

Appendices

Appendix 1 – 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

REFUSAL OF PLANNING PERMISSION

APPLICATION NO: 3/2018/0915

DECISION DATE: 26 November 2018

DATE RECEIVED: 03/10/2018

APPLICANT:

Mr Neil Forshaw

C/O agent

AGENT:

Mr Daniel Strode

PWA Planning

2 Lockside Road Office Park

Lockside Road

Preston

PR2 2YS

DEVELOPMENT PROPOSED: Application for outline planning permission with some matters reserved for a residential development of 3 dwellings, following demolition of agricultural buildings including access.

AT: Daniels Farm Preston Road Alston Preston PR3 3BL.

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

- 1 The proposed residential development of this site is contrary to Key Statements DS1 and DS2, as well as Policies DMG2 and DMH3, of the Ribble Valley Core Strategy. Approval of this application would lead to new dwellings within the open countryside without sufficient justification which would cause harm to the development strategy of the borough as set out in the Core Strategy, leading to unsustainable development.
- 2 The proposed residential development would be visible from public vantage points and would result in the introduction of built form and urban encroachment into the area to the detriment of the character and appearance of the defined open countryside. The scheme is thus considered detrimental to the visual amenities of the area which is contrary to Key Statement EN2, and Policies DMG1, DMG2 and DMH3 of the Ribble Valley Core Strategy, as well as national guidance contained within the National Planning Policy Framework.

P.T.O.

APPLICATION NO: 3/2018/0915

DECISION DATE: 26 November 2018

- 3 The proposed development would create a harmful precedent for the acceptance of other similar unjustified proposals for residential developments outside the settlement boundaries without sufficient justification 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.

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:
- 3061 001

NICOLA HOPKINS
DIRECTOR OF ECONOMIC DEVELOPMENT AND PLANNING

Appendix 2 – Structural Survey

STRUCTURAL INSPECTION
OF
OUTBUILDINGS AT DANIELS FARM, ALSTON

ON BEHALF OF

MR NEIL FORSHAW / PWA PLANNING

CONTENTS

	Page No.
1.0 INTRODUCTION	2
2.0 DESCRIPTION	2
3.0 OBSERVATIONS	2
4.0 CONCLUSIONS AND RECOMMENDATIONS	3
APPENDIX A – KEY PLAN	5
APPENDIX B – PHOTOGRAPHS	7

1.0 INTRODUCTION

Reid Jones Partnership Ltd, consulting engineers, were asked to carry out a structural inspection of three outbuildings at Daniels Farm, Alston, Longridge, by Ms Louise Leyland of PWA Planning. The buildings belong to Mr Neil Forshaw and are currently used for agricultural purposes.

It is proposed to convert the outbuildings to residential accommodation. The purpose of the inspection was to assess their current structural condition and suitability for conversion, and to make recommendations on any essential structural repairs considered necessary as part of conversion and general refurbishment works.

Mr John Reid BSc CEng MICE MStructE of Reid Jones Partnership Ltd carried out the structural inspection on Monday 26th June 2017.

The inspection was of a visual nature, and no opening up of the fabric of the buildings was carried out.

This report shall be for the sole use of Mr Forshaw and his professional advisors and shall not be relied upon by any other party without the full written consent of Reid Jones Partnership Ltd.

2.0 DESCRIPTION

The group of buildings, comprising a number of residential properties and the three farm outbuildings, are located on the site as shown on the key plan in Appendix A.

Building A lies to the north east of the group. It is a relatively modern single storey livestock building, rectangular in plan and with a duo-pitched roof (**photos 1 & 2**). The roof covering is of asbestos-cement sheets on timber purlins, in turn supported on steel roof trusses with a high-level collar-tie (**photo 3**). The walls are of hollow concrete blocks, stiffened on the two long sides with integral piers. The floor slab is of concrete throughout, with raised feeding stalls placed to each side of a central aisle

Building B is a single storey steel framed agricultural building dating from the 1940s or 1950s (**photo 4**), currently used as a cattle shed. The roof covering is asbestos cement roof sheeting is supported on steel angle purlins spanning between steel angle roof trusses (**photo 5**). The trusses are provided with diagonal knee braces to the supporting steel columns. The upper parts of the two side walls are clad with corrugated steel sheets on timber or steel angle rails. The lower parts are of cast-in-place concrete. The end wall facing south east is of blockwork to a height of around 1.5m, with timber boarding above. The opposite end wall is open. The floor slab is of concrete throughout, with raised feeding stalls each side of a central slatted aisle with slurry pit below (**photo 6**).

Building C is a three-span steel framed cattle shed, most likely constructed in the 1960s or 1970s (**photos 7, 8 & 9**). The first span, to the north west, has a duo-pitch roof of steel portal frames, supporting timber purlins and a covering of asbestos-cement sheeting (**photo 10**). The external walls and internal dividing wall to this part are of cast-in-place concrete or timber sleepers to just above mid-height, with asbestos-cement sheeting on timber rails above. The second and third spans are mono-pitch lean-to structures, with similar roof construction (**photos 11 & 12**). The external walls are of blockwork to around 1.2m high, with asbestos-cement or profiled steel wall cladding on timber rails above. The floors are of concrete, level in the first span, but with raised cattle stalls and slatted side or central aisles with slurry pits below in the second and third spans (**photo 13**).

3.0 OBSERVATIONS

Reference to the north, south, east or west sides or parts refer to those facing the relevant compass directions. When facing a wall or other structural element, reference to left, right, top or bottom relates to the wall as viewed.

The following observations were made during the inspection of the outbuildings: -

Building A

Internal Inspection

- Some damage to the asbestos-cement roof sheeting was noted near the south-east corner (**photo 14**).

External Inspection

- The external blockwork wall has suffered damage from vehicle impact at the south-west corner (**photo 15**).

Building B

Internal Inspection

- No signs of significant structural defect were noted.

External Inspection

- Several corrugated sheets are missing on the north east wall (**photo 4**).
- The timber cladding to the south east gable wall is damaged (**photo 4**).
- Exposed parts of the steel frame are corroding.
- The concrete external wall has spalled in several places revealing corroding embedded metal (**photo 16**).

Building C

Internal Inspection

- Two steel rafters in span 3 have been replaced by timber rafters. One has been damaged by agricultural equipment (**photo 17**).

External Inspection

- The wall sheeting has been damaged in many locations or is missing (**photo 18**).
- Exposed parts of the steel frame are corroding (**photo 19**).

4.0 CONCLUSIONS AND RECOMMENDATIONS

Building A

Building A is in a reasonable state of repair. The roof structure is largely intact and the walls are reasonably straight and vertical.

Conversion to residential use would require the roof covering to be replaced. The walls would need to be over-clad or lined to provide sufficient insulation and weather resistance. A new insulated ground floor slab would be required throughout.

The following repair recommendations are made with respect to the structure of Building A:

- Damaged areas of the blockwork walls should be re-built.
- The timber purlins should be inspected by a timber preservation specialist and treated in accordance with their recommendations. Their adequacy to support the roof loads to Building Regulations standards should be checked.
- The steel roof trusses should be strengthened by providing an additional tie member at lower level and their adequacy to support new roof loads confirmed.

Building B

Building B is a steel framed agricultural shed and is in reasonable structural condition.

Conversion to residential use will require a new roof covering, new external wall cladding and a new ground floor. The adequacy of the existing frame and foundations to take snow and wind loads to Building Regulations standards should be checked by structural calculation.

The following repair recommendations are made with respect to the structure of Building B:

- The steel frame should be cleaned and painted.
- Concrete damaged by corrosion of embedded metalwork should be repaired and protected behind new wall cladding.

Building C

Building C is a relatively modern steel framed agricultural shed. The steel frame and roof are in good structural condition, the external walls are in poor condition.

Conversion to residential use will require a new roof covering, new external wall cladding and a new ground floor. The adequacy of the existing frame and foundations to take snow and wind loads to Building Regulations standards should be checked by structural calculation.

The following repair recommendations are made with respect to the structure of Building C:

- The two timber rafters should be replaced with steel rafters.
- The steel frame should be cleaned, painted and protected.

APPENDIX A
KEY PLAN



Building A

Building B

Building C

APPENDIX B
PHOTOGRAPHS



Photo 1 – Building A, from South West



Photo 2 – Building A, from North West



Photo 3 – Building A – Internal View



Photo 4 – Building B, from South East



Photo 5 – Building B – Roof Structure



Photo 6 – Building B – Floor



Photo 7 – Building C, from North West



Photo 8 – Building C – North East Wall



Photo 9 – Building C – South East Wall



Photo 10 – Building C – Span 1



Photo 11 – Building C – Span 2



Photo 12 – Building C – Span 3



Photo 13 – Building C – Span 3 (Floor)



Photo 14 – Building A – Damaged Roof Sheet



Photo 15 – Building A – Damaged Wall



Photo 16 – Building B – Spalled Concrete



Photo 17 – Building C – Damaged Timber Rafter



Photo 18 – Building C – Missing Wall Sheet



Photo 16 – Building C – Corroding Steel

Appendix 3 – Mansell v Tonbridge And Malling Borough Council



Neutral Citation Number: [2017] EWCA Civ 1314

Case No: C1/2016/4488

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MR JUSTICE GARNHAM
[2016] EWHC 2832 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 September 2017

Before:

The Chancellor of the High Court
Lord Justice Lindblom
and
Lord Justice Hickinbottom

Between:

Michael Mansell

Appellant

- and -

Tonbridge and Malling Borough Council

Respondent

- and -

(1) Croudace Portland
(2) The East Malling Trust

Interested
Parties

Ms Annabel Graham Paul (instructed by **Richard Buxton Environmental and Public Law**)
for the **Appellant**

Mr Juan Lopez (instructed by **Tonbridge and Malling Borough Council Legal Services**)
for the **Respondent**

