes of forestry or agriculture.*
- 3. The development is for local needs housing which meets an identified need and is secured as such.*
- 4. The development is for small scale tourism or recreational developments appropriate to a rural area.*
- 5. The development is for small-scale uses appropriate to a rural area where a local need or benefit can be demonstrated.*
- 6. The development is compatible with the enterprise zone designation.*

As the application site lies outside a defined settlement area it must meet at least one of the considerations listed in Policy DMG2. Core Strategy Policy DMH3 relates specifically to dwellings in the open countryside and AONB. Policy DMH3 reads:-

Within areas defined as Open Countryside or AONB on the proposals map, residential development will be limited to:

- 1. Development essential for the purposes of agriculture or residential development which meets an identified local need. In assessing any proposal for an agricultural, forestry or other essential workers dwellings a functional and financial test will be applied.*
- 2. The appropriate conversion of buildings to dwellings providing they are suitably located and their form and general design are in keeping with their surroundings. Buildings must be structurally sound and capable of conversion without the need for complete or substantial reconstruction.*

3. *The rebuilding or replacement of existing dwellings subject to the following criteria:*
- *the residential use of the property should not have been abandoned.*
 - *there being no adverse impact on the landscape in relation to the new dwelling.*
 - *the need to extend an existing curtilage.*

In order to satisfy policies DMG2 and DMH3 in principle residential development in the open countryside or AONB must meet an identified local housing need or one of the other criteria.

It is stated at paragraph 7.4 of the planning statement that the development will be a 'rounding off' point for development in line with the requirements of Policy DS1. Reference to 'rounding off' is contained in the following paragraph of Policy DS1:-

Development that has recognised regeneration benefits, is for identified local needs or satisfies neighbourhood planning legislation, will be considered in all the borough's settlements, including small-scale development in the smaller settlements that are appropriate for consolidation and expansion or rounding-off of the built up area.

It is considered evident from how this part of the Policy is worded that it relates to development *in* settlements. The application site is located in the open countryside detached from any settlement boundary and therefore this sentence has no relevance to the application case. Furthermore, the proposal has no recognised regeneration benefits, is not for identified local needs (see section on self-build below) nor does it satisfy neighbourhood planning legislation.

Self-build housing

Fundamental to the consideration of this application is whether self-build accommodation meets an identified local need as claimed within the applicant's Planning Statement. The Self-build and Custom Housing Building Act 2015 (as amended by the Housing and Planning Act 2016) places a statutory duty on Local Planning Authorities to provide opportunities for self-build housing to meet demand arising as recorded on the Council's self-build register. In considering whether a home is a self-build or custom build home, relevant authorities must be satisfied that the initial owner of the home will have primary input into its final design and layout.

Changes in legislation came into effect on effect on 31 October 2016 which amended the Self-build and Custom Housebuilding Act 2015 and implemented Chapter 2 of the Housing and Planning Act 2016 which sets out provisions to support self-build and custom housebuilding. This means that the second and final part of the Right to Build - placing a duty on relevant authorities to make a suitable number of serviced plots available to meet the demand on their self-build and custom housebuilding registers, has now come into force and the Right to Build is now fully implemented.

It is clear that the act has implications for the Authority insofar that a duty is placed upon it to grant sufficient consent for serviced plots to meet the demand as reflected within the self-build register. However the act is not explicit in terms of the requirement to meet demand in the areas, settlements or locations whereby demand is registered. This has been clarified through the receipt of a recent inspector's decision relating to self-build housing (APP/T2350/W/18/31210850) 'the Wiswell decision'.

The authority considers therefore, in terms of locational matters, that applications for self-build dwellings/plots should not be considered as an 'exception' to the criterion of the Development Strategy for the Borough or adopted policies that seek to guide the location and siting of new housing.

Section 38(6) of the Town and Country Planning Act 1990, still requires that applications are "determined in accordance with the Development Plan unless material considerations indicate otherwise". It is therefore important to give due consideration to the interplay between Key Statement DS1, Policy DMG2, DMH3 and the Self-Build Act.

In this respect, it is considered that self-build applications must still be determined in accordance with the adopted Development Plan, which seeks to critically establish both the pattern and intended scale of development in order to achieve a sustainable pattern of development across the Borough. To consider otherwise would inevitably result in the undermining of the main aims and effectiveness of the Development Strategy as a whole, particularly in relation to aspects of locational sustainability.

Furthermore, a failure to require self-build proposals to be in compliance with the locational aspirations of the Development Plan would result in the likely perpetuation of unsustainable patterns of development in locations that would normally be deemed unsustainable or unsuitable. The Authority therefore maintains that the purpose of the Self-Build Act is not to allow or enable such development to be treated as an 'exception' to the criterion of specific policies or the aims and objectives of the adopted development plan.

At the time of writing this report there are 6 individuals on Part 1 of the self-build register. It is understood that a number of entries have been removed from the register as they were considered no longer eligible for entry or failed to pay the required fee to remain in the register. None of the existing entries have identified Whalley as their preferred area of choice. Whilst it is accepted the planning authority has yet to grant any consents that are explicitly self-build (and secured as such), the planning authority has granted a significant number of large-scale and windfall consents that would be capable of accommodating self-build plots. However it is accepted, that to date, none of these have been secured as explicitly self-build dwellings (for the purposes of the act).

In respect of the matter of 'local need', the nature of the housing proposed within the application does not meet with the definition of 'local needs housing' as defined within the adopted Core Strategy which is as follows:

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

This matter is disputed by the applicant who claims that self-build housing is intended to meet identified local need, by virtue of the demand reflected on the self-build register and therefore should be considered as an exception to criterion contained within adopted policy relating to housing in the open countryside. In respect of this matter, clarification has been provided by the Wiswell decision, in which the inspector agrees with the Local Planning Authority approach in that self-building housing cannot be considered as 'local-needs housing' as defined within the adopted development plan.

However, it is noted that in respect of the above decision the inspector also concluded that *'subsequent changes to national policy and guidance together with The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) 'the Act' do in my view, regardless of the Council's position in respect of housing supply, mean that the development plan policies cited in respect of the appeal scheme are out-of-date'.*

The inspector further added that *'In these circumstances, for decision-taking, Framework paragraph 11 d) states that: where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

Whilst the above referenced appeal was ultimately dismissed, it is important to note that the proposal related to the creation of a self-build dwelling, located partially within a tier 2 settlement and defined open countryside. As such the Inspector concluded that there should

be significant negative weight attached to the social and environmental aspects of the proposal relating to whether future occupants of the proposed development would have reasonable access to services and facilities.

The Self-Build Act further places a duty on authorities to comply with their duty to grant sufficient permissions to match demand as reflected on Part 1 of the self-build register, within a three year period from the end of each base period. The last base period ended on the 30th of October 2016 therefore the time for 'compliance' with the duties imposed under the act has yet to expire. In this respect and in relation to the current application there is therefore no clear impetus or obligation upon the authority to grant consent at this time given the period of compliance has approximately 5 months remaining. It should be noted that 'demand' for the purposes of the act reads *'to be the aggregate number of new entries in Part 1 of the register in that base period and the two preceding base periods'*.

The authority considers that it has sufficient policies against which self-build housing should be assessed, namely those policies that relate to housing in general, particularly in relation to locational aspirations.

In this respect the authority does not consider that the development plan is silent or out-of-date insofar that whilst self-build is not explicitly referred to within adopted policy, the development plan, when read as a whole, contains sufficient policies to allow for the approval of self-build housing in appropriate locations where there are no other significant adverse impacts.

It is accepted that there is a statutory duty for the local planning authority to have policies in place relating to self-build as defined within paragraphs 60 and 61 of the NPPF which read as follows:

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

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

However, taking the above definitions into consideration, the authority considers it has adequate provisions in place, through the application of all-encompassing housing policies, that would allow for the assessment and granting of approval for the provision of self-build housing (amongst other specialist types of housing) provided such a proposal was suitably located with no other over-riding adverse impacts.

Neither the Self Build Act nor the Framework intend or require for such housing to be treated as an exception to already adopted housing policy. The Act and Framework only require that provisions are in place, through policy, that would allow for the housing needed for different groups to be assessed (of which self-build housing would be one) and that this be embodied within adopted policy.

Notwithstanding the duties imposed upon the authority by the Self-Build act, the authority considers that the proposal would result in the creation of new residential dwellings in the defined open countryside, without sufficient justification insofar that self-build housing, as defined within the act, does not meet the definition of 'local needs housing' as embodied within the adopted development plan.

Sustainability of location

As noted above, the Wiswell appeal was ultimately dismissed due to significant negative weight attached to the social and environmental aspects of the proposal relating to whether future occupants of the proposed development would have reasonable access to services and facilities. It was considered by the inspector, despite the fact that he deemed the policies relevant to the supply of housing to be out-of-date and the 'tilted balance' engaged, that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the scheme.

The application site is located approximately 2.3km from the main centre of Whalley (as identified on the draft Proposals Map) which contains the majority of the settlements services and facilities. Key Statement DMI2 says that development should be located to minimise the need to travel and should incorporate good access by foot and cycle and have convenient links to public transport to reduce the need to travel by private car. This is echoed in Policy DMG3 of the Core Strategy which attaches considerable weight to pedestrian, cycle and reduced mobility accessibility and proposals which promote development within existing developed areas or extensions to them at locations which are highly accessible by means other than the private car. Development should be located in areas which maintain and improve choice for people to walk, cycle or catch public transport rather than drive between home and facilities which they need to use regularly.

Paragraph 7.1 of the planning statement makes reference to the now defunct District Wide Local Plan Policy A3 which sought to deliver redevelopment of the former Calderstones hospital site and asserts that the application site's location within the policy area indicates that the Council had previously promoted the application site for development. It is clear from the Policy wording that development at the site was limited to the existing central built campus, as identified on the Proposals Map, and not the site that is the subject of this application.

A material consideration in the determination of this planning application is the appeal decision for application 3/2013/1023. The application sought permission for 4 semi-detached three-bedroom dwellings (2 market units & 2 affordable units) at the same site. The appeal was against non-determination of the application and was dismissed on 22 June 2015. The Council resolved in its evidence that had it been in a position to determine the application, that it would have refused planning permission on the basis of the proposals amounting to an unsustainable form of residential development in the open countryside, for which there was no identified local need.

The inspector, in reaching the decision to dismiss the appeal, considered the locational sustainability of the site in detail and concluded at paragraph 8, "from my observations at the site visit there was a clear physical separation created by the fields and landscape between Kingsmill Avenue and other nearby development on the edge of Whalley, which accentuates the isolation of the site from the main developed areas and settlement. I have also had regard to the availability and frequency of public transport close to Kingsmill Avenue, and observed the existence of pavements and footpaths leading to Whalley. Nevertheless, whilst the frequency of buses would not be unreasonable for the location, it is unlikely that this would prevent an overall reliance on the private car, given the distance from day to day services and, indeed, employment." In terms of the site's location and access to services and facilities, there have been no fundamental changes since the 2015 appeal decision.