The interested parties did not appear and were not represented

Hearing date: 4 July 2017

**Judgment Approved by the court
for handing down
(subject to editorial corrections)**

Lord Justice Lindblom:

Introduction

1. Should the judge in the court below have quashed a local planning authority’s grant of planning permission for the redevelopment of the site of a large barn and a bungalow to provide four dwellings? That is what we must decide in this appeal. It is contended that the authority misdirected itself in considering a “fallback position” available to the landowner, and also that it misapplied the “presumption in favour of sustainable development” in the National Planning Policy Framework (“the NPPF”) – a question that can now be dealt with in the light of this court’s recent decision in *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893.
2. The appellant, Mr Michael Mansell, appeals against the order of Garnham J., dated 10 November 2016, dismissing his claim for judicial review of the planning permission granted on 13 January 2016 by the respondent, Tonbridge and Malling Borough Council, for development proposed by the first interested party, Croudace Portland, on land owned by the second interested party, the East Malling Trust, at Rocks Farm, The Rocks Road, East Malling. The proposal was to demolish the barn and the bungalow on the land and to construct four detached dwellings, with garages and gardens. Mr Mansell lives in a neighbouring property, at 132-136 The Rocks Road – a grade II listed building. He was an objector.
3. It was common ground that the proposal was in conflict with the development plan. Rocks Farm is outside the village of East Malling to its south-east, within the “countryside” as designated in the Tonbridge and Malling Borough Core Strategy. The site of the proposed development extends to about 1.3 hectares. The barn, about 600 square metres in area, had once been used to store apples. The bungalow was lived in by a caretaker. The application for planning permission came before the council’s Area 3 Planning Committee on 7 January 2016. In his reports to committee the council’s planning officer recommended that planning permission be granted, and that recommendation was accepted by the committee. The officer guided the members on the “fallback position” that was said to arise, at least partly, through the “permitted development” rights for changes of use from the use of a building as an agricultural building to its use as a dwelling-house, under Class Q in Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”).
4. Mr Mansell’s challenge to the planning permission attacked the officer’s approach to the “fallback position” and his assessment of the proposal on its planning merits. Garnham J. dismissed the claim for judicial review on all grounds. Permission to appeal was granted by McCombe L.J. on 21 February 2017.

The issues in the appeal

5. The appeal raises three main issues:
 - (1) whether the council correctly interpreted and lawfully applied the provisions of Class Q in the GPDO (ground 1 in the appellant’s notice);

- (2) whether the council was entitled to accept there was a real prospect of the fallback development being implemented (ground 2); and
- (3) whether the council misunderstood or misapplied the “presumption in favour of sustainable development” (ground 3).

Did the council correctly interpret and lawfully apply the provisions of Class Q?

6. When the council determined the application for planning permission the permitted development rights under Class Q were in these terms, so far is relevant here:

“Q. Permitted development

Development consisting of –

- (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order; and
- (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3 (dwellinghouses) of that Schedule.

Q.1 Development not permitted

Development is not permitted by Class Q if –

- ...
- (b) the cumulative floor space of the existing building or buildings changing use under Class Q within an established agricultural unit exceeds 450 square metres;
- (c) the cumulative number of separate dwellinghouses developed under Class Q within an established agricultural unit exceeds 3;
- ...
- (g) the development would result in the external dimensions of the building extending beyond the external dimensions of the existing building at any given point;
- (h) the development under Class Q (together with any previous development under Class Q) would result in a building or buildings having more than 450 square metres of floor space having a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order;
- ... ”

The permitted development rights under Class Q are subject to several “Conditions” in paragraph Q.2, none of them controversial here.

7. In section 6 of his main report to committee for its meeting on 7 January 2016 the officer dealt at length with the “Determining Issues”. In discussing those issues he considered the “fallback position” in paragraphs 6.14 to 6.19:

“6.14 In practical terms for this site, the new permitted development rights mean that the existing agricultural barn could be converted into three residential units. Some representations point out that only a proportion of the barn could be

converted in such a manner (up to 450sqm) but the remainder – a small proportion in terms of the overall footprint – could conceivably be left unconverted and the resultant impacts for the site in terms of the amount of residential activity would be essentially the same. The building could be physically adapted in certain ways that would allow for partial residential occupation and the extensive area of hardstanding which exists between the building and the northern boundary could be used for parking and turning facilities.

- 6.15 The existing bungalow within the site could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building. Such a scenario would, in effect, give rise to the site being occupied by a total of four residential units albeit of a different form and type to that proposed by this application. This provides a realistic fallback position in terms of how the site could be developed.
- 6.16 I appreciate that discussion concerning realistic ‘fallback’ positions is rather complicated but, in making an assessment of any application for development, we are bound to consider what the alternatives might be for a site: in terms of what could occur on the site without requiring any permission at all (historic use rights) or using permitted development rights for alternative forms of development.
- 6.17 In this instance a scheme confined to taking advantage of permitted development would, in my view, be to the detriment of the site as a whole in visual terms. Specifically, it would have to be developed in a contrived and piecemeal fashion in order to conform to the requirements of the permitted development rights, including the need to adhere to the restrictions on the floor space that can be converted using the permitted development rights.
- 6.18 I would also mention that should the applicant wish to convert the entire barn for residential purposes, above the permitted development thresholds, such a scheme (subject to detailed design) would wholly accord with adopted policy. Again, this provides a strong indicator as to how the site could be developed in an alternative way that would still retain the same degree of residential activity as proposed by the current application but in a more contrived manner and with a far more direct physical relationship with the nearest residential properties.
- 6.19 The current proposal therefore, in my view, offers an opportunity for a more comprehensive and coherent redevelopment of the site as opposed to a more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights.”
8. For Mr Mansell, Ms Annabel Graham Paul submitted to us, as she did to the judge, that the officer’s advice in those six paragraphs betrays a misunderstanding of the provisions of Class Q in the GPDO, in particular sub-paragraphs Q.1(b) and Q.1(h). She argued that the restriction to 450 square metres in sub-paragraph Q.1(b) applies to the total floor space of the agricultural building or buildings in question, not to the floor space actually “changing use”. Before the judge, though not in her submissions in this court, Ms Graham Paul sought to bolster that contention with a passage in an inspector’s decision letter

relating to a proposal for development on a site referred to by the judge as “Mannings Farm”. The inspector had observed that “[the] floor space of the existing building ... far exceeds the maximum permitted threshold, of 450 sq m, as set out in [sub-paragraph] Q.1(b)”, and that “the intention is to reduce the size of the building as part of the proposal but Q.1(b) clearly relates to existing floorspace and there is no provision in the GPDO for this to be assessed on any other basis”.

9. Garnham J. rejected Ms Graham Paul’s argument. In paragraph 30 of his judgment he said:

“30. In my judgment this construction of paragraph Q.1(b) fails because it disregards the definition section of the Order. The critical expression in subparagraph (b) is *“the existing building or buildings”*. Paragraph 2 of the Order defines *“building”* as *“any part of a building”*. Accordingly, the paragraph should be read as meaning *“the cumulative floor space of the existing building or any part of the building changing use ...”*. If that is right, it is self-evident that the limit on floor space relates only to that part of the building which is changing use.”

10. The judge found support for that conclusion in several inspectors’ decisions, one of them a decision on proposed development at Bennetts Lane, Binegar in Somerset. In correspondence in that case the Department for Communities and Local Government had pointed to the definition of a “building” in the “Interpretation” provisions in paragraph 2 of the GPDO. Because that definition included “any part of a building”, their view was that “in the case of a large agricultural building, part of it could change use ... and the rest remain in agricultural use” (paragraph 32 of the judgment). However, as was accepted on both sides in this appeal, the court must construe the provisions of the GPDO for itself, applying familiar principles of statutory interpretation.

11. In paragraph 34 of his judgment Garnham J. said this:

“34. Ms Graham Paul contends that that construction of subparagraph (b) means that it adds nothing to subparagraph (h). I can see the force of that submission and, as a matter of first principle, statutory provisions should be construed on the assumption that the draftsman was intending to add something substantive by each relevant provision. Nonetheless, giving the interpretation section its proper weight, I see no alternative to the conclusion that Class Q imposes a floor space limit on those parts of the buildings which will change use as a result of the development. In those circumstances, I reject the Claimant’s challenge to the Officer’s construction of the Class Q provisions in the 2015 Order.”

12. Ms Graham Paul submitted that this interpretation of the relevant provisions would render sub-paragraph Q.1(b) of Class Q redundant, because sub-paragraph Q.1(h) already limits the residential floor space resulting from the change of use under Class Q to a maximum of 450 square metres. The statutory provisions for permitted development rights in the GPDO ought to be interpreted consistently. The interpretation favoured by the judge, submitted Ms Graham Paul, depends on reading into sub-paragraph Q.1(b) the additional words “any part of a building” after the words “the existing building or buildings”, which, she said, is wholly unnecessary. Statutory provisions ought to be construed on the

assumption that the draftsman was intending to add something of substance in each provision. The judge's interpretation offends that principle, said Ms Graham Paul, because it would, in effect, subsume sub-paragraph Q.1(b) into sub-paragraph Q.1(h). Only her interpretation of sub-paragraph Q.1(b) would enable sub-paragraph Q.1(h) to add something of substance to the provisions of Class Q. And in principle, Ms Graham Paul argued, it makes good sense to prevent, without an express grant of planning permission, the partial conversion of large agricultural buildings to accommodate residential use, leaving other parts of the building either in active agricultural use or simply vacant.

13. Ms Graham Paul sought to reinforce these submissions by pointing to other provisions of the GPDO where similar wording is used: Class M, which provides permitted development rights for changes of use of buildings in retail or betting office or pay day loan shop use to Class C3 use, and states in sub-paragraph M.1(c) that development is not permitted if "the cumulative floor space of the existing building changing use under Class M exceeds 150 square metres"; and Class N, which provides permitted development rights for changes of use from specified sui generis uses, including use as an amusement arcade or centre, and use as a casino, to Class C3 use, and states in sub-paragraph N.1(b) that development is not permitted if "the cumulative floor space of the existing building changing use under Class N exceeds 150 square metres".
14. I cannot accept Ms Graham Paul's argument. I think the judge's understanding of Class Q was correct. The provisions of Class Q relating to the scope of permitted development rights should be given their literal meaning. When this is done, they make perfectly good sense in their statutory context and do not give rise to any duplication or redundancy.
15. The focus here is on the provisions as to development that is "not permitted" under paragraph Q.1, and in particular the provisions of sub-paragraphs Q.1(b) and Q.1(h). Sub-paragraph Q.1(b) establishes the "cumulative floor space of the existing building or buildings" that is "changing use under Class Q ...". The limit on such "cumulative floor space ..." is 450 square metres. This restriction is stated to be a restriction on the change of use, not on the size of the building or buildings in which the change of use occurs. Sub-paragraph Q.1(b) relates to a single act of development in which the building in question, or part of it, is "changing use". The floor space limit set by it relates not to the total floor space of the building or buildings concerned. It relates, as one would expect, to the permitted development rights themselves, which apply to the "cumulative" amount of floor space actually "changing use under Class Q". The use of the word "cumulative" in this context – as elsewhere in the GPDO – is perfectly clear. It connotes, in relevant circumstances, the adding together of separate elements of floor space within a building or buildings, or, again in relevant circumstances, a single element of floor space, which in either case must not exceed 450 square metres. The total floor space of the building or buildings concerned may itself be more than 450 square metres. But the cumulative amount of floor space whose use is permitted to be changed within that total floor space must not exceed 450 square metres.
16. This interpretation of sub-paragraph Q.1(b) avoids arbitrary consequences in the application of the permitted development rights under Class Q. It does not make the availability of those rights for a qualifying "agricultural building" depend on the total floor space of the building itself. It would not, therefore, create a situation in which the permitted development rights under Class Q would be available for a building whose total floor space was 450 square metres, but not for a building with a floor space of 451 square

metres or an area greater than that. If the consequence is that the permitted development rights, when fully used, would result in a building partly in use as a dwelling-house and partly still in agricultural use, that is an outcome contemplated by the GPDO. I see no difficulty in that.

17. Had the draftsman intended to confer permitted development rights under Class Q only to a building or buildings whose total floor space was not more than 450 square metres, the relevant provision would have been framed differently. There would have been no need to use the word “cumulative” or some other such word. The provision would simply have stated, for example, “the total floor space of the existing building or buildings within an established agricultural unit in which the change of use under Class Q is being undertaken does not exceed 450 square metres”. But that is not what sub-paragraph Q.1(b) says, or, in my view, what it means.
18. Nor can I see how an interpretation of sub-paragraph Q.1(b) in which the restriction of 450 square metres applies not to the floor space actually changing use but to the total floor space of the building or buildings in which the change of use is taking place can be reconciled with the definition of “building” in paragraph 2 of the GPDO as including “part of a building”. Unless one disapplies that part of the definition of a building to sub-paragraph Q.1(b), one must read that provision as meaning “the cumulative floor space of the existing building or buildings or part of a building changing use under Class Q ... exceeds 450 square metres” (my emphasis). That understanding of sub-paragraph Q.1(b) would not sit happily with the concept that the restriction of 450 square metres applies not to the floor space changing use but to the total floor space of the building itself.
19. My interpretation of sub-paragraph Q.1(b) does not leave sub-paragraph Q.1(h) redundant. Sub-paragraph Q.1(h) achieves a different purpose. It prevents, for example, a change of use as “permitted development” in an agricultural building of which part is already in Class C3 use, or an aggregation of successive changes of use through separate acts of development, that would result in more than 450 square metres of floor space in a building or buildings being in Class C3 use. Neither of those outcomes would necessarily be prevented by sub-paragraph Q.1(b).
20. Finally, there is nothing in the provisions of Class M and Class N, or in any other provision of the GPDO, to suggest a different understanding of Class Q. The provisions in sub-paragraphs M.1(c) and N.1(b) also contain the word “cumulative” in referring to the floor space “changing use”, not to the total floor space of the “existing building or buildings” in which the change of use is taking place. And in both Class M and Class N the draftsman has also included a provision – respectively in sub-paragraphs M.1(d) and N.1(c) – stating that “the development (together with any previous development under [the relevant class]) would result in more than 150 square metres of floor space in the building having changed use under [the relevant class]”. Although we are not deciding those questions, it seems to me that the same analysis would hold good for those provisions too.
21. In my view, therefore, the officer did not misrepresent the permitted development rights under Class Q in his advice to the committee on the “fallback position”. The provisions of Class Q were correctly interpreted and lawfully applied.

Was the council entitled to accept that there was a real prospect of the fallback development being implemented?

22. Garnham J. accepted that the council was entitled to conclude that there was a “realistic” fallback. In paragraphs 36 and 37 of his judgment he said:

“36. In paragraph 6.15 of the report the Officer concluded that the fall back position was “realistic”. In my judgment he was entitled so to conclude. The evidence establishes that there had been prior discussions between the Council and the Planning Agent acting for the East Malling Trust who owns the site. It was crystal clear from that contact that the Trust were intending, one way or another to develop the site. Alternative proposals had been advanced seeking the Council’s likely reaction to planning applications. It is in my view wholly unrealistic to imagine that were all such proposals to be turned down the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible.

37. It was not a precondition to the Council’s consideration of the fall back option that the interested party had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect. The officer was entitled to have regard to the planning history which was within his knowledge and the obvious preference of the Trust to make the most valuable use it could of the site.”

23. The judge accepted the submission of Mr Juan Lopez for the council that the committee did not have to ignore fallback development that included elements for which planning permission would be required and had not yet been granted. He noted that “[the] building could be converted, so as to provide dwelling houses limited in floor space to 450m² by the construction of internal walls without using the whole of the internal space of the barn” (paragraph 40). And he went on to say (in paragraph 41):

“41. In my judgment therefore, it would have been unrealistic to have concluded that, were the present application for permission to be rejected, the interested party would do nothing to develop this site. On the contrary it was plain that development was contemplated and that some development could have taken place pursuant to Class Q. The Council was entitled to have regard to the fact that there might be separate applications for permission in respect of some elements of the scheme and to advise that appropriate regard must be had to material planning considerations including the permitted development fall back position. Accordingly I reject the second element of the Claimant’s challenge on ground 1.”

24. Ms Graham Paul criticized the judge’s approach. She said it would enable permitted development rights under the GPDO to be relied on as a fallback even where there was no evidence that the landowner or developer would in fact resort to such development. The judge did not consider whether the council had satisfied itself that there was a “real prospect” of the fallback development being implemented (see the judgment of Sullivan L.J. in *Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government* [2009] J.P.L. 1326, at paragraph 21). The “real prospect”, submitted Ms Graham Paul, must relate to a particular fallback development contemplated by the

landowner or developer, not merely some general concept of development that might be possible on the site. Only a specific fallback makes it possible for a comparison to be made between the planning merits of the development proposed and the fallback development. The relevance of a fallback depends on there being a “finding of actually intended use as opposed to a mere legal or theoretical entitlement” (see the judgment of Mr Christopher Lockhart-Mummery Q.C., sitting as a deputy judge of the High Court, in *R. v Secretary of State for the Environment and Havering London Borough Council, ex parte P.F. Ahern (London) Ltd.* [1998] Env. L.R. 189, at p.196).

25. Ms Graham Paul said there was nothing before the council to show that either the East Malling Trust or Croudace Portland contemplated the site being developed in the way the officer described in his report. On the contrary, the conversion of the barn for residential use – as opposed to its demolition and replacement with new dwellings – seems to have been regarded as impracticable or uneconomic. The East Malling Trust’s planning consultant, Broadlands Planning Ltd., had submitted a “Planning Statement” to the council in December 2013, seeking the council’s advice before the submission of an application for planning permission. In that document two possible schemes for the site were referred to (at paragraph 26). Neither could have been achieved using permitted development rights. One involved the retention of the barn and its conversion to four dwelling-houses, the other a “wholesale redevelopment of the site”, perhaps with the replacement of the bungalow, to create five new dwellings. In a letter to Broadlands Planning Ltd. dated 30 January 2014 the council’s Senior Planning Officer, Ms Holland, said she was “not convinced that the proposal would result in the building being converted, but rather [that] large portions would be removed and a new building created”. And the East Malling Trust’s marketing agent, Smiths Gore, in a letter to potential developers dated 27 February 2014, suggested it was “unlikely that a developer would contemplate the conversion of the Apple Store”. There was, said Ms Graham Paul, no other contemporaneous evidence to lend substance to the fallback scheme to which the officer referred in his report, and no evidence of the council trying to find out what, if anything, was actually contemplated. The evidence did not demonstrate a “real prospect” – as opposed to a merely “theoretical” prospect – of such a development being carried out. The judge should have recognized that the fallback development referred to in the officer’s report was not a material consideration.
26. I cannot accept that argument. In my view the officer did not misunderstand any principle of law relating to a fallback development. His advice to the members was sound.
27. The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three things can be said about it:
 - (1) Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a lawful exercise of planning judgment by a decision-maker.
 - (2) The relevant law as to a “real prospect” of a fallback development being implemented was applied by this court in *Samuel Smith Old Brewery* (see, in particular, paragraphs 17 to 30 of Sullivan L.J.’s judgment, with which the Master of the Rolls and Toulson L.J. agreed; and the judgment of Supperstone J. in *R. (on the application of Kverndal) v London Borough of Hounslow Council* [2015] EWHC 3084 (Admin), at paragraphs 17 and 42 to 53). As

Sullivan L.J. said in his judgment in *Samuel Smith Old Brewery*, in this context a “real” prospect is the antithesis of one that is “merely theoretical” (paragraph 20). The basic principle is that “... for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice” (paragraph 21). Previous decisions at first instance, including *Ahern* and *Brentwood Borough Council v Secretary of State for the Environment* [1996] 72 P. & C.R. 61 must be read with care in the light of that statement of the law, and bearing in mind, as Sullivan L.J. emphasized, “... “fall back” cases tend to be very fact-specific” (ibid.). The role of planning judgment is vital. And “[it] is important ... not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal decisions within judicial formulations that are not enactments of general application but are themselves simply the judge’s response to the facts of the case before the court” (paragraph 22).