It is concluded at paragraph 11 of the inspector's decision notice that: "On the basis of the evidence submitted and my observations on site, I conclude that the proposals would result in an unjustified and unsustainable form of development within the countryside. The development would therefore conflict with Key Statement DS1 and Policies DMG2 and DMH3 of the Core Strategy, which guide new housing development to within principal and defined settlements, with housing within the countryside needing to demonstrate either an essential economic, agricultural or local need. Furthermore, the proposed development

would also conflict with paragraph 55 of the Framework, which sets out the special circumstances which would justify new residential development in the countryside”.

In addition to the conflict identified by the inspector in relation to Key Statement DS1 and Policies DMG2 and DMH3, the planning officer considers the proposed development is also contrary to Key Statement DMI2 and Policy DMG3 given that it would result in an over reliance on the private motor vehicle.

Planning Balance

The applicant asserts that the above position has been fundamentally changed by the advent of the self-build legislation and recently revised NPPF. As set out above, it is contended by the applicant that, as the Council has no specific self-build policy, the Local Plan is silent and the proposal falls to be determined against the presumption in favour of sustainable development at paragraph 11d of the NPPF. Whilst the Council is in disagreement with this point, the appeal inspector did consider the 2013 appeal case with and without the ‘tilted balance’ applied. Paragraph 13 of the appeal decision states, “The appellant has contended that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. However, whether this may or may not be the case, no decisive evidence has been submitted with this appeal in support of the contention. Furthermore, the proposed 4 dwellings would not represent a significant contribution to any shortfall, and in any event, for the reasons already given, the development would not amount to a sustainable form of development necessary for there to be a presumption in its favour, as required by paragraph 49 of the Framework, and as set out at paragraph 14.”

The applicant asserts that the construction and delivery of the site would benefit the local economy and that the Council does not have a sufficient supply of small sites as set out at NPPF paragraph 68. The Council’s policies support the development of sustainable windfall sites and taking account of information contained in the October 2018 HLAS at least 10% of sites within the borough with planning permission for housing are small or medium sized sites. Any economic benefits arising from the delivery of four dwellings would be relatively minor and brief.

Taking account of the appeal decisions above, it is the view of the planning officer that the proposal fails to comply with policies DS1, DMI2, DMG2, DMG3 and DMH3 of the Core Strategy. Self-build housing is not considered as ‘local-needs housing’ as defined within the adopted development plan and the Council does not consider that the development plan is silent or out-of-date insofar that whilst self-build is not explicitly referred to within adopted policy, the development plan, when read as a whole, contains sufficient policies to allow for the approval of self-build housing in appropriate locations where there are no other significant adverse impacts. The presumption in favour of sustainable development at paragraph 11d of the Framework is not engaged and, whilst the benefits of the provision of 4 self-build houses are acknowledged, the proposals would result in an unjustified and unsustainable form of development within the countryside.

Even should the Local Planning Authority concede that 1) the development would provide housing to meet identified local housing needs of the surrounding area in accordance with Core Strategy policies DMG2 and DMH3, and 2) that the development plan is silent or out-of-date insofar as it relates to self-build housing and paragraph 11d of the Framework is applicable, there is no evidence that any identified housing need could not be provided within the existing defined settlements and the significant negative weight attached to the site’s unsustainable location would significantly and demonstrably outweigh the benefits.

RECOMMENDATION:	That the application be REFUSED for the followings reasons:
1.	The proposal is considered contrary Key Statement DS1 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that approval would lead to the creation of new dwellings in the open countryside without sufficient justification. The proposed development would create a harmful precedent for the acceptance of other similar unjustified proposals which would have an adverse impact on the implementation of

the planning policies of the Council contrary to the interests of the proper planning of the area in accordance with core principles and policies of the NPPF.

2. The proposal would lead to the perpetuation of an unsustainable pattern of development, without sufficient or adequate justification, that does not benefit from adequate walkable access to local services or facilities - placing further reliance on the private motor-vehicle contrary to the aims and objectives of Key Statement DMI2 and Policy DMG3 of the adopted Core Strategy and Section 9 of National Planning Policy Framework, Promoting sustainable transport.

APPENDIX C 'WISWELL DECISION'



Appeal Decision

Site visit made on 20 November 2018

by **Andrew McGlone BSc MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 December 2018

Appeal Ref: APP/T2350/W/18/3210850

Wiswell Brook Farm, Moor Side Lane, Wiswell BB7 9DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Steven Smith against the decision of Ribble Valley Borough Council.
 - The application Ref 3/2018/0537, dated 7 June 2018, was refused by notice dated 3 August 2018.
 - The development proposed is the erection of 1no. self-build dwelling and associated work.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Steven Smith against Ribble Valley Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application was submitted in outline with all matters reserved for future consideration, except for access. Indicative plans have been submitted. These have formed part of my consideration of this appeal.
4. The Council, following the publication of its revised Housing Land Availability Study changed its position in respect of being able to demonstrate a five year supply of deliverable housing sites as required by paragraph 73 of the National Planning Policy Framework (the Framework). As a result, I provided the appellant with an opportunity to comment on the Council's revised position. I have had regard to the parties' evidence in reaching my findings.

Main Issues

5. The main issues are: (i) whether the development would accord with development plan policies relating to the location of development in the Borough; and (ii) whether future occupants of the proposed development would have reasonable access to services and facilities.

Reasons

6. The appeal site is a plot of greenfield land located off Moor Side Lane. The southern part of the site is within the defined settlement boundary of Wiswell, but the rest is outside the current settlement boundary, and in the open

countryside. Until the Housing and Economic Development - Development Plan Document is found 'sound' and adopted, the settlement boundary for Wiswell is that shown on the Proposals Map published with the now replaced Districtwide Local Plan. I do, however, understand that no changes are proposed to the established settlement boundary. Wiswell is a Tier 2 Village settlement in Key Statement DS1 of the Core Strategy 2008 – 2028 A Local Plan for Ribble Valley (Local Plan). Moor Side Lane and public right of way No 11 gradually rise up from Pendleton Road. Detached residential dwellings in large landscaped plots are either side of the lane. Between the site and Wiswell Brook Farm is a public right of way (No. 15). Moorside and 14 and 16 Leys Close adjoin the site.

Location of development

7. Local Plan Key Statement DS1 states that development will need to meet proven local needs or deliver regeneration benefits. It continues by saying that development that is for identified local needs or satisfies neighbourhood planning legislation will be considered in all the borough's settlements, including small-scale development in the smaller settlements that are appropriate for consolidation and expansion or rounding-off of the built up area. Local Plan Policy DMG2 explains that within the Tier 2 Villages and outside the defined settlement areas development must meet at least one of the considerations listed. Policy DMH3 reflects the approach of Policy DMG2.
8. The parties' dispute focusses on whether the development would be local needs housing. The Glossary in the Local Plan defines this as housing developed to meet the needs of existing and concealed households living within the parish and surrounding parishes which is evidenced by the Housing Needs Survey for the parish, the Housing Waiting List and the Strategic Housing Market Assessment. I am informed by the Council that there is no Housing Waiting List for Wiswell, but having regard to the other two documents the proposal does not accord with the Local Plan's definition. I shall consider the merits of a self-build dwelling later in my decision, but the appellant does not dispute the Council's view that the scheme would not deliver regeneration benefits.
9. It is, however, reasonable to assess whether harm would arise from a dwelling being built on the site in this location. The site is sandwiched between existing residential development and the lane. These, along with variable ground levels and vegetation distinguish the physical extent of the site, and significantly constrain its visual contribution to the open countryside. The proposal would be an infill development. There is also no reason for me to believe, as all other matters are reserved for future consideration, that the dwelling could not be designed and sited to respond to the character and appearance of the area, whilst maintaining the leafy context that characterises the site's vicinity. In this regard, the proposal would not conflict with the Council's aim to protect the open countryside from sporadic or visually harmful development.
10. I conclude, however, that the appeal scheme would conflict with Key Statement DS1, DMG2 and DMH3, which set out the Council's approach to the location of development in the Borough. The Council cite Key Statement DS2 in relation to this issue. I shall turn to this later in my decision.

Services and Facilities

11. The village lies between two of the Borough's three Principal Settlements of Whalley and Clitheroe. Both offer a range of services and facilities, unlike

Wiswell which offers a limited range of services and facilities for everyday needs. Future occupants would need to travel further afield regularly. However, this reflects the existing situation for neighbouring residents, and more generally for the population of Wiswell. Framework paragraph 103 states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.

12. Car journeys to and from the village to Clitheroe and Whalley would use Wiswell Shay and Whiteacre Lane. Both offer convenient routes. The site is accessed using a narrow tarmacked lane. This would offer a safe and convenient access route with reasonable visibility splays at the lane's junction with Pendleton Road. Planning conditions could also be used to ensure vehicles enter and leave the site in forward gear given the limitations of the lane.
13. Although the lane is a public footpath, it is not lit and its gradient would mean that journeys made on foot and by bicycle would not be suitable for every potential future occupant. The nearest bus stop is around a mile away, albeit school bus services stop centrally within the village. Future occupant's journeys to and from the bus stop would be along an un-lit lane with no footway. I recognise that roads nearby do not have footways and there are no records of accidents, but journeys outside of the village would be especially unattractive during the hours of darkness or during inclement weather. Hence, despite the site's proximity to the public right of way network and the Southern Loop Cycle Route (Lancashire Cycleway Route 91), the proposed development would not minimise the need to travel; offer choice for people to walk and cycle; or provide convenient links to public transport. Future occupants would be heavily reliant on journeys by private car.
14. Notwithstanding the site's location, I conclude, on this issue, that future occupants of the proposed development would not have reasonable access to services and facilities. The proposal would not accord with Local Plan Key Statement DMI2 and Local Plan Policy DMG3; which jointly, seek to minimise the need to travel, incorporate good access by foot and cycle and have convenient links to public transport to reduce the need for travel by private car.
15. The Council refer to Local Plan Policy DMG2 on this issue, but it is not relevant to the consideration of travel and accessibility to services and facilities.

Planning Balance

16. Notwithstanding whether the Council can demonstrate a five year supply of deliverable housing sites, it is the appellant's position that the Local Plan is silent in terms of the provision of self-build housing. The term 'silent' is not defined, but the Local Plan is not silent on the Council's approach for development proposals for housing in the Borough, particularly in relation to their location. Hence, the Local Plan contains a body of policy relevant to the proposal at hand to enable the scheme to be judged against.
17. However, subsequent changes to national policy and guidance together with The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) 'the Act' do in my view, regardless of the Council's position in respect of housing supply, mean that the development plan policies cited in respect of the appeal scheme are out-of-date as they are based on delivering housing across the Borough in certain locations and where they meet at least one of several considerations.