- (3) Therefore, when the court is considering whether a decision-maker has properly identified a “real prospect” of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in every case, the “real prospect” will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker’s planning judgment in the particular circumstances of the case in hand.
28. In this case, in the circumstances as they were when the application for planning permission went before the committee, it was plainly appropriate, indeed necessary, for the members to take into account the fallback available to the East Malling Trust as the owner of the land, including the permitted development rights arising under Class Q in the GPDO and the relevant provisions of the development plan, in particular policy CP14 of the core strategy. Not to have done so would have been a failure to have regard to a material consideration, and thus an error of law.
29. That the East Malling Trust was intent upon achieving the greatest possible value from the redevelopment of the site for housing had by then been made quite plain. The “Planning Statement” of December 2013 had referred to two alternative proposals for the redevelopment of the site (paragraph 26), pointing out that both “[the] redevelopment and replacement of [the] bungalow” and “[the] conversion of the existing storage and packing shed” were “permissible in principle” (paragraph 35). The firm intention of the East Malling Trust to go ahead with a residential development was entirely clear at that stage.
30. In my view it was, in the circumstances, entirely reasonable to assume that any relevant permitted development rights by which the East Malling Trust could achieve residential development value from the site would ultimately be relied upon if an application for planning permission for the construction of new dwellings were refused. That was a simple and obvious reality – whether explicitly stated by the East Malling Trust or not. It was accurately and quite properly reflected in the officer’s report to committee. It is

reinforced by evidence before the court – in the witness statement of Mr Humphrey, the council’s Director of Planning, Housing and Environmental Health, dated 18 March 2016 (in paragraphs 6 to 24), in the witness statement of Mr Wilkinson, the Land and Sales Manager of Croudace Portland, also dated 18 March 2016 (in paragraphs 4 to 7), in the first witness statement of Ms Flanagan, the Property and Commercial Director of the East Malling Trust, dated 17 March 2016 (in paragraphs 4 to 6), and in Ms Flanagan’s second witness statement, dated 17 June 2016 (in paragraphs 2 to 5).

31. As Ms Flanagan says (in paragraph 2 of her second witness statement):

“2. At paragraph 6 of my first witness statement, I state that there was no doubt that the Trust would consider alternatives to the preferred scheme. To further amplify, the Trust (as a charitable body) is tasked with obtaining best value upon the disposal of its assets. A number of alternative uses were considered for the site, including industrial uses. However the Board was aware that a residential scheme of some type would provide the best value for the application land, even were that to include a conversion of the existing agricultural building.”

Ms Flanagan goes on to refer to Smiths Gore’s letter of 27 February 2014 (in paragraphs 4 and 5):

“4. ... This letter ... states that at that time [Smith Gore’s] opinion was that it was unlikely that a scheme of conversion would be contemplated by any developer. However, this letter pre-dated the permitted development rights that subsequently came into effect in April 2014. By the time the planning application had formally been submitted, these permitted development rights were in effect.

5. Had no other scheme proven acceptable in planning terms, and if planning permission had been refused for the development the subject of the planning application, the Trust would have built out a “permitted development” scheme to the fullest extent possible in order to realise the highest value for the land, in order to thereafter seek disposal to a developer.”

32. That evidence is wholly unsurprising. And it confirms the East Malling Trust’s intentions as they were when the council made its decision to grant planning permission in January 2016, by which time the current provisions for “permitted development” under Class Q of the GPDO had come into effect. It states the East Malling Trust’s position as landowner at that stage – as opposed to the view expressed by an officer of the council, and an opinion by a marketing agent in a letter to developers, almost two years before. It is consistent with what was being said on behalf of the East Malling Trust in its dealings with the council from the outset – in effect, that the site was going to be redeveloped for housing even if this had to involve the conversion and change of use of the barn to residential use. It reflects the fiduciary duty of the trustees. And it bears out what the council’s officer said about the “fallback position” in his report to committee.

33. I do not see how it can be said that the officer’s assessment of the “fallback position”, which the committee adopted, offends any relevant principle in the case law – in particular the concept of a “real prospect” as explained by Sullivan L.J. in *Samuel Smith Old*

Brewery. It was, in my view, a faithful application of the principles in the authorities in the particular circumstances of this case. It also demonstrates common sense.

34. The officer did not simply consider the fallback in a general way, without regard to the facts. He considered it in specific terms, gauging the likelihood of its being brought about if the council were to reject the present proposal. In the end, of course, these were matters of fact and planning judgment for the committee. But the officer's advice in paragraphs 6.14 to 6.19 of his report was, I believe, impeccable. He was right to say, in paragraph 6.14, that the "new permitted development rights" – under Class Q in the GPDO – would enable the barn to be converted into three residential units; in the same paragraph, that the building "could be physically adapted in certain ways that would allow for partial residential occupation ..."; and, in paragraph 6.15, that the bungalow "could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building". He was also right to say, therefore, that the site could be developed for "four residential units albeit of a different form and type to that proposed by this application". All of this was factually correct, and represented what the council knew to be so. It did not overstate the position. It went no further than the least that could realistically be achieved by way of a fallback development – through the use of permitted development rights under Class Q and an application for planning permission complying with policy CP14.
35. The officer also guided the committee appropriately in what he said about the realism of the "fallback position". At the end of paragraph 6.15 of his report he said that the fallback development he had described was "a realistic fallback position in terms of how the site could be developed". He was well aware of the need to take into account only a fallback development that was truly "realistic", not merely "theoretical". He came back, in paragraph 6.16, to the question of "realistic 'fallback' positions", again reminding the members that this was what had to be considered. He went on to acknowledge, rightly, that the council had to consider what could be achieved "using permitted development rights for alternative forms of development". The context for this advice was that in his view, as he said in paragraph 6.15, he was dealing with "a realistic fallback position". He went on in paragraph 6.17 to consider what "would" happen if a scheme taking advantage of permitted development rights came forward. And in paragraph 6.18 his advice was that a redevelopment involving the conversion of "the entire barn for residential purposes, above the permitted development thresholds ... would wholly accord with adopted policy". That was a legally sound planning judgment. The same may also be said of the officer's conclusion in paragraph 6.19, where he compared the proposal before the committee with the "more piecemeal form of development that would arise should the applicant seek to undertake to implement permitted development rights".
36. In short, none of the advice given to the council's committee on the "fallback position" can, in the particular circumstances of this case, be criticized. It was, I think, unimpeachable.
37. In my view, therefore, the council was entitled to accept that there was a "real prospect" of the fallback development being implemented, and to give the weight it evidently did to that fallback as a material consideration. In doing so, it made no error of law.

Was the judge right to conclude that the council did not misunderstand or misapply the “presumption in favour of sustainable development” in the NPPF?

38. Paragraph 14 of the NPPF states:

“14. At the heart of [the NPPF] is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

...

For decision-taking this means:

- approving development proposals that accord with the development plan without delay; and
- 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 [the NPPF] taken as a whole; or
 - specific policies in [the NPPF] indicate development should be restricted.”

39. In *Barwood v East Staffordshire Borough Council* this court stated its understanding of the policy for the “presumption in favour of sustainable development” in the NPPF, and how that presumption is intended to operate (see paragraphs 34 and 35 of my judgment). In doing so, it approved the relevant parts of the judgment of Holgate J. in *Trustees of the Barker Mill Estates v Secretary of State for Communities and Local Government* [2016] EWHC 3028 (Admin) (in particular paragraphs 126, 131, 136, and 140 to 143). Three simple points emerged (see paragraph 35 of my judgment). The first and second of those three points need not be set out again here. The third, however, is worth repeating – because it bears on the issue we are considering now. I shall emphasize the most important principle for our purposes here:

“ ...

- (3) When the section 38(6) duty is lawfully performed, a development which does not earn the “presumption in favour of sustainable development” – and does not, therefore, have the benefit of the “tilted balance” in its favour – may still merit the grant of planning permission. On the other hand, a development which does have the benefit of the “tilted balance” may still be found unacceptable, and planning permission for it refused This is the territory of planning judgment, where the court will not go except to apply the relevant principles of public law The “presumption in favour of sustainable development” is not irrebuttable. Thus, in a case where a proposal for the development of housing is in conflict with a local plan whose policies for the supply of housing are out of date, the decision-maker is left to judge, in the particular circumstances of the case in hand, how much weight should be given to that conflict. The absence of a five-year supply of housing land will not necessarily be conclusive in favour of the grant of planning permission. This is not a matter of law. It is a matter of planning judgment (see paragraphs 70 to

74 of the judgment in [*Crane v Secretary of State for Communities and Local Government* [2015] EWHC 425 (Admin)].”

40. The judgments in this court in *Barwood v East Staffordshire Borough Council* entirely supersede the corresponding parts of several judgments at first instance – including, most recently, *Reigate and Banstead Borough Council v Secretary of State for Communities and Local Government* [2017] EWHC 1562 (Admin). In those cases, judges in the Planning Court have offered various interpretations of NPPF policy for the “presumption in favour of sustainable development”, and have explained how, in their view, the presumption should work. There is no need for that to continue. After the decision of the Court of Appeal in *Barwood v East Staffordshire Borough Council*, it is no longer necessary, or appropriate, to cite to this court or to judges in the Planning Court any of the first instance judgments in which the meaning of the presumption has been considered.
41. The Planning Court – and this court too – must always be vigilant against excessive legalism infecting the planning system. A planning decision is not akin to an adjudication made by a court (see paragraph 50 of my judgment in *Barwood v East Staffordshire Borough Council*). The courts must keep in mind that the function of planning decision-making has been assigned by Parliament, not to judges, but – at local level – to elected councillors with the benefit of advice given to them by planning officers, most of whom are professional planners, and – on appeal – to the Secretary of State and his inspectors. They should remember too that the making of planning policy is not an end in itself, but a means to achieving reasonably predictable decision-making, consistent with the aims of the policy-maker. Though the interpretation of planning policy is, ultimately, a matter for the court, planning policies do not normally require intricate discussion of their meaning. A particular policy, or even a particular phrase or word in a policy, will sometimes provide planning lawyers with a “doctrinal controversy”. But even when the higher courts disagree as to the meaning of the words in dispute, and even when the policy-maker’s own understanding of the policy has not been accepted, the debate in which lawyers have engaged may turn out to have been in vain – because, when a planning decision has to be made, the effect of the relevant policies, taken together, may be exactly the same whichever construction is right (see paragraph 22 of my judgment in *Barwood v East Staffordshire Borough Council*). That of course may not always be so. One thing, however, is certain, and ought to be stressed. Planning officers and inspectors are entitled to expect that both national and local planning policy is as simply and clearly stated as it can be, and also – however well or badly a policy is expressed – that the court’s interpretation of it will be straightforward, without undue or elaborate exposition. Equally, they are entitled to expect – in every case – good sense and fairness in the court’s review of a planning decision, not the hypercritical approach the court is often urged to adopt.
42. The principles on which the court will act when criticism is made of a planning officer’s report to committee are well settled. To summarize the law as it stands:
 - (1) The essential principles are as stated by the Court of Appeal in *R. v Selby District Council, ex parte Oxtou Farms* [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in *R. (on the application of Siraj) v Kirklees Metropolitan Borough Council* [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in *R. (on the application of*

Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin), at paragraph 15).

- (2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.
- (3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere.

43. Was the officer's advice to the members in this case flawed in that way? I do not think so.

44. In paragraph 6.1 of his report the officer said:

“6.1 As Members are aware, the Council in its role as Local Planning Authority is required to determine planning applications and other similar submissions in accordance with the Development Plan in force unless material considerations indicate otherwise. ... The NPPF and the associated [Planning Practice Guidance] are important material considerations.”

He went on to consider the relevant policies of the development plan, in particular policies CP11, CP12, CP13 and CP14 of the core strategy, and then advised the committee, in paragraph 6.6:

“6.6 With the above policy context in mind, it is clear that the proposal relates to new development outside the village confines (on land which is not defined as “previously developed” for the purposes of applying NPPF policy), is not part of a wider plan of farm diversification and is not intended to provide affordable housing as an exceptions site. Consequently, the proposed development falls outside of the requirements of these policies and there is an objection to the principle of the proposed development in the broad policy terms.”

and in paragraph 6.7:

“6.7 It is therefore necessary to establish whether any other material planning considerations exist that outweigh the policy objections to the scheme in these particular circumstances.”

45. In paragraph 6.8 the officer acknowledged, in the light of the relevant guidance in the Planning Practice Guidance, that “the policies contained in ... the NPPF are material considerations and must be taken into account”, and, in paragraph 6.9, that since the core strategy had been adopted in 2007 it was “necessary to establish how consistent the above policies are with the policies contained within the NPPF”. His advice in paragraphs 6.10 to 6.13 of his report was this:

“6.10 With this in mind, it must be noted that paragraph 49 of the NPPF states that applications for new housing development should be considered in the context of the presumption in favour of sustainable development. Paragraph 50 of the NPPF emphasises the importance of providing a wide choice of high quality homes, to widen opportunities for home ownership and create sustainable, inclusive and mixed communities. Paragraph 55 states that in order to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.

6.11 These criteria all demonstrate a clear government momentum in favour of sustainable development to create new homes and drive economic development. The proposed development would create four high quality new homes on the very edge of an existing village settlement.

6.12 A further indicator of such emphasis is borne out of the recent changes to the regime of permitted development rights set out by national government by the Town and Country Planning (General Permitted Development) Order 2015. This allows for far more development to take place without the need for planning permission from Local Authorities and generally provides a steer as to government’s thinking on how to boost the country’s economy through the delivery of new homes.

6.13 Such continued emphasis from government is a material consideration that must be balanced against the policy context set out in the TMBCS.”

46. I have already referred to the officer's advice on the "fallback position" in paragraphs 6.14 to 6.19 of his report. In paragraphs 6.20 to 6.42 he considered the planning merits of the proposal and its advantages by comparison with the fallback development, drawing the committee's attention to relevant policies both in the core strategy and in the NPPF. He advised that the design and density of the proposed development were acceptable and beneficial (paragraphs 6.20 to 6.23). In paragraph 6.24 he said:

"6.24 With these considerations in mind, particularly the emphasis contained within the NPPF concerning sustainable development generally, the impetus behind the provision of new homes, the benefits of removing existing structures and the permitted development "fallback" position, it is my view that, on balance, other material considerations can weigh in favour of the grant of planning permission."

47. He concluded that the effects of the development on the settings of listed buildings and the setting of East Malling Conservation Area would not be harmful (paragraphs 6.25 to 6.30). He also found the proposed arrangements for access to the site and for car parking acceptable (paragraphs 6.31 to 6.36). He advised that "... the existing barn could be partially converted and the existing access retained for use by those units which arguably could have a greater impact on amenity in terms of activity, noise and disturbance than the proposed development simply by virtue of the greater degree of proximity to the existing residential properties" (paragraph 6.33). He told the committee that in his view it "would be counterproductive to seek affordable housing contributions as this would merely limit the ability of the Trust to recycle funds to provide wider support for the Trust" (paragraph 6.37). And the loss of Grade 2 agricultural land was "not ... a justifiable reason to refuse planning permission ..." (paragraph 6.39).

48. The final paragraph of the officer's report is paragraph 6.42, where he said this:

"6.42 In conclusion, it is important to understand that the starting point for the determination of this planning application rests with the adopted Development Plan. Against that starting point there are other material planning considerations that must be given appropriate regard, not least the requirements set out within the NPPF which is an important material consideration and the planning and design of the proposal for the site in the context of the permitted development fallback position. The weight to attribute to each of those other material planning considerations, on an individual and cumulative basis, and the overall balance is ultimately a matter of judgement for the Planning Committee. My view is that the balance can lie in favour of granting planning permission."

49. In recording the argument on this issue in the court below, Garnham J. noted Ms Graham Paul's submission that "the presumption in favour of sustainable development set out in paragraph 14 of [the NPPF] was not operative" in this case – because the development plan was in place and up-to-date and the council was able to demonstrate a five-year supply of deliverable housing sites (paragraph 43 of the judgment). Ms Graham Paul had conceded that "sustainability may be capable of being a material consideration in considering a conflict with a development plan". What the officer had done in paragraph 6.10 of his report, said the judge, had been "to invite the committee to note the effect of paragraphs 49, 50 and 55 [of the NPPF]". It was not suggested that those paragraphs of the

NPPF had been misrepresented. Nor was it suggested that the officer had failed to point out that the proposed development “fell outside the local plan”; he had done that in paragraph 6.6 of his report. In those circumstances, said the judge, “it cannot sensibly be argued that the officer misled the committee in any material respect” (paragraph 47). The judge also rejected the submission that paragraphs 49, 50 and 55 of the NPPF were irrelevant. He observed that the NPPF “provides for a presumption in favour of sustainable development which it says should be seen “as a golden thread” running through decision-taking”. He added that “[the] weight to be given to those considerations in any given case is a matter for the planning authority but it cannot, at least on facts such as the present, be said that the underlying principle is irrelevant” (paragraph 48). He rejected the submission that the officer had not justified the departure from the development plan. The officer’s report, he said, “accurately and fairly sets out the competing considerations and it was a matter for the judgment of the planning authority how those considerations were resolved” (paragraph 49).

50. In the submissions they made to us at the hearing, though not in their respective skeleton arguments, both Ms Graham Paul and Mr Lopez recast their arguments in the light of what this court has now said about the “presumption in favour of sustainable development” in *Barwood v East Staffordshire Borough Council*, including the basic point that the presumption is contained solely in paragraph 14 of the NPPF (see paragraph 35 of my judgment in that appeal). They were right to do so.
51. It was common ground before us, as it was in the court below, that the “presumption in favour of sustainable development” did not apply to the proposal. And the council’s officer did not advise the committee that it did. As Ms Graham Paul acknowledged, the only reference to the “presumption in favour of sustainable development” in the officer’s report is in the first sentence of paragraph 6.10. But, she submitted, in view of what the officer said in that paragraph of the report, and also in paragraph 6.42, we should conclude that the committee took the presumption into account as a material consideration, which it ought it not to have done. Ms Graham Paul did not submit that the proposal was given the benefit of the so called “tilted balance”. But she argued that the effect of the officer’s advice was that the “presumption in favour of sustainable development” was one of the “requirements set out within the NPPF ...”, which the officer treated as “an important material consideration” and a significant factor weighing in favour of the proposal in the planning balance.
52. I disagree. In my view the argument fails on a straightforward reading of the officer’s report, in the light of the judgments in this court in *Barwood v East Staffordshire Borough Council*. I do not accept that the officer counted the “presumption in favour of sustainable development” as a material consideration weighing in favour of planning permission being granted.
53. The reference to the “presumption in favour of sustainable development” in paragraph 6.10 of the officer’s report is a quotation of the first sentence of paragraph 49 of the NPPF, not of paragraph 14. The quotation is correct. In the same paragraph of the report the officer also referred to two other passages of policy in the NPPF, namely paragraphs 50 and 55. The policies are correctly summarized. The common factor in those three passages of NPPF policy is not the “presumption in favour of sustainable development”. It is the promotion, in national planning policy, of sustainable housing development. That this is

what the officer had in mind in this part of the report is very clear from what he went on to say in paragraphs 6.11, 6.12 and 6.13, and then in paragraph 6.24.