18. In these circumstances, for decision-taking, Framework paragraph 11 d) states that: where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. Local Plan Key Statement DS2 takes a similar approach in setting out that the Council will grant permission in such circumstances unless material considerations indicate otherwise.
19. The Act requires local planning authorities to establish local registers of custom-builders who wish to acquire suitable land to build their own home. Local authorities need to have regard to the demand on their local register and give enough suitable development permissions to meet the identified demand when exercising their planning and other relevant functions. Framework paragraph 61 says that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. This includes people wishing to commission or build their own homes. Such housing can be either market or affordable housing.
20. The appellant lives in Wiswell directly next to the site. The Council confirm that the appellant has been on the local authority's self-build register since 10 November 2017. The Act is not explicit in terms of the requirement to meet demand in areas, settlements or locations whereby demand is registered, but there is a need for authorities to permission an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that base period. The first base period ended on 30 October 2016, with each subsequent base period being the period of 12 months beginning immediately after the end of the previous base period. I do not have details of whether other people are on the self-build register, but the Council does have some time yet to grant permission to specifically meet the identified demand confirmed by the appellant's entry on the register.
21. The appeal scheme would be a windfall development that would contribute to meeting the Borough's housing requirement. There is also no ceiling on the provision of housing, and the scheme could, pending a grant of reserved matters be built-out relatively quickly. Furthermore, the proposal would support the appellant's wish to commission or build their own home on a site physically well-related to Wiswell, and the dwelling could be suitably design so that it would be sensitive to its surroundings and the intrinsic character and beauty of the countryside. While the scale of the proposal is modest, I give the housing provision moderate positive weight due to the Framework's objective of significantly boosting the supply of homes where it is needed, and as the scheme would specifically address the self-build requirement of the appellant.
22. Limited positive benefits would also stem from the proposal which would contribute to the economic, social and environmental objectives through the provision of jobs and spending during the construction phase; spending in the local economy by future occupants; the efficient use of land; the protection of the natural environment; and the provision of car parking and access.
23. The scheme would not have an unacceptable impact on local roads, and the public footpaths would remain available for use. However, the scheme would lead to issues in terms of access on foot, by cycle or by public transport. There would also be a high reliance on the private car. Framework paragraph 84 states that planning policies and decisions should recognise that sites to meet

local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. Even so, I attach significant negative weight to the social and environmental objectives as a result of my findings in the second main issue. The proposal's location would cause limited harm, albeit the effect on the countryside would carry a neutral weight in the planning balance.

Conclusion

24. I have concluded in my main issues that the proposal would be contrary to Local Plan Key Statements DS1 and DMI2 and Local Plan Policies DMG2, DMG3 and DMH3. Limited and significant harm would stem from these conflicts respectively. Balanced against this is the scheme's contribution to the supply of housing, and the provision of a self-built plot to which I have given moderate weight, and the other considerations which carry limited weight.
25. I therefore consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Thus, in applying Local Plan Key Statement DS2 and Framework paragraph 11(d) ii, planning permission should not be granted and the proposal would not represent sustainable development.
26. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR



APPENDIX D PREVIOUS
APP/T2350/A/14/2223462

APPEAL

DECISION

-

Appeal Decision

Site visit made on 5 November 2014

by M Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22/06/2015

Appeal Ref: APP/T2350/A/14/2223462

Kingsmill Avenue, Mitton Road, Whalley, BB7 9PG

- 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 & Mrs J Townson against Ribble Valley Borough Council.
 - The application Ref 3/2013/1023/P, is dated 5 December 2013.
 - The development proposed is (Re-application of Application No: 3/2012/0702/P) for four new zero-carbon emission dwellings conforming to EU Passive Gold Standard, on land at Kingsmill Avenue (West End) off Mitton Road, Whalley. The development comprises 4 semi-detached three-bedroom dwellings (2 market units & 2 affordable units) with associated garden areas and parking.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council resolved in its evidence that had it been in a position to determine the application, that it would have refused planning permission on the basis of the proposals amounting to an unsustainable form of residential development in the open countryside, for which there was no identified local need. Furthermore, the Council would have highlighted that the proposals would have created a harmful precedent for other similar proposals.
3. Since the submission of this appeal, the Development Plan has been updated by the adoption and publication of the Ribble Valley Borough Council Core Strategy 2008-2028: A Local Plan for Ribble Valley (the Core Strategy). As a result, saved Policies H2 and G5 of the Ribble Valley Districtwide Local Plan 1998, which were cited in the Council's reason for refusal for the 2012 application, have been superseded and no longer apply. In their original submissions for this appeal, the Council referred to Key Statement DS1 and emerging Policies DMG2 and DMH3 of the submission version of the Core Strategy. Subsequent to the adoption of the Core Strategy, the Council has confirmed that there have not been any further relevant changes from the submission version, and I have therefore assessed the appeal on the basis of the up-to-date development plan, which is formed of the Core Strategy.

Main Issues

4. The main issue is whether, having regard to local and national planning policy, the proposal would amount to a sustainably located form of development.

Reasons

5. The appeal site is located at the western end of Kingsmill Avenue, which was developed in the 1950's as staff accommodation for the former Calderstones Hospital, which was located nearby. The site comprises grassed land and hardstanding, set on either side of the turning head at the end of Kingsmill Avenue, which was occupied at the time of my site visit by several detached garages, structures, and a caravan. From my observations on the site and on the basis of the submitted plans, the appeal site would also incorporate some of the adjoining land to the north and south, which is currently comprised of fields. A footpath links the western end of Kingsmill Avenue to a row of cottages to the west at Common Side.
6. Kingsmill Avenue is located in excess of 2 kilometres to the north of the settlement of Whalley. In the vicinity of the appeal site, I observed there to be occasional small clusters of dwellings as well as small groupings of buildings related to farming and commerce. Closer to Whalley, is a recently developed residential area which occupies part of the former Calderstones Hospital site. However, this development is separated from Kingsmill Avenue across fields by a substantial distance, and a dense band of trees. As a consequence the existing dwellings on Kingsmill Avenue do not directly relate to the development, and therefore appear in a comparatively isolated position. Whilst I acknowledge the appellant's reference to the original purpose of the dwellings and their link to the former hospital, the site would nevertheless be assessed as being located outside of an existing settlement and therefore within the open countryside.
7. The National Planning Policy Framework (the Framework) sets out at paragraph 55 the special circumstances which would justify new residential development in the countryside. These circumstances include the essential need for a rural worker to live permanently at or near their place of work, the re-use of redundant or disused buildings, or that the design of the development is of exceptional quality or innovation. In this respect, the appellant has not provided any indication that the proposed development should be assessed as according with any of the special circumstances which would justify the location of new homes in the countryside, as set out in the Framework.
8. In respect of the wording of paragraph 55, I have had regard to the appellant's contention that the proposed dwellings would not be overly isolated in the context of Kingsmill Avenue or the nearby settlement of Whalley. In this respect, I accept that the proposed dwellings would adjoin the existing dwellings within Kingsmill Avenue and be relatively close to dwellings at Common Side. However, from my observations at the site visit there was a clear physical separation created by the fields and landscape between Kingsmill Avenue and other nearby development on the edge of Whalley, which accentuates the isolation of the site from the main developed areas and settlement. I have also had regard to the availability and frequency of public transport close to Kingsmill Avenue, and observed the existence of pavements and footpaths leading to Whalley. Nevertheless, whilst the frequency of buses would not be unreasonable for the location, it is unlikely that this would prevent an overall reliance on the private car, given the distance from day to day services and, indeed, employment. I have also taken into account that part of the land has been previously developed, but given the location of the

site this cannot be regarded as an overriding factor in assessing its suitability for residential development.

9. I have also considered paragraph 54 of the Framework, which requires local planning authorities to be responsive to local circumstances and needs in respect of rural housing, particularly for affordable housing. I have noted that the appellant has proposed that two of the four dwellings would be offered as affordable units, and would be made available for local occupancy to meet identified housing needs, with reference made to a lack of suitable rental housing in Mitton parish as well as the provision of much needed family units. However, whilst this would provide some limited weight in support of the proposals, I have not been directed to any definitive evidence regarding the size and type of housing which might justify the proposals as meeting a housing need in this specific location. Nor is there any evidence that this would be a need which could not be provided within the existing defined settlements.
10. The appellant has drawn my attention to the redevelopment of the former Calderstones Hospital site, and the conclusions that were drawn in respect of the development of previously developed land in this circumstance. However, whilst I have already acknowledged the link between Kingsmill Avenue and the wider former hospital site, I have also had regard to the Council's reference to the redevelopment having been restricted to the site of the former central built campus, which did not include this site.
11. On the basis of the evidence submitted and my observations on site, I conclude that the proposals would result in an unjustified and unsustainable form of development within the countryside. The development would therefore conflict with Key Statement DS1 and Policies DMG2 and DMH3 of the Core Strategy, which guide new housing development to within principal and defined settlements, with housing within the countryside needing to demonstrate either an essential economic, agricultural or local need. Furthermore, the proposed development would also conflict with paragraph 55 of the Framework, which sets out the special circumstances which would justify new residential development in the countryside.

Other Matters

12. The Council has highlighted its concern that the proposed development could lead to a harmful precedent for the acceptance of similar proposals without sufficient justification within the countryside. Whilst I am mindful that each application and appeal must be determined on its own individual merits, I can appreciate the Council's concern that approval of this proposal could be used in support of other such similar schemes. Despite the absence of specific examples, I consider that this is not a generalised fear of precedent, but a realistic and specific concern regarding the proliferation of unjustified and unsustainable development within the countryside. I accept that allowing this appeal would make it more difficult to resist further planning applications for similar developments, and I consider that the cumulative effect would exacerbate the harm which I have described above.
13. The appellant has contended that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. However, whether this may or may not be the case, no decisive evidence has been submitted with this appeal in support of the contention. Furthermore, the proposed 4 dwellings would not represent a significant contribution to any shortfall, and in any event, for the reasons

- already given, the development would not amount to a sustainable form of development necessary for there to be a presumption in its favour, as required by paragraph 49 of the Framework, and as set out at paragraph 14.
14. The appellant has drawn my attention to the proposed use of sustainable building techniques as well as adherence to lifetime homes standards, and the available economic benefit to the Council of finance from the New Homes Bonus initiative. I have also had regard to the absence of any objection from the Council to the design and layout of the proposed dwellings, which in the context of the existing street is a conclusion with which I would concur. Nevertheless, whilst these are matters, along with the provision of additional affordable housing units, which would provide some limited weight in support of the proposed development, these would be insufficient to outweigh my concerns in respect of the main issue.
 15. The appellant has also made reference to other recent decisions on residential developments within the wider area. However, whilst I have had regard to the submissions on these other sites, I have not been provided with sufficient detail to allow me to draw any conclusion on the relevance to the current scheme. In any event, I have determined this appeal on the basis of the evidence before me and the planning merits of the proposal.
 16. A number of additional issues have been raised by interested parties with regards to the proposed development. These include the impact on existing parking problems and highway safety including construction access, the loss of amenity to neighbouring occupiers, and the impact on existing local infrastructure including means of dealing with foul drainage.
 17. In respect of highway matters, whilst I accept that Kingsmill Avenue is relatively narrow with the consequence that the availability of on-street parking is more limited, I observed that the majority of dwellings also possessed off-street parking or garaging. Each property within the proposed development would also incorporate both a garage and a driveway, and I consider this to be an adequate level of parking provision. I have also carefully considered the suitability of the junction between Kingsmill Avenue and Mitton Road for the level of additional development proposed. On the basis of my observations, an acceptable level of visibility is available at the junction, and in the absence of demonstrable evidence of a record of accidents at the junction, or any objections from Lancashire County Council as the highway authority, I see no reason to dispute the conclusions which have been reached in respect of highway matters.
 18. I am satisfied that the positioning of the proposed development incorporates a reasonable degree of separation between the proposed dwellings and the existing, which would provide a satisfactory relationship in respect of amenity. Furthermore, I have not been provided with any detailed evidence that the development would result in an unacceptable additional burden on existing infrastructure beyond available capacity, or that the impact could not be addressed satisfactorily by other means. In this respect I have had regard to the conclusions set out in the consultation responses from United Utilities and the Environment Agency.
 19. Interested parties have also raised concern related to their existing access and use of the appeal site, citing agreements which had previously been in place with the owner of the site over future access and use. Whilst I have had

regard to these matters, these would seem to relate to a private agreement between the parties, which does not have any bearing on my determination of this appeal.

Conclusion

20. For the reasons given above, I conclude that the appeal should be dismissed.

M Seaton

INSPECTOR

APPENDIX E HEPWORTH ROAD, WOODVILLE APPEAL -
APP/G2435/W/18/3214451



Appeal Decisions

Site visit made on 4 June 2019

by Harold Stephens BA MPhil DipTP MRTPI FRSA

an Inspector appointed by the Secretary of State

Decision date: 25 June 2019

Appeal Ref: APP/G2435/W/18/3214451 (Appeal A)

Land off Hepworth Road, Woodville DE11 7DW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Lauren Land Developments Ltd against the decision of North West Leicestershire District Council.
- The application Ref 16/01191/OUTM, dated 11 October 2016, was refused by notice dated 16 May 2018.
- The development proposed is self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure (outline – access and layout included) at Land Off Hepworth Road, Woodville, Swadlincote.

Appeal Ref: APP/G2435/Q/18/3214498 (Appeal B)

Land off Hepworth Road, Woodville DE11 7DW

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to discharge a planning obligation.
- The appeal is made by Lauren Land Developments Ltd against the decision of North West Leicestershire District Council.
- The development to which the planning obligation relates is Part Three of the Schedule to the 2004 Section 106 Agreement (dated 3 June 2004) relating to application 02/01416/OUT.
- The planning obligation, dated 3 June 2004, was made between South Derbyshire District Council, North West Leicestershire District Council, Derbyshire County Council, Leicestershire County Council, Tapton Properties Limited, the Governor and Company of the Bank of Scotland and George Wimpey North Midlands Limited.
- The application Ref 16/01191/106A, dated 11 October 2016, was refused by notice dated 7 August 2018.
- The application sought to have the planning obligation discharged.

Decisions

1. **Appeal A** is allowed and planning permission is granted for self and custom build residential development consisting of 30 plots with a new access and supporting infrastructure (outline – access and layout included) at Land Off Hepworth Road, Woodville, Swadlincote in accordance with the terms of the application, Ref 16/01191/OUTM, dated 11 October 2016, and the plans submitted with it, subject to the conditions set out in the Schedule attached to this decision.

2. **Appeal B** is allowed. The planning obligation, dated 3 June 2004, relating to Part Three of the Schedule to the 2004 Section 106 Agreement, no longer serves a useful purpose and is discharged.

Background and Planning History

3. Appeal A and Appeal B both relate to the same site. There is a close relationship between the two proposals. For the purposes of clarity I shall refer to the S78 appeal against the refusal of outline planning permission for a self and custom-build residential development consisting of 30 plots with a new access and supporting infrastructure (outline -access and layout included) on land off Hepworth Road, Woodville as Appeal A and the Section 106B appeal against the refusal of the Section 106A application to discharge the application site from the obligations in Part Three of the Schedule to the 2004 Section 106 Agreement as Appeal B.
4. A Planning Obligation in the form of a S.106 Agreement dated 24 April 2019 was submitted in support of the appeal proposals. A Deed of Variation dated 7 June 2019 was also submitted in response to Leicestershire County Council's (LCC) revised request for education contributions, in accordance with its Statement of Case dated 23 April 2019 and its subsequent e-mail dated 13 May 2019 to the Planning Inspectorate. These documents address all of the matters sought by the North West Leicestershire District Council (NWLDC) and LCC in connection with the provision of community and other services arising from the development. The Planning Obligation, including the Deed of Variation, is a material consideration in these cases. I return to the Planning Obligation later in these decisions.
5. The appeal site measures about 1.9 hectares in extent, is broadly triangular in shape and is situated to the south east of Woodville. It is bounded to the north and west by the recently constructed Taylor Wimpey residential development. The eastern boundary comprises a mature hedgerow and public footpath. Beyond this to the east of the site lies open grassland. The site is bounded to the south by Hepworth Road. The appeal site is currently undeveloped and is predominantly occupied with areas of scrubland and grassland along with several patches of marsh and some small ephemeral ponds. The appeal site is located outside the Limits to Development as defined in the adopted Local Plan.
6. Although there is no relevant planning history on the appeal site it is noteworthy that the appeal site forms part of the 48.77 hectares Woodville Woodlands development which encompasses land within the administrative areas of both South Derbyshire District Council (SDDC) and NWLDC. Following the grant of outline planning permission for the various aspects of the Woodville Woodlands development on 3 June 2004¹ and 11 June 2004², the residential development of the scheme has come forward in several distinct phases.
7. The appeal site was not included in any phase of the residential development because the plan annexed at Appendix 1 of the 2004 S.106 Agreement for the Woodville Woodlands scheme identifies several areas of the site for 'Forest Planting'. As a result, some of the appeal site is included within the 9.85

¹ SDDC planning application 9/2001/0050

² NWLDC planning application 02/01416/OUT

hectares of 'Dedicated Forestry Land' associated with the Woodville Woodlands development.

8. Clauses 2-7 of Part Three of the Schedule to the 2004 S.106 Agreement provide further details about the covenants the owner of the land entered into with NWLDC in respect of the 'Dedicated Forestry Land'. Clause 5 requires that upon the completion of the Approved Forestry Scheme, the 'Dedicated Forestry Land' *must be maintained in perpetuity as a forestry area for use by the general public* to the reasonable satisfaction of NWLDC. Clause 7 goes on to establish that the 'Dedicated Forestry Land' must not be used *for any purpose other than woodland/shrubland*.
9. The Woodville Woodlands Phase 4 Strategic Composite Planting Plan,³ which formed part of the reserved matters application for the outline planning consent 02/01416/OUT is understood to be the Approved Forestry Scheme referred to in the 2004 S.106 Agreement. This plan indicates that 4,275 sq. m of mixed woodland planting was originally planned for the appeal site. From the evidence that is before me the appeal site is believed to incorporate 4,275 sq. m of the 9.85 hectares of 'Dedicated Forestry Land' that is identified in the 2004 S.106 Agreement.
10. With this background information in mind I now turn to deal with Appeal A.

Appeal A

Appeal proposal

11. The appeal proposal seeks outline planning permission for a self and custom-build residential development consisting of 30 plots with a new access and supporting infrastructure. All matters except access and layout were reserved for subsequent approval. It is proposed that the serviced plots would range in size from 290 sq. m to 597sq. m. The position and size of each plot would be fixed. However, the siting of the dwellings on each plot would be subject to separate reserved matters applications.
12. A new vehicular and pedestrian access would be provided to the site from Hepworth Road. In addition, several new pedestrian and cycle links would be created between the appeal site and the adjoining housing developments. One of these would connect the site to South Street to the north and the other would link to Dovedale Park residential development to the north west. There would be sufficient space on every plot to provide a minimum of two off-street parking spaces per dwelling. The Design Code, submitted with the application, also sets out that every dwelling must provide at least two secure and covered cycle parking spaces. Informal open space, a landscape buffer, boulevard planting strips together with hedge and tree planting would also be provided.
13. The subsequent reserved matters applications would be required to adhere to the Design Code for the scheme. The Design Code sets out the broad parameters and design principles that would guide the development in relation to layout; scale; design and appearance; landscaping; sustainability and drainage; parking; external storage; amenity space and ecology. A number of plans, drawings and documents were submitted in support of the proposal. These are listed at paragraph 4.11 of the Appellant's proof and

³ Drawing No: Plan/624/Strat/Ph4/PP(C)1c

where these were revised and superseded during the planning process they have been clearly marked as superseded.

Planning Policy

14. The statutory development plan for the area includes the North West Leicestershire Local Plan (LP) (2017). Both parties refer to a number of policies in the LP as being relevant to the determination of the appeal. These include: S1 - Future Housing and Economic Development Needs; S2 - Settlement Hierarchy; S3 - Countryside; D1 - Design of New Development; D2 - Amenity; H4 - Affordable Housing; If1- Development and Infrastructure; IF4 - Transport Infrastructure and New Development; IF7 - Parking Provision and New Development; En1 - Nature Conservation; En3 - The National Forest; Cc2 - Water - Flood Risk; Cc3 - Water - Sustainable Drainage Systems.
15. Other relevant policies and guidance which are material in this case include: the National Planning Policy Framework (NPPF); the National Planning Practice Guidance (NPPG); the Written Ministerial Statement (WMS), 28 November 2014; the Housing White Paper, February 2017; the North West Leicestershire District Council - Good Design Guide SPD; and the Leicestershire Highway Design Guidance.
16. I am also aware of the Self-build and Custom Housebuilding Act 2015 (as amended) and the associated Self-build and Custom Housebuilding Regulations 2016. Amongst other matters the purpose of the Act is to allow individuals wishing to build their own home to register their interest in acquiring a suitable plot of land with the relevant authority. Specifically, the Act makes provision for Local Authorities to maintain a register of people who are seeking to acquire a serviced plot in their area in order that they may build houses for them to occupy as homes; and for Local Authorities to have regard to the demand for custom build housing as evidenced by the registers when exercising certain functions including those relating to planning and housing.

Main Issue

17. The main issue in this case is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

18. There is no dispute that the appeal site is located outside the defined Limits to Development as outlined on the Policies Map in the adopted LP. Land outside the Limits to Development is identified as countryside where development will be considered in the context of Policy S3. Only certain specified uses, listed (a) to (s) in the policy, will be supported. New residential development is not identified as a form of development permitted in the countryside under Policy S3 of the LP and therefore the appeal proposal is plainly in conflict with the development plan.
19. For the Council it is argued that the appeal proposal would introduce residential development and extend the existing edge of the settlement of Woodville. It is stated that the proposal would result in unnecessary development of greenfield land and encroach into an area of countryside which would be in conflict with Policy S3 in the LP. It is further contended that such proposed development would be harmful in terms of protection of the

countryside and would result in the development of open undeveloped land that forms an important separation between Woodville and Blackfordby. It is claimed that the proposal would be contrary to paragraph 170 of the NPPF 2019 as well as Policy S3 of the LP.