54. In those paragraphs the officer was not purporting to apply the “presumption in favour of sustainable development” to the proposal. Nor did he advise the committee that the presumption was engaged, or that it was, in itself, a material consideration weighing in favour of the proposal. He referred, in paragraph 6.11, to “[these] criteria” – meaning the matters to which he had referred in paragraph 6.10 – as demonstrating “a clear government momentum in favour of sustainable development to create new homes and drive economic development”; in paragraphs 6.12 and 6.13 respectively, to “such emphasis” and “[such] continued emphasis from government”; and in paragraph 6.24 to “the emphasis contained within the NPPF concerning sustainable development generally ...” (my underlining). The language in those paragraphs is very distinctly not the language one would have expected the officer to have used if he thought he was applying the “presumption in favour of sustainable development”. The intervening and subsequent assessment, culminating in his final conclusion on the planning merits of the proposal in paragraph 6.42, is concerned with its credentials and benefits – and advantages when compared with the fallback – as sustainable development.
55. Paragraph 6.42 of the officer’s report does not, in my view, betray a misunderstanding of NPPF policy for the “presumption in favour of sustainable development”. The advice given to the committee in that paragraph was not inaccurate or misleading. The officer did not undertake the planning balance in terms of the policy for “decision-taking” in paragraph 14 of the NPPF. There can be no suggestion that, contrary to his earlier conclusion and advice in paragraphs 6.6 and 6.7 of his report, he was treating this as a case in which the proposal accorded with the development plan, so that it was to be approved “without delay” under the first limb of the policy for “decision-taking” in paragraph 14. Nor can it be suggested that, contrary to the whole tenor of his assessment of the proposal in paragraphs 6.1 to 6.41, this was a case in which the development plan was “absent” or “silent” or any “relevant policies” of it were “out-of-date”, so that the second limb of the policy for “decision-taking” in paragraph 14 applied.
56. This case is clearly and materially different from *Barwood v East Staffordshire Borough Council* – a case that shows what can go wrong when a decision-maker is misled as to the meaning and effect of government policy for the “presumption in favour of sustainable development”. Here the officer did not commit an error of the kind made by the inspector – and conceded by the Secretary of State – in that case: the mistake of discerning a “presumption in favour of sustainable development” outside paragraph 14 of the NPPF and treating that wider presumption as a material consideration weighing in favour of the proposal (see paragraphs 43 to 48 of my judgment in *Barwood v East Staffordshire Borough Council*). The officer did not say, as the inspector did in *Barwood v East Staffordshire Borough Council*, that “where a proposal is contrary to the development plan [the “presumption in favour of sustainable development”] is a material consideration that should be taken into account” (paragraph 12 of the decision letter in that case). Unlike the inspector in that case (in paragraphs 37 to 41 of his decision letter), he did not bring the “presumption in favour of sustainable development” into the balancing exercise as a material consideration (see paragraphs 26 and 29 of my judgment). And, in my opinion, it cannot realistically be suggested that the members would have thought they were being invited to apply that presumption in government policy, or to give it weight as a material consideration, in their assessment of the proposal.

57. The “presumption in favour of sustainable development” did not, in fact, feature as a material consideration to which the officer gave any positive weight when undertaking the planning balance. The exercise he conducted in paragraph 6.42 of his report was an entirely conventional and lawful balance of other material considerations against the identified conflict with the development plan, as section 38(6) of the Planning and Compulsory Purchase Act 2004 requires. It was, in fact, a classic example of that provision in practice. This is not to say that in his assessment of the proposal he had to refrain from considering the extent to which it complied with relevant NPPF policies – in particular, in the specific respects to which he referred, the sustainability of the proposed development in the light of NPPF policy, as well as its compliance with relevant policies of the development plan. That was a perfectly legitimate, and necessary, part of the planning assessment in this case. Had the officer left it out, he would have been in error, because he would then have been failing to have regard to material considerations. But he did not make that mistake. He assessed the proposal comprehensively on its planning merits, exercising his planning judgment on the relevant planning issues. He took into account the sustainability of the proposed development in the light of NPPF policy, but without giving it the added impetus of the “presumption in favour of sustainable development”. I cannot fault the advice he gave.
58. Finally on this issue, I do not accept the suggestion made by Ms Graham Paul in reply that the council’s response to Mr Mansell’s solicitors’ pre-application protocol letter, in its solicitors’ letter dated 22 February 2016, can be read as conceding the error for which Ms Graham Paul contended. In fact, it squarely denied that error. Having referred to the quotation of the first sentence of paragraph 49 of the NPPF in paragraph 6.10 of the officer’s report, it acknowledged that the proposal was a “departure from the development plan” and that the development plan was not “absent” or “silent” nor were relevant policies “out-of-date”. It then said that neither the officer nor the committee had treated the “presumption in favour of sustainable development” under paragraph 14 of the NPPF as “operative” in this case. It acknowledged, therefore, that neither of the limbs of the policy for “decision-taking” in paragraph 14 of the NPPF could have applied here. And it said that the officer’s report “does not begin to suggest otherwise”. I agree.
59. It follows that this ground of appeal must also fail.

Conclusion

60. For the reasons I have give, I would dismiss this appeal.

Lord Justice Hickinbottom

61. I agree with both judgments. Without diminishing my concurrence with anything my Lords have said, I would wish expressly to endorse the observations of Lindblom L.J. in paragraphs 39-40 to the effect that, in future, reference to pre-*Barwood v East Staffordshire Borough Council* authorities on the meaning and operation of the presumption in paragraph 14 of the NPPF should be avoided; and in paragraph 41, supported by the further comments of the Chancellor, on the respective roles of planning decision-makers and the courts in planning cases.

The Chancellor of the High Court

62. I too agree with Lord Justice Lindblom's judgment, but would add a few words from a more general perspective. In the course of the argument, one could have been forgiven for thinking that the contention that the presumption in favour of sustainable development in the NPPF had been misapplied in the planning officer's report turned on a minute legalistic dissection of that report. It cannot be over-emphasised that such an approach is wrong and inappropriate. As has so often been said, planning decisions are to be made by the members of the Planning Committee advised by planning officers. In making their decisions, they must exercise their own planning judgment and the courts must give them space to undertake that process.
63. Appeals should not, in future, be mounted on the basis of a legalistic analysis of the different formulations adopted in a planning officer's report. An appeal will only succeed, as Lindblom L.J. has said, if there is some distinct and material defect in the report. Such reports are not, and should not be, written for lawyers, but for councillors who are well-versed in local affairs and local factors. Planning committees approach such reports utilising that local knowledge and much common-sense. They should be allowed to make their judgments freely and fairly without undue interference by courts or judges who have picked apart the planning officer's advice on which they relied.
64. It is also appropriate to reiterate what Lindblom L.J. said at paragraph 35 of the *East Staffordshire* case to the effect that planning decision-makers have to exercise planning judgment as much when the presumption in favour of sustainable development is applicable as they do when it is not. The presumption may be rebutted when it is applicable, and planning permission may be granted where it is not. In each case, the decision-makers must use their judgment to decide where the planning balance lies based on material considerations. It is not for the court to second guess that planning judgment once it is exercised, unless as I have said it is based on a distinct and material defect in the report.
65. I agree that this appeal should be dismissed.