20. At my visit I saw that the proposed development would involve development of greenfield land on the fringe of the settlement of Woodville. However, the appeal site lies adjacent to the existing built form of Woodville and is bounded by Hepworth Road to the south and east and is well contained within its setting. In my view, it does not form an important area of separation between Woodville and Blackfordby. Development of the appeal site would not extend beyond the southern confines of the existing built form of Woodville and would be considerably set in from the eastern boundary of Woodville's developed footprint along Hepworth Road.
21. I also saw several existing clusters of development situated in the area of countryside between the south east boundary of Woodville and the north western boundary of Blackfordby. I note that these clusters are situated in a considerably more isolated location in relation to these settlements compared to the appeal site. Consequently, they have a greater impact on the perceived and physical separation between Woodville and Blackfordby than the appeal site. These clusters include development at Thorn Street, Butt Lane and the well-established manufacturing facility, Wavin UK (Forest Works), at Butt Lane. The siting of these clusters of development highlights that the countryside in between Woodville and Blackfordby is not undeveloped. In my view, development of the appeal site would not undermine the physical and perceived separation between Woodville and Blackfordby.
22. The Council confirms that as at April 2019, there are 54 individuals on the Council's Self-Build and Custom Housebuilding Register and that as of April 2019, it has permitted 4 plots in the period since 31 October 2016. Since 31 October 2016 the Council has permitted an additional 133 single plot dwellings which have been distributed across the District.⁴ However, the Council has not provided any information to suggest that there are provisions in place to ensure that any of the 133 single dwelling permissions would be developed in a manner that accords with the legal definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended).
23. To my mind this raises considerable doubts as to whether any of the single dwelling permissions would count towards the number of planning permissions the Council has granted for serviced plots and thus whether these consents would actually contribute towards the delivery of self-build and custom housebuilding in the District. Importantly, the S.106 Agreement submitted with the appeal proposal contains provisions to ensure that the proposed dwellings on the appeal site would meet the definition of self-build and custom housebuilding. There is no evidence before me of a similar mechanism which would secure the delivery of self-build and custom housebuilding on the plots referred to in Appendix 3 of the Council's Statement. I consider it would be unreasonable to include any of the single dwelling permissions within the calculation of self-build and custom housebuilding permissions granted in the District.

⁴ See details in Appendix 3 to the Council's Statement

24. Moreover, the Council refers to the Buildstore.co.uk website which was, at March 2019, advertising 9 self-build plots sites as being available within the District and that all of these have been granted planning permission since 31 October 2016.⁵ However, one of these (17/01860/FUL) is also listed in Figure 4 of the Council's Statement of Case as an approved self-build site. From the evidence that is before me none of the 8 remaining sites is subject to a planning condition or a planning obligation requiring a self-build or custom-build house to be built on the site that accords with the statutory definition.
25. In summary, it is only the 4 plots listed in Figure 4 of the Council's Statement of Case that appear to comply with the definition of self-build and custom housebuilding in the Self-Build and Custom Housebuilding 2015 (as amended). It follows that the Council has not yet granted planning permission for enough serviced plots to meet the demand arising for base period 1 let alone any of the subsequent base periods (2, 3 and 4).⁶ Although the Council maintains it is already making progress towards granting planning permission for enough serviced plots to meet the demand arising in base period 1, the Council has provided no information to suggest that there are any applications pending determination for serviced plots in the District at present.
26. The deadline for granting planning permission for enough serviced plots to meet the demand arising for base period 1 is 30 October 2019. As such there remains a residual requirement to grant consent for at least 5 serviced plots by 30 October 2019. Consequently, the ability of the appeal proposal to address the unmet demand for serviced plots that arose in base period 1, base period 2 and part of base period 3⁷, in a comprehensively planned manner, is a material consideration that weighs strongly in favour of the appeal proposal. The appeal proposal would meet the majority of the current demand by delivering 30 serviced self-build or custom-build plots and this would accord with advice in paragraphs 59 and 61 of the NPPF and other Government guidance.
27. I accept that the NPPG on Self-Build and Custom Housebuilding states that relevant authorities *could* include policies in their local plans for self and custom housebuilding, but this is not a requirement.⁸ It also states that relevant authorities could seek to meet demand by engaging with landowners who own sites that are suitable for housing. The only requirement is that the Council has a duty to grant planning permission for enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area.⁹ The Council is considering how best to address the issue of self-build and custom housebuilding in the Local Plan Review.
28. Nevertheless, the Council is required by the provisions in Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended) to grant planning permission for enough serviced plots of land to meet the demand for self-build and custom housebuilding in the District which arises in each base period. I consider the appeal proposal is necessary to enable the Council to meet its statutory obligations with respect to the duty under Section 2A of the Self-Build and Custom Housebuilding Act 2015 (as amended), given that there

⁵ See details in Appendix 4 to the Council's Statement

⁶ Base Period 4 runs from 31/10/2018-30/10/2019 and is therefore ongoing.

⁷ Based on the information provided by NWLDP in paragraph 6.5 of its Statement of Case

⁸ NPPG Paragraph: 025 Reference ID: 57-025-201760728

⁹ NPPG Paragraph: 023 Reference ID: 57-023-201760728

appears to be an inadequate supply of serviced plots coming forward for development in the District.

29. The Council refers to the need for the planning system to protect and enhance valued landscapes. However, the Council has provided no evidence to demonstrate there are physical attributes associated with the appeal site and its immediate setting that elevate it above ordinary countryside. From the evidence that is before me and from my site visit, the appeal site and its immediate setting do not represent a valued landscape in the context of paragraph 170 of the NPPF.
30. The Council and others have raised concerns that the appeal site forms part of National Forest planting and landscaping which was secured by the adjacent Woodville Woodlands development. From the evidence before me it appears that the appeal site is identified on the approved plans as a combination of forest planting and grassland. Aerial photography suggests that the appeal site was a greenfield element of the Woodville Woodlands scheme and consists of grassland and scrub. It appears as though these habitats have been left to develop and for woodland planting to naturally regenerate rather than being re-planted as plantation woodland which was the approach adopted on brownfield areas of the wider site. Overgrown brambles and hawthorns were cleared from the appeal site in 2015 but no protected trees have been removed.
31. The National Forest Company (NFC) has raised no objection to the proposal provided that an equal amount of landscaping is provided elsewhere. The NFC has requested a contribution of £38,000 which would be secured by the S.106 Agreement. The Council has agreed to and signed the S.106 Agreement which sets out details relating to the NFC contribution and has confirmed that it considers the £38,000 NFC contribution to adequately mitigate the impacts of the appeal proposal in respect of tree planting. I agree that the £38,000 NFC contribution would provide adequate mitigation for the proposed scheme.
32. On the main issue I conclude that the proposal would not adversely impact upon the character and appearance of the surrounding area.

Planning Obligation

33. The S.106 Agreement and Deed of Variation provide a legal mechanism to secure developer contributions towards local schools. LCC originally requested an education contribution of £195, 806.86 and this figure was referred to in the signed S.106 Agreement. However, in an email dated 13 May 2019, the LCC sought a revised education contribution which amounts to £184,956.51. The revised contribution is made up of a primary school contribution of £131,328.00 and a high school contribution of £53, 628.51. The primary school contribution is for the provision of pupil places at St Margaret's C of E Primary School or such other primary school as will provide additional facilities to accommodate pupil growth from the development. The high school contribution is for the provision of pupil places at Ivanhoe High School or such other high school as will provide additional facilities to accommodate pupil growth from the development.
34. Given that the S.106 Agreement had already been agreed and signed, the Appellant had to arrange for a Deed of Variation to be prepared and signed to ensure that the S.106 Agreement correlates with the amounts requested by

LCC in respect of the primary sector and high school sector contributions. The Deed of Variation has the effect of varying the submitted S.106 Agreement so the total value of the education contribution and its apportionment between primary and high school sectors accords with the LCC's revised request. Additionally, given that the education contribution would be paid in instalments, as per Schedule 3 of the S.106 Agreement, the Deed of Variation amends the value of each instalment to correctly reflect the revised value of the education contribution. I consider there are adequate provisions in place to mitigate the impact of the development on local schools.

35. The NFC has requested that a £38,000 contribution towards off-site National Forest tree planting and the S.106 Agreement sets out where the compensatory tree planting would take place. It is the current intention that such funds would be used for tree planting at Ashby Woulds which the NFC has recently acquired and which is around 1.39kms to the south of the appeal site. The S.106 Agreement includes some flexibility for the provision of tree planting and development works at an alternative site in the vicinity of the development to be agreed between the NWLDC and the owner. I consider that the proposal would comply with Policy En3 of the LP and the impact on trees and the National Forest would be acceptable.
36. The appeal proposal does not include provision for affordable housing. A viability report was submitted with the proposal and this indicates that the scheme would not be viable with the inclusion of affordable housing (either on-site or off-site). The District Valuer is satisfied that the scheme is not viable with the inclusion of affordable housing. There is no reason for me to disagree with that analysis.
37. From the evidence that is before me all of the obligations in the S106 Agreement, as varied by the Deed of Variation, are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. They all meet the tests in CIL Regulations 122 and 123 and the guidance in paragraph 54 and 56 of the NPPF 2019. I have taken them into account in these decisions.

Other Matters

38. I have taken into account all other matters raised including the representations from interested persons and parties. Local residents have expressed concerns about the design of the new houses. The appeal proposal seeks approval of the layout of plots, the internal access roads and the point of access from Hepworth Road. The precise location of the dwelling within each plot, its appearance, scale and landscaping would be subject to separate reserved matters applications. A Design Code has been submitted as part of the proposal to guide future reserved matters applications and covers landscaping, sustainable technologies, drainage, scale, design and layout.
39. I note that the layout shows that a main route would run through the site that would be planted, that there would be significant planting to the boundaries of the site, public open space and spacious plots at a density of 15.7 dwellings per hectare. I consider that it has been demonstrated, in principle, that an appropriate scheme for 30 dwellings could be satisfactorily developed on the site and would comply with Policy D1 of the LP, the NWLDC Good Design Guide SPD and the advice in the NPPF.

40. With regard to traffic and highway safety the proposed development would provide a new vehicular access point from Hepworth Road. The access would be located about 170 m to the west of Hepworth Road/Forest Road roundabout and would take the form of a priority junction with a right turn ghost lane and appropriate visibility splays in each direction. The proposal is accompanied by a Transport Statement which concludes that the development would not materially increase traffic flows on the surrounding highway network. The County Highway Authority raises no highway safety objections to the proposed scheme. I consider the proposal would comply with Policy IF4 of the LP, the advice in the NPPF and the Leicestershire Highway Design Guidance.
41. With regard to ecological impacts I note that the proposal was supported by an initial ecological assessment. Following comments by the County Ecologist a Greater Crested Newt Mitigation Strategy and a further Botanical Survey were submitted to the Council. The County Ecologist has reviewed the updated information and was satisfied with the mitigation strategy put forward in respect of Greater Crested Newts and recommends that a planning condition be attached to any planning permission. The County ecologist considers that the loss of species rich grassland can be offset by the creation of a new wet grassland of around 0.25 ha. There is sufficient space along the site frontage and within the south eastern corner of the site for this to be created but it is recommended that the precise species and management be subject to planning conditions. There is no reason for me to disagree with that analysis.
42. A Flood Risk Assessment and Surface Water Drainage Strategy has been submitted in support of the proposal. This confirms that the site is located within Flood Zone 1 and thus has a low probability of fluvial or tidal flooding. However, it is noted that there is a small area located centrally within the site which has resulted in a high level of risk of surface water flooding. It is proposed to manage surface water run-off from the development through the implementation of a sustainable drainage system, limiting the proposed maximum discharge rate to the site specific greenfield rate, providing on-site attenuation in the form of ponds or open water features with controlled discharge rates. The precise location and design of the open water features would be subject to a planning condition. Foul drainage would be connected to the existing mains sewer.
43. Some local residents are concerned about the impact of the proposal on the living conditions of existing residential occupiers. I consider that the impacts on neighbouring occupiers arising from the proposed development would need to be assessed in more detail at the reserved matters stage(s) when more precise details as to the layout, scale and appearance of the dwellings are submitted for consideration. Notwithstanding the details shown on the submitted layout there would appear to be no reason in principle why 30 units could not be provided on the site in a manner which would not significantly adversely impact upon neighbours' amenities.
44. I have considered and taken into account the planning appeal decisions referred to by the Council. I consider that the circumstances of those appeals are materially different to the appeal proposal. The appeal proposal should be considered on its own merits in the context of the development plan and other material considerations.

Planning Balance

45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan, unless material planning considerations indicate otherwise. The Reason for Refusal cites only Policy S3 which is said to be breached but it also indicates that the proposal would not constitute sustainable development. The site is outside the defined limits to development and is not a form of development permitted by Policy S3. I find that being outside the settlement boundary and within the countryside, the appeal proposal is not in accordance with the development plan taken as a whole.
46. However, balanced against the identified conflict with the development plan, I consider there are a number of factors that need to be considered. Paragraph 8 of the NPPF 2019 states "*Achieving sustainable development means that the planning system has three overarching objectives*", which are identified as economic, social and environmental. In my view the appeal proposal would make a positive contribution towards achieving all three of these.
47. I attach substantial weight in terms of the economic benefits that would arise from the provision of 30 dwellings in Woodville. The new residents that would live in these homes are likely to use and support local services, local facilities and local businesses. Therefore, the proposal is likely to make a positive contribution to the local economy. The development of each property should create opportunities for local builders, tradesmen and builder's merchants. This has the potential to create local employment and training opportunities.
48. In terms of the social benefits, the proposal would be able to meet most of the current demand for self and custom-build plots in the District. The appeal proposal does not represent unnecessary development because it would greatly assist NWLDC to meet its statutory obligations with respect to providing serviced plots for self-build and custom-build housing. This would ensure that the proposed development plays a major role in meeting an evidenced housing need in North West Leicestershire. Moreover, the mix of housing types that come forward on the site would respond to the needs of local residents in accordance with Policy H6 of the LP and paragraph 59 of the NPPF. The overall layout of the site has been designed to ensure that a high standard of amenity can be provided for existing and future residents in line with Policy D2 and paragraph 127f of the NPPF. This comprises a substantial social benefit.
49. The proposal would not impact upon any physical separation between Woodville and Blackfordby or the character and appearance of the surrounding area. The site is well located in relation to the local transport infrastructure and would have good pedestrian and cycle links to local services, facilities and open space. The Design Code establishes that each dwelling must incorporate ecological enhancements, which include a minimum of one bat or one bird box. Furthermore, landscaping on each plot would help to promote biodiversity enhancements across the site. With regard to the performance and energy efficiency of the homes, the Design Code establishes that each dwelling must exceed the energy and carbon requirements in Part L of the Building Regulations. All of these factors would provide environmental benefits. I apportion moderate weight in terms of the environment. Taking all of these matters into account, I consider that the proposal would represent sustainable development as defined by the NPPF 2019.

50. In summary, the appeal proposal provides an opportunity to comprehensively meet the majority of the current demand for self and custom-build plots in the District on a sustainably located site. On balance I consider that the economic, social and environmental benefits of the proposal significantly and demonstrably outweigh the conflict with the development plan. It is therefore concluded that there are material considerations in this case to justify a departure from the development plan in accordance with the statutory provisions outlined under Section 38(6) of the Planning and Compulsory Purchase Act 2004.
51. Having considered these and all other matters raised I find nothing of sufficient materiality to lead me to a different conclusion. Appeal A is allowed subject to the conditions set out in the attached Schedule.

Appeal B

Background

52. I have already set out the background and planning history of the site at paragraphs 3-9 above and there is no need for me to repeat that here. The Section 106B Appeal seeks to discharge the appeal site from the obligations in Part Three of the Schedule to the 2004 S.106 Agreement. The proposed discharge would result in the 1.9 hectares appeal site being excluded from the definition of 'Dedicated Forestry Land' in the 2004 S.106 Agreement. As a result, it would allow the self or custom-build scheme (Appeal A) to come forward on the site. The S.106 Agreement and Deed of Variation submitted with the appeal proposals provide the legal mechanism to achieve this. Amongst other matters this S.106 Agreement includes a clause to secure the £38,000 financial contribution towards off-site National Forest planting in accordance with the request from the NFC.

Main Issue

53. The main issue in this appeal is whether the planning obligation continues to serve a useful planning purpose.

Reasons

54. Section 106A (6) of the Town and Country Planning Act 1990 (as amended) provides that on an application for modification, the determination may be that the obligation shall continue to have effect without modification; if the obligation no longer serves a useful purpose, that it should be discharged; or if the obligation continues to serve a useful purpose but would serve that purpose equally well if it had effect subject to the modifications requested.
55. The judgment in *Batchelor Enterprises Limited v North Dorset District Council [2003] EWHC 3006 (Admin)*¹⁰ provides clarity on how to assess whether a planning obligation still serves a useful purpose, in paragraph 26 of the judgment, Mr Justice Sullivan established that

"paragraph (b) in sub-section 106A (6) should be read as providing that a local planning authority may determine "if the obligation no longer serves a useful (planning) purpose that it shall be discharged.""

¹⁰ Appendix 12 of the Appellant's Statement of Case

56. The Council's reason for refusal is premised on the fact that the application 16/01191/OUTM was refused partly due to its perceived impact upon the separation and undeveloped character between Woodville and Blackfordby. I have already comprehensively addressed this matter under Appeal A and concluded that the appeal site is well contained within its setting and does not form part of an important area of separation between Woodville and Blackfordby. It follows therefore that the 4,275 sq. m of Dedicated Forestry Land on the site does not serve a useful planning purpose by protecting an important separation between the two settlements.
57. Furthermore, as noted in paragraph 31 above, the NFC has confirmed that it does not object to the proposal, subject to the self or custom-build scheme (Appeal A) making a £38,000 contribution towards compensatory off-site tree planting. This financial contribution would be secured by the S.106 Agreement submitted alongside both appeals.
58. I note that the primary reason for designating 4,275 sq. m of the appeal site as Dedicated Forestry Land in 2004 was to enable a National Forest tree planting scheme to take place on the site. However, the NFC has confirmed that the appeal site was not re-planted as plantation woodland as part of the National Forest Planting that took place for the Woodville Woodlands development.¹¹
59. In addition, clause 5 of Part Three of the Schedule to the 2004 S.106 Agreement stipulated that upon completion of the Approved Forestry Scheme the Dedicated Forestry Land should be maintained ... "*in perpetuity as a forestry area for use by the general public.*" In 2010 the NWLDC stated that the Approved Forestry Scheme was complete.¹² Therefore, had the appeal site formed part of the Approved Forestry Scheme, the appeal site should now be accessible to the public. However, the appeal site has not been made publicly accessible. This provides further evidence to suggest that no forestry planting took place on the site and therefore designating part of it as Dedicated Forestry Land does not serve a useful planning purpose.
60. Moreover, from the evidence that is before me, it appears that neither NWLDC nor SDDC has adopted the appeal site as a forestry area. Had the appeal site formed part of the Approved Forestry Scheme, one of these Councils would have been obliged to adopt it under clause 3.2 of Part Two of the Schedule to the 2004 S.106 Agreement. Therefore, the fact that the appeal site has not been adopted by one of the District Councils provides further confirmation that the National Forest tree planting scheme did not take place on the site and was not implemented in the manner originally intended. This signals that there has been a material change in circumstances for the obligations in Part Three of the Schedule to the 2004 S.106 Agreement since it was originally signed. Ultimately, this means that designating part of the appeal site for Dedicated Forestry Land no longer serves a useful planning purpose because it protects the site for a tree planting scheme that did not materialise.
61. I consider that designating part of the site as Dedicated Forestry Land does not make a positive contribution towards the three overarching objectives of the planning system set out in paragraph 8 of the NPPF 2019. If the appeal site was not discharged from the obligations in Part Three of the Schedule to the 2004

¹¹ Appendix 7 of the Appellant's Statement of Case

¹² Appendices 13 and 14 of the Appellant's Statement of Case

S.106 Agreement this would prevent it from being used for any purpose other than as woodland/scrubland and the proposed self or custom-build plots would not come forward. There is clear evidence from the Council's self-build and custom housebuilding register which confirms that there is a need for the type of residential development that is being proposed for the appeal site. The Dedicated Forestry Land on the appeal site would be contrary to the economic, social and environmental objectives of the planning system. Accordingly, it does not fulfil a useful planning purpose.

62. On the other hand, discharging the appeal site from the planning obligations in Part Three of the Schedule to the 2004 S.106 Agreement would enable the proposed self or custom-build development, subject to Appeal A, to come forward. This scheme would deliver a number of social, economic and environmental objectives and thus would make a positive contribution towards achieving all three of the planning system's overarching objectives. As a result, the proposed discharge would represent a significant improvement on the current circumstances.
63. In conclusion, for all of the above reasons, I consider that the 4,275 sq.m of Dedicated Forestry Land on the appeal site no longer serves a useful planning purpose. None of the other matters raised alter the balance of my conclusions. Therefore, the proposed discharge conforms with the test in Section 106A (6) of the Town and Country Planning Act 1990 (as amended). As such Appeal B is allowed and the appeal site is discharged from the obligations in Part Three of the Schedule to the 2004 S.106 Agreement.