Appendix 4 – Site Photos



Image 1: View across the site to the north



Image 2: View from the access road towards existing barns



Image 3: View towards Alston Fold Farm dwelling



Image 4: View towards large barn



Image 5: View towards Alston Fold Farm dwelling

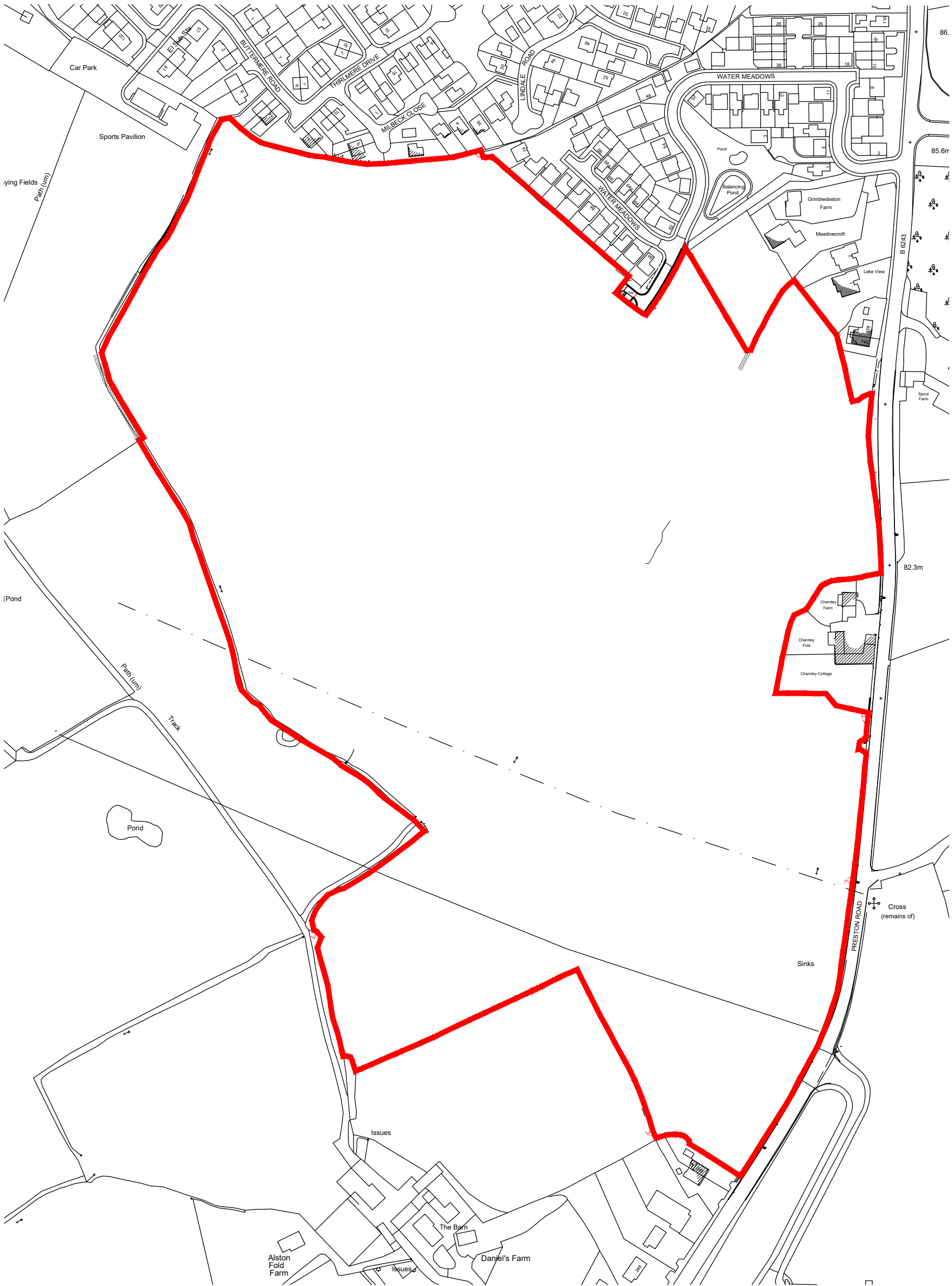


Image 6: View towards storage shed and neighbouring outbuilding



Image 7: View towards storage shed to east of the site and neighbouring dwelling

Appendix 5 – Land West of Preston Road, Longridge Planning Application



- The Copyright of this drawing belongs to MPSSL Planning & Design Ltd. and shall not be used or reproduced in any form without its express permission.
- Do not scale from this drawing - Work to figured dimensions only. All dimensions to be checked on site prior to the execution of any work.
- For the avoidance of doubt all dimensions are measured to wall structure and not the finishes unless otherwise stated.
- Where any discrepancy is found to exist within or between drawings and/or documents it should be reported to the architect immediately.
- MPSSL Planning & Design Ltd. shall not be liable for any use of drawings and documents for any purpose other than for which the same were prepared by or on behalf of MPSSL Planning & Design Ltd.

Rev	Date	Revision	Initial
-----	------	----------	---------

+ Client



+ Drawing Title

Site Location Plan

+ Project

Preston Road, Longridge

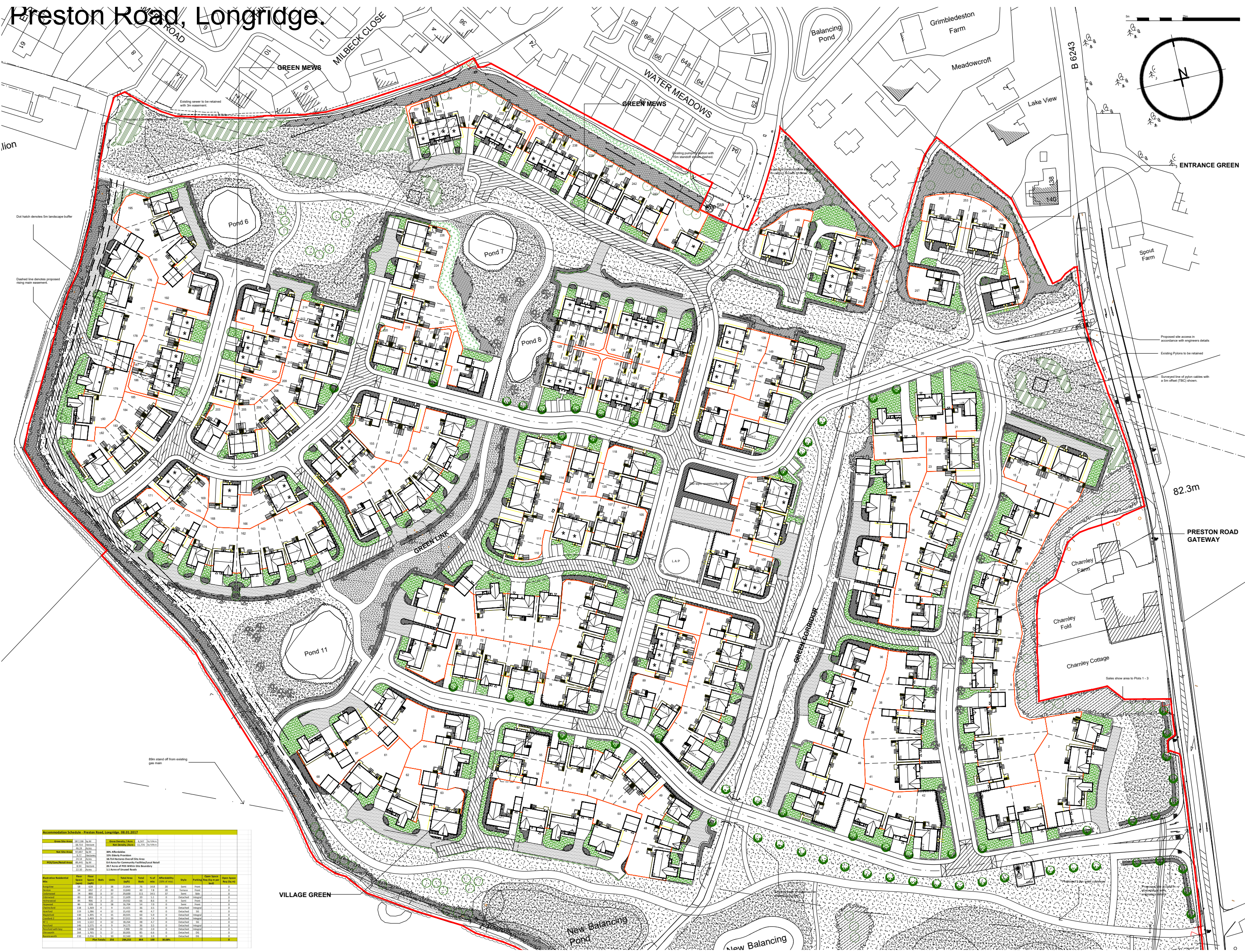
Job No	Dwg No	Drawn	Rev
17037	00	AB	--
Scale	Date	Stage	
1:2500 @ A3	02/02/18	For Approval	



+ mpsl planning & design Ltd
14 West Point Enterprise Park,
Clarence Avenue,
Trafford Park, Manchester.
M17 1QS

+ t: 0161 772 1999
e: info@mpsldesign.co.uk
www.mpsldesign.co.uk

Preston Road, Longridge.



The Copyright of this drawing belongs to MPIS, Planning & Design Ltd, and shall not be used or reproduced in any form without the express permission.

Do not scale from this drawing. Work to figured dimensions only. All dimensions to be checked on site prior to the construction of any work.

For the avoidance of doubt all dimensions are measured to wall structure and not the finished surface unless otherwise stated.

Where any discrepancy is found to exist within or between drawings and documents for any purpose other than for which the same were prepared by or on behalf of MPIS, Planning & Design Ltd, shall not be liable for any use of drawings and documents for any purpose other than for which the same were prepared by or on behalf of MPIS, Planning & Design Ltd.

Key:

- Describe existing trees to be retained.
- Describe existing trees to be removed.
- Describe contributing surface water runoff and drainage.
- Describe contributing surface to shared drainage.
- Describe 1.5m high timber fence with 0.3m high rails.
- Describe 1.5m high chain-link fence with timber post-and-rail access gate.
- Describe 1.5m high brick wall.
- Describe existing ponds.
- Describe affordable housing units.
- Describe cycle drive.
- Describe pump station and electrical substation.