Harold Stephens

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS (1-16) (APPEAL A)

- 1) Application for approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission and the development hereby permitted shall begin before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 2) Approval of the details of the appearance, landscaping and scale (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 3) The development shall be carried out in accordance with the following approved plans:
 - Drg No. P0877.20160420.SK001 Rev B - Site access arrangement;
 - Drg No 10 3008-10-Rev E - Site Block Plan; and
 - Drg No 11 Rev A - Site location plan.
- 4) No more than 30 dwellings shall be constructed on the site.
- 5) No development or submission of any reserved matters shall be undertaken until a Risk Based Land Contamination Assessment for the entire site has been submitted to and approved in writing by the Local Planning Authority, in order to ensure that the land is fit for use as the development proposes. The Risk Based Land Contamination Assessment shall be carried out in accordance with:
 - BS10175:2011+A1:2013 Investigation Of Potentially Contaminated Sites Code of Practice;
 - BS 8576:2013 Guidance on Investigations for Ground Gas - Permanent Gases and Volatile Organic Compounds (VOCs); and
 - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

Should any unacceptable risks be identified in the Risk Based Land Contamination Assessment, no development shall commence on site until a Remedial Scheme and a Verification Plan is prepared and submitted to and agreed in writing by the Local Planning Authority. The Remedial Scheme shall be prepared in accordance with the requirements of:

 - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004; and
 - BS 8485:2015 Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings.

The Verification Plan shall be prepared in accordance with the requirements of:

 - Evidence Report on the Verification of Remediation of Land Contamination Report: SC030114/R1, published by The Environment Agency 2010;
 - CLR 11 Model Procedures for the Management of Land Contamination, published by The Environment Agency 2004.

If, during the course of development, previously unidentified contamination is discovered, development must cease on that part of the site and it must be reported in writing to the Local Planning Authority within 10 working days. Prior to the recommencement of development on that part of the site, a Risk Based Land Contamination Assessment for the discovered contamination (to include any required amendments to the Remedial Scheme and Verification Plan) must be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details and retained as such in perpetuity.

6) Prior to occupation of any part of the completed development, either

(i) If no remediation was required by Condition 5 a statement from the developer or an approved agent confirming that no previously identified contamination was discovered during the course of development is received and approved in writing by the Local Planning Authority, or

(ii) A Verification Investigation shall be undertaken in line with the agreed Verification Plan for any works outlined in the Remedial Scheme and a report showing the findings of the Verification Investigation relevant to either the whole development or that part of the development shall be submitted to and approved in writing by the Local Planning Authority. The Verification Investigation Report shall:

- Contain a full description of the works undertaken in accordance with the agreed Remedial Scheme and Verification Plan;
- Contain results of any additional monitoring or testing carried out between the submission of the Remedial Scheme and the completion of remediation works;
- Contain Movement Permits for all materials taken to and from the site and/or a copy of the completed site waste management plan if one was required;
- Contain Test Certificates of imported material to show that it is suitable for its proposed use;
- Demonstrate the effectiveness of the approved Remedial Scheme; and
- Include a statement signed by the developer, or the approved agent, confirming that all the works specified in the Remedial Scheme have been completed.

7) No development shall take place, including any works of demolition, until a construction method statement has been submitted to and approved in writing by the Local Planning Authority. The statement shall provide for:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) wheel washing facilities;
- f) measures to control the emission of dust and dirt during construction;
- g) a scheme for recycling/disposing of waste resulting from demolition and construction works;

h) delivery, demolition and construction working hours.

The approved construction method statement shall be adhered to throughout the construction period for the development.

- 8) No part of the development hereby permitted shall be occupied until such time as vehicular visibility splays of 2.4 x 65 metres have been provided at the site access. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.
- 9) No part of the development hereby permitted shall be occupied until such time as the access arrangements shown on Drg No. P0877.20160420.SK001 Rev B have been implemented in full.
- 10) Notwithstanding the submitted plans, no development shall commence until details of parking and turning have been submitted to and approved in writing by the Local Planning Authority. Thereafter the onsite parking provision shall be so maintained in perpetuity.
- 11) No development shall take place until a scheme for foul drainage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.
- 12) No development approved by this planning permission shall take place until such time as infiltration testing has been carried out to confirm or discount the suitability of the site for the use of infiltration as a drainage element, and the Flood Risk Assessment (FRA) has been updated accordingly to reflect this in the drainage strategy.

The results should conform to BRE Digest 365, details should also be submitted demonstrating that sufficient surface water storage can be provided on-site. Alternatively, the Lead Local Flood Authority would accept the proposal of an alternative drainage strategy that could be used should infiltration prove not to be feasible during the detailed design stage.

- 13) No development approved by this planning permission shall take place until such time as a surface water drainage scheme has been submitted to, and approved in writing by, the Local Planning Authority.

The scheme shall include the utilisation of holding sustainable drainage techniques with the incorporation of sufficient treatment trains to maintain or improve the existing water quality; the limitation of surface water run-off to equivalent greenfield rates; the ability to accommodate surface water run-off on-site up to the critical 1 in 100 year event plus an appropriate allowance for climate change, based upon the submission of drainage calculations; and the responsibility for the future maintenance of drainage features.

The scheme shall be fully implemented and subsequently maintained, in accordance with the timing and phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

Full details for the drainage proposal should be supplied, including but not limited to, headwall details, pipe protection details (e.g. trash screens), long sections and full model scenarios for the 1 in 1, 1 in 30 and 1 in 100 year + climate change. Where discharging to a sewer, this should be modelled as surcharged for all events above the 1 in 30 year, to account for the design standards of the public sewers.

- 14) No reserved matters applications shall be submitted until such time as a Design Code for the entirety of the site has been submitted to and agreed in writing by the Local Planning Authority. The Design Code shall substantially accord with the principles and parameters described and illustrated in the Design and Access Statement (including addendum) and demonstrate compliance with Building for Life 12 (or any subsequent replacement standard issued by the Design Council or any successor organisation). The development shall thereafter be carried out in accordance with the agreed details.
- 15) No demolition/development shall take place/commence until a programme of archaeological work, commencing with an initial phase of trial trenching, has been detailed within a Written Scheme of Investigation, submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:
- The programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme)
 - The programme for post-investigation assessment
 - Provision to be made for analysis of the site investigation and recording
 - Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - Provision to be made for archive deposition of the analysis and records of the site investigation
 - Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No demolition/development shall take place other than in accordance with the approved Written Scheme of Investigation.

- 16) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition (15) and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

APPENDIX F COUNSEL ADVICE (1ST)

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

ADVICE

1. I am asked to advise Mr Andrew Billington in respect of a planning application (ref:3/2017/1100) on land 'adjacent to John Smith Playing Field, Chaigley Road, Longridge, PR3 3TQ' ('the Site') for 'up to 15 self-build dwellings (30% affordable self build) including access'.

2. The application was submitted to Ribble Valley Borough Council ('the Council') on 20th November 2017 and is due to be determined by the Council's planning committee on Thursday 8th March 2018. I have been provided with the officer's report to committee ('the Report') which recommends refusal for three reasons. I am asked to advise on the first reason:
 - '1. The proposal is considered contrary to Key Statements DS1, DS2 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that the approval would lead to the creation of new residential dwellings in the defined open countryside, located outside of a defined settlement boundary, without sufficient justification which would cause harm to the development strategy for the borough leading to the creation of an unsustainable pattern of development

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

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

4. Section 1 of the 2015 Act requires:

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

(a) individuals, and

(b) associations of individuals,

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

5. Further section 2 provides:

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

...

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

(a) planning;

6. The 2015 Act continues:

2A Duty to grant planning permission etc

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

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

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

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

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

(b) ending with 30 October 2016.

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

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

(6) For the purposes of this section—

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

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

(i) by the authority,

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

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

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

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

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

(9) Regulations under subsection (3)—

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

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

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

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

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

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

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

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

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

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

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

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

Paragraph: 011 Reference ID: 57-011-20160401

Revision date: 01 04 2016

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

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

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

21. I note that para.5.1.10 raise concerns over ‘future implications given the timescales and obligation for granting a suitable number of self-build consent to match the level of demand which is reflected within the self-build register’. I would only observe that these are not future implications: it is a live statutory duty and there is a self-build application before the Council now. The duty is material under the planning acts and the 2015 Act reiterates that it must have regard to that demand in exercising its planning functions.
22. Further, even ignoring that the Council is now under a legal duty to provide plots for self-builders, I consider that the officer’s local plan analysis is short sighted. There is a specialist form of housing need (self-build) which those instructing me submit falls within the terms of DMH3. If, as the report states, that analysis is not accepted what then does the current local plan have to say about self-build and addressing that need: where is the relevant policy?
23. The officer report relies upon no other provisions of the extant plan. Such a policy would be, if it existed, central to the consideration of this application. Rather, there is no specific policy. If this need has no policy provision and it does not fall within the terms of DMH3 then the local plan is ‘silent’ as per the second bullet point of the decision making provisions of para.14 of the NPPF and the tilted balance is the relevant decision making test:

where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:

—any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or

—specific policies in this Framework indicate development should be restricted.

24. The Report does not analyse the decision on the basis that it is either plan compliant with DMH3 (the submissions of those instructing me) or that the plan is silent on self-build and as such permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of doing so.
25. The adverse impacts are particularised in the reasons as development beyond a disputed development boundary and an alleged visually and morphologically anomalous development affecting the appearance and character of the area and landscape. Those adverse effects would have to outweigh significantly and demonstrably the Council comply with its legal duty under the 2015 Act to meet a specialised housing need along with the numerous benefits particularised in the planning statement that accompanied the application¹ and the context of a local planning authority with a marginal housing land supply.
26. Under either analysis the Report is legally wrong. I advise accordingly, if I can be of any further assistance please do not hesitate to contact me.

ANTHONY GILL

6th March 2018

KINGS CHAMBERS

MANCHESTER, LEEDS, AND BIRMINGHAM

¹ Para.7.4

APPENDIX G COUNSEL ADVICE (2ND)

Re: the Stables at John Smith Playing Field, Longridge

ADVICE

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

3. The Council now claims to have a five year housing land supply and has advised that it considers Insp McGlone misinterpreted its housing policies. As such they will not accept the submission of those instructing me that the tilted balance under NPPF para.11 applies.
4. I am asked to advise with regard to the Council's continued recalcitrance as to the significance of its self-build policy approach (or lack thereof).
5. I have previously advised that the Council was failing to comply with its duty under Self-build and Custom Housebuilding Act 2015¹ ('the 2015 Act') to deliver the identified need for self-build housing through the granting of permission for self-build plots. The failure of the Council to do so and the absence of any policy within its local plan to do so are sufficient to engage the tilted balance under para.11 (the disbenefits of the proposal must significantly and demonstrably outweigh the benefits).
6. Further, I emphasised the significant weight that must be applied to the delivery of self-build provision in that planning balance (I consider it of the utmost weight) because it is a duty to deliver imposed directly by primary legislation of Parliament rather than a duty articulated through s.38(6) and the local plan. I remain of that opinion.
7. I think the principle is akin to the interests of the child in planning decisions which is a primary consideration which no other material consideration can attract greater weight than due to it being enshrined in the UN Convention of the Rights of the Child. The impact of the self-build duty arising from primary legislation has a *similar* effect in making it an *elevated material consideration*².

¹ As amended by the Housing and Planning Act 2016

² I am not suggesting it has the same weight as the interests of children.

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

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

14. The NPPF2018 provides at para.60:

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

15. It continues:

61. Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers²⁵, people who rent their homes and people wishing to commission or build their own homes²⁶).

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

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

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

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

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

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

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

Paragraph: 011 Reference ID: 57-011-20160401

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

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

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

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

28. I think the appeal proposals are strong in locational and landscape terms. As such I would struggle to see on what other bases³ the Council could sustain a refusal at appeal in light of the para.11 tilted balance.

Other Matters

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

³ I have only ever advised on one RfR in this case.

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

ANTHONY GILL

KINGS CHAMBERS

6th February 2019

MANCHESTER, LEEDS, AND BIRMINGHAM



APPENDIX H RELEVANT PLANNING POLICIES

Key Statement DS1 – Development Strategy

The majority of new housing development will be:

- concentrated within an identified strategic site located to the south of Clitheroe towards the A59; and
- the principal settlements of:
 - Clitheroe;
 - Longridge; and
 - Whalley.

Strategic employment opportunities will be promoted through the development of:

- the Barrow Enterprise Site as a main location for employment; and
- the Samlesbury Enterprise Zone.

New retail and leisure development will be directed toward the centres of:

- Clitheroe;
- Longridge; and
- Whalley.

In addition to the strategic site at Standen and the borough's principal settlements, development will be focussed towards the Tier Villages, which are the more sustainable of the 32 defined settlements:

- Barrow;
- Billington;
- Chatburn;
- Gisburn;
- Langho;
- Mellor;
- Mellor Brook;
- Read & Simonstone;
- Wilpshire.

In the 23 remaining Tier 2 Village settlements, which are the less sustainable of the 32 defined settlements, development will need to meet proven local needs or deliver regeneration benefits. The Tier 2 Village settlements are:

- Bolton-by-Bowland;
- Brockhall;
- Calderstones;
- Chipping;
- Copster Green;
- Downham;
- Dunsop Bridge;
- Grindleton;
- Holden;
- Hurst Green;
- Newton;
- Osbaldeston;
- Pendleton;
- Ribchester;
- Rimington;
- Sabden;
- Sawley;
- Slaidburn;
- Tosside;
- Waddington;
- West Bradford;
- Wiswell;
- Worston.

In general the scale of planned housing growth will be managed to reflect existing population size, the availability of, or the opportunity to provide facilities to serve the development and the extent to which development can be accommodated within the local area. Specific allocations will be made through the preparation of a separate allocations DPD.

In allocating development, the Council will have regard to the AONB, Green Belt and similar designations when establishing the scale, extent and form of development to be allocated under this strategy. The relevant constraints are set out as part of the strategic framework included in this plan.

Development that has recognised regeneration benefits, is for identified local needs or satisfies neighbourhood planning legislation, will be considered in all the borough's settlements, including small-scale development in the smaller settlements that are appropriate for consolidation and expansion or rounding-off of the built up area.

Through this strategy, development opportunities will be created for economic, social and environmental well-being and development for future generations.

Key Statement DS2 – Presumption in Favour of Sustainable Development

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

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

Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise – taking into account whether:

- any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole; or
- specific policies in that Framework indicate that development should be restricted.

Key Statement H1: Housing Provision

Land for residential development will be made available to deliver 5,600 dwellings, estimated at an average annual completion target of at least 280 dwellings per year over the period 2008 to 2028 in accordance with baseline information.

The Council will identify through the relevant “Strategic Housing Land Availability Study” (SHLAA), sites for residential development that are deliverable over a five-year period. By reference to the housing land monitoring report and where appropriate Strategic Housing Land Availability Assessments, the Council will endeavour to ensure housing land is identified for the full 15 year period and beyond.

A ‘plan-monitor-manage’ approach will be adopted and a monitoring report will be the key tool in tracking the fiveyear rolling land supply. The overall housing requirement will be subject to a formal review within five years from the date of adoption of the Core Strategy to ensure it remains the appropriate strategic figure with which to plan.

Key Statement H2: Housing Balance

Planning permission will only be granted for residential development providing it can be demonstrated that it delivers a suitable mix of housing that accords with the projected future household requirements and local need across the Ribble Valley as a whole as evidenced by the Strategic Housing Market Assessment.

Determination of planning applications for residential development will be informed by the most recent Housing Needs Surveys, Addressing Housing Needs statement and the most recently adopted SHMA, to identify the type, tenure and size of residential dwellings, required at different locations throughout the borough as well as reference to relevant housing market information as appropriate.

Policy DMG1 – General Considerations

In determining planning applications, all development must:

Design

1. Be of a high standard of building design which considers the 8 building in context principles (from the Cabe/English Heritage building on context toolkit).
2. Be sympathetic to existing and proposed land uses in terms of its size, intensity and nature as well as scale, massing, style, features and building materials.
3. Consider the density, layout and relationship between buildings, which is of major importance. Particular emphasis will be placed on visual appearance and the relationship to surroundings, including impact on landscape character, as well as the effects of development on existing amenities.
4. Use sustainable construction techniques where possible and provide evidence that energy efficiency, as described within Policy DME5, has been incorporated into schemes where possible.
5. The code for sustainable homes and lifetime homes, or any subsequent nationally recognised equivalent standards, should be incorporated into schemes.

Access

1. Consider the potential traffic and car parking implications.
2. Ensure safe access can be provided which is suitable to accommodate the scale and type of traffic likely to be generated.
3. Consider the protection and enhancement of public rights of way and access.

Amenity

1. Not adversely affect the amenities of the surrounding area.
2. Provide adequate day lighting and privacy distances.
3. Have regard to public safety and secured by design principles.
4. Consider air quality and mitigate adverse impacts where possible.

Environment

1. Consider the environmental implications such as SSSIs, County Heritage Sites, local Nature Reserves, Biodiversity Action Plan (BAP) Habitats and Species, Special Areas of Conservation and Special Protected Areas, protected species, green corridors and other sites of nature conservation.
2. With regards to possible effects upon the natural environment, the Council propose that the principles of the mitigation hierarchy be followed. This gives sequential preference to the following: 1) enhance the environment 2) avoid the impact 3) minimise the impact 4) restore the damage 5) compensate for the damage 6) offset the damage.
3. All development must protect and enhance heritage assets and their settings.
4. All new development proposals will be required to take into account the risks arising from former coal mining and, where necessary, incorporate suitable mitigation measures to address them.
5. Achieve efficient land use and the reuse and remediation of previously developed sites where possible. Previously developed sites should always be used instead of greenfield sites where possible.

Infrastructure

1. Not result in the net loss of important open space, including public and private playing fields without a robust assessment that the sites are surplus to need. In assessing this, regard must be had to the level of provision and standard of public open space in the area, the importance of playing fields and the need to protect school playing fields to meet future needs. Regard will also be had to the landscape or townscape of an area and the importance the open space has on this.
2. Have regard to the availability to key infrastructure with capacity. Where key infrastructure with capacity is not available it may be necessary to phase development to allow infrastructure enhancements to take place.
3. Consider the potential impact on social infrastructure provision.

Other

1. Not prejudice future development which would provide significant environmental and amenity improvements.

This policy helps deliver the vision for the area and gives an overarching series of considerations that the Council will have regard to in achieving quality development.

Policy DMG2 – Strategic Considerations

Development should be in accordance with the Core Strategy Development Strategy and should support the spatial vision.

1. 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.

Within the tier 2 villages and outside the defined settlement areas development must meet at least one of the following considerations:

1. The development should be essential to the local economy or social well being of the area.
2. The development is needed for the purposes of forestry or agriculture.
3. The development is for local needs housing which meets an identified need and is secured as such.
4. The development is for small scale tourism or recreational developments appropriate to a rural area.
5. The development is for small-scale uses appropriate to a rural area where a local need or benefit can be demonstrated.
6. The development is compatible with the enterprise zone designation.

Within the Open Countryside development will be required to be in keeping with the character of the landscape and acknowledge the special qualities of the area by virtue of its size, design, use of materials, landscaping and siting. Where possible new development should be accommodated through the re-use of existing buildings, which in most cases is more appropriate than new build.

In protecting the designated area of outstanding natural beauty the council will have regard to the economic and social well being of the area. However the most important consideration in the assessment of any development proposals will be the protection, conservation and enhancement of the landscape and character of the area avoiding where possible habitat fragmentation. Where possible new development should be accommodated through the re-use of existing buildings, which in most cases is more appropriate than new build. Development will be required to be in keeping with the character of the landscape and acknowledge the special qualities of the AONB by virtue of its size, design, use of material, landscaping and siting. The AONB management plan should be considered and will be used by the council in determining planning applications.

For the purposes of this policy the term settlement is defined in the glossary. current settlement boundaries will be updated in subsequent DPDS.

This policy assists the interpretation of the development strategy and underpins the settlement hierarchy for the purposes of delivering sustainable development. In establishing broad constraints to development, the Council will secure the overall vision of the Core Strategy.

Policy DMG3 – Transport and Mobility

In making decisions on development proposals the local planning authority will, in addition to assessing proposals within the context of the development strategy, attach considerable weight to:

1. The availability and adequacy of public transport and associated infrastructure to serve those moving to and from the development – The relationship of the site to the primary route network and the strategic road network.
2. The provision made for access to the development by pedestrian, cyclists and those with reduced mobility.
3. Proposals which promote development within existing developed areas or extensions to them at locations which are highly accessible by means other than the private car.
4. Proposals which locate major generators of travel demand in existing centres which are highly accessible by means other than the private car.
5. Proposals which strengthen existing town and village centres which offer a range of everyday community shopping and employment opportunities by protecting and enhancing their vitality and viability.
6. Proposals which locate development in areas which maintain and improve choice for people to walk, cycle or catch public transport rather than drive between homes and facilities which they need to visit regularly.
7. Proposals which limit parking provision for developments and other on or off street parking provision to discourage reliance on the car for work and other journeys where there are effective alternatives.

All major proposals should offer opportunities for increased use of, or the improved provision of, bus and rail facilities.

All development proposals will be required to provide adequate car parking and servicing space in line with currently approved standards.

The Council will protect land currently identified on the proposals map from inappropriate development that may be required for the opening of stations at Gisburn and Chatburn. Any planning application relating to these sites will be assessed having regard to the likelihood of the sites being required and the amount of harm that will be caused to the possible implementation of schemes.

The Council will resist development that will result in the loss of opportunities to transport freight by rail.

Transport considerations are key to the delivery of sustainable development. The Council has established through this policy those aspects to be given particular regard when determining planning applications.

This policy recognises that the recent investment in the local railway infrastructure opens up the possibility of carrying more local and long distance freight in a more sustainable way, potentially removing more lorry based traffic from local roads. It also continues the opportunities recognised to extend passenger service by protecting existing station locations that could be developed to improve use of rail as a modal option.

In using this policy, reference will be made to Guidance of Transport Assessments. This should also include an assessment of the impacts on existing bus and rail infrastructure, including level crossings. Where necessary developers will be expected to contribute towards improvements in public transport provision and infrastructure.



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