1:1000

17/03/21

P1

1:500 @ A0

28/08/2017

For Approval

MPIS planning&design

MPIS Planning & Design Ltd
144 Westwood Way, Longridge, Lancashire, FY12 1JH
Tel: 01757 170000
Email: info@mpisplanning.co.uk
www.mpsplanning.co.uk

Accommodation Schedule - Preston Road, Longridge, 08.03.2017											
Units Site Area			Site Area / Acre			Site Area / Acre			Site Area / Acre		
1			18,138	10.58	1,814	18,138	10.58	1,814	18,138	10.58	1,814
2			18,724	10.85	1,872	18,724	10.85	1,872	18,724	10.85	1,872
3			19,124	10.95	1,912	19,124	10.95	1,912	19,124	10.95	1,912
New Units Area			New Units Area			New Units Area			New Units Area		
1			17,097	9.84	1,710	17,097	9.84	1,710	17,097	9.84	1,710
2			17,777	10.05	1,778	17,777	10.05	1,778	17,777	10.05	1,778
3			18,138	10.34	1,814	18,138	10.34	1,814	18,138	10.34	1,814
4			18,499	10.61	1,850	18,499	10.61	1,850	18,499	10.61	1,850
5			18,860	10.88	1,886	18,860	10.88	1,886	18,860	10.88	1,886
6			19,221	11.15	1,922	19,221	11.15	1,922	19,221	11.15	1,922
7			19,582	11.42	1,958	19,582	11.42	1,958	19,582	11.42	1,958
8			20,262	11.82	2,026	20,262	11.82	2,026	20,262	11.82	2,026
9			20,623	12.09	2,062	20,623	12.09	2,062	20,623	12.09	2,062
10			20,984	12.36	2,098	20,984	12.36	2,098	20,984	12.36	2,098
11			21,345	12.63	2,134	21,345	12.63	2,134	21,345	12.63	2,134
12			21,706	12.90	2,170	21,706	12.90	2,170	21,706	12.90	2,170
13			22,067	13.17	2,206	22,067	13.17	2,206	22,067	13.17	2,206
14			22,428	13.44	2,242	22,428	13.44	2,242	22,428	13.44	2,242
15			22,789	13.71	2,278	22,789	13.71	2,278	22,789	13.71	2,278
16			23,150	13.98	2,315	23,150	13.98	2,315	23,150	13.98	2,315
17			23,511	14.25	2,351	23,511	14.25	2,351	23,511	14.25	2,351
18			23,872	14.52	2,387	23,872	14.52	2,387	23,872	14.52	2,387
19			24,233	14.79	2,423	24,233	14.79	2,423	24,233	14.79	2,423
20			24,594	15.06	2,459	24,594	15.06	2,459	24,594	15.06	2,459
21			24,955	15.33	2,495	24,955	15.33	2,495	24,955	15.33	2,495
22			25,316	15.60	2,531	25,316	15.60	2,531	25,316	15.60	2,531
23			25,677	15.87	2,567	25,677	15.87	2,567	25,677	15.87	2,567
24			26,038	16.14	2,603	26,038	16.14	2,603	26,038	16.14	2,603
25			26,399	16.41	2,639	26,399	16.41	2,639	26,399	16.41	2,639
26			26,760	16.68	2,676	26,760	16.68	2,676	26,760	16.68	2,676
27			27,121	16.95	2,712	27,121	16.95	2,712	27,121	16.95	2,712
28			27,482	17.22	2,748	27,482	17.22	2,748	27,482	17.22	2,748
29			27,843	17.49	2,784	27,843	17.49	2,784	27,843	17.49	2,784
30			28,204	17.76	2,820	28,204	17.76	2,820	28,204	17.76	2,820
31			28,565	18.03	2,856	28,565	18.03	2,856	28,565	18.03	2,856
32			28,926	18.30	2,892	28,926	18.30	2,892	28,926	18.30	2,892
33			29,287	18.57	2,928	29,287	18.57	2,928	29,287	18.57	2,928
34			29,648	18.84	2,964	29,648	18.84	2,964	29,648	18.84	2,964
35			30,009	19.11	3,000	30,009	19.11	3,000	30,009	19.11	3,000
36			30,370	19.38	3,037	30,370	19.38	3,037	30,370	19.38	3,037
37			30,731	19.65	3,073	30,731	19.65	3,073	30,731	19.65	3,073
38			31,092	19.92	3,109	31,092	19.92	3,109	31,092	19.92	3,109
39			31,453	20.19	3,145	31,453	20.19	3,145	31,453	20.19	3,145
40			31,814	20.46	3,181	31,814	20.46	3,181	31,814	20.46	3,181
41			32,175	20.73	3,217	32,175	20.73	3,217	32,175	20.73	3,217
42			32,536	21.00	3,253	32,536	21.00	3,253	32,536	21.00	3,253
43			32,897	21.27	3,289	32,897	21.27	3,289	32,897	21.27	3,289
44			33,258	21.54	3,325	33,258	21.54	3,325	33,258	21.54	3,325
45			33,619	21.81	3,361	33,619	21.81	3,361	33,619	21.81	3,361
46			33,980	22.08	3,398	33,980	22.08	3,398	33,980	22.08	3,398
47			34,341	22.35	3,434	34,341	22.35	3,434	34,341	22.35	3,434
48			34,702	22.62	3,470	34,702	22.62	3,470	34,702	22.62	3,470
49			35,063	22.89	3,506	35,063	22.89	3,506	35,063	22.89	3,506
50			35,424	23.16	3,542	35,424	23.16	3,542	35,424	23.16	3,542
51			35,785	23.43	3,578	35,785	23.43	3,578	35,785	23.43	3,578
52			36,146	23.70	3,614	36,146	23.70	3,614	36,146	23.70	3,614
53			36,507	23.97	3,650	36,507	23.97	3,650	36,507	23.97	3,650
54			36,868	24.24	3,686	36,868	24.24	3,686	36,868	24.24	3,686
55			37,229	24.51	3,722	37,229	24.51	3,722	37,229	24.51	3,722
56			37,590	24.78	3,759	37,590	24.78	3,759	37,590	24.78	3,759
57			37,951	25.05	3,795	37,951	25.05	3,795	37,951	25.05	3,795
58			38,312	25.32	3,831	38,312	25.32	3,831	38,312	25.32	3,831
59			38,673	25.59	3,867	38,673	25.59	3,867	38,673	25.59	3,867
60			39,034	25.86	3,903	39,034	25.86	3,903	39,034	25.86	3,903
61			39,395	26.13	3,939	39,395	26.13	3,939	39,395	26.13	3,939
62			39,756	26.40	3,975	39,756	26.40	3,975	39,756	26.40	3,975
63			40,117	26.67	4,011	40,117	26.67	4,011	40,117	26.67	4,011
64			40,478	26.94	4,047	40,478	26.94	4,047	40,478	26.94	4,047
65			40,839	27.21	4,083	40,839	27.21	4,083	40,839	27.21	4,083
66			41,200	27.48	4,120	41,200	27.48	4,120	41,200	27.48	4,120
67			41,561	27.75	4,156	41,561	27.75	4,156	41,561	27.75	4,156
68			41,922	28.02	4,192	41,922	28.02	4,192	41,922	28.02	4,192
69			42,283	28.29	4,228	42,283	28.29	4,228	42,283	28.29	4,228
70			42,644	28.56	4,264	42,644	28.56	4,264	42,644	28.56	4,264
71			43,005	28.83	4,300	43,005	28.83	4,300	43,005	28.83	4,300
72			43,366	29.10	4,336	43,366	29.10	4,336	43,366	29.10	4,336
73			43,727	29.37	4,372	43,727	29.37	4,372	43,727	29.37	4,372
74			44,088	29.64	4,408	44,088	29.64	4,408	44,088	29.64	4,408
75			44,449	29.91	4,444	44,449	29.91	4,444	44,449	29.91	4,444
76			44,810	30.18	4,481	44,810	30.18	4,481	44,810	30.18	4,481
77			45,171	30.45	4,517	45,171	30.45	4,517	45,171	30.45	4,517
78			45,532	30.72	4,553	45,532	30.72	4,553	45,532	30.72	4,553
79			45,893	30.99	4,589	45,893	30.99	4,589	45,893	30.99	4,589
80			46,254	31.26	4,625	46,254	31.26	4,625	46,254	31.26	4,625
81			46,615	31.53	4,661	46,615	31.53	4,661	46,615	31.53	4,661
82			46,976	31.80	4,697	46,976	31.80	4,697	46,976	31.80	4,697
83			47,337	32.07	4,733	47,337	32.07	4,733	47,337	32.07	4,733
84			47,698	32.34	4,769	47,698	32.34	4,769	47,698	32.34	4,769
85			48,059	32.61	4,805	48,059	32.61	4,805	48,059	32.61	4,805
86			48,420	32.88	4,842	48,420	32.88	4,842	48,420	32.88	4,842
87			48,781	33.15	4,878	48,781	33.15	4,878	48,781	33.15	4,878
88			49,142	33.42	4,914	49,142	33.42	4,914	49,142	33.42	4,914
89			49,503	33.69	4,950	49,503	33.69	4,950	49,503	33.69	4,950
90			49,864	33.96	4,986	49,864	33.96	4,986	49,864	33.96	4,986
91			50,225	34.23	5,022	50,225	34.23	5,022	50,225	34.23	5,022
92			50,586	34.50	5,058	50,586	34.50	5,058	50,586	34.50	5,058
93			50,947	34.77	5,094	50,947	34.77	5,094	50,947	34.77	5,094
94			51,308	35.04	5,130	51,308	35.04	5,130	51,308	35.04	5,130
95			51,669	35.31	5,166	51,669	35.31	5,166	51,669	35.31	5,166
96			52,030	35.58	5,203	52,030	35.58	5,203	52,030	35.58	5,203
97			52,391	35.85	5,239	52,391	35.85	5,239	52,391	35.85	5,239
98			52,752	36.12	5,275	52,752	36.12	5,275	52,752	36.12	5,275
99			53,113	36.39	5,311	53,113	36.39	5,311	53,113	36.39	5,311
100			53,474	36.66	5,347	53,474	36.66	5,347	53,474	36.66	5,347
101			53,835	36.93	5,383	53,835	36.93	5,383	53,835	36.93	5,383
102			54,196	37.20	5,419	54,196	37.20	5,419	54,196	37.20	5,419
103			54,557	37.47	5,455	54,557	37.47	5,455	54,557	37.47	5,455
104			54,918	37.74	5,491	54,918	37.74	5,491	54,918	37.74	5,491
105			55,279	38.01	5,527	55,279	38.01	5,527	55,279	38.01	5,527
106			55,640	38.28	5,564	55,640	38.28	5,564	55,640	38.28	5,564
107			56,001	38.55	5,600	56,001	38.55	5,600	56,001	38.55	5,600
108			56,362	38.82	5,636	56,362	38.82	5,636	56,362	38.82	5,636
109			56,723	39.09	5,672	56,723	39.09	5,672	56,723	39.09	5,672
110			57,084	39.36	5,708	57,084	39.36	5,708	57,084	39.36	5,708
111			57,445	39.63	5,744	57,445	39.63	5,744	57,445	39.63	5,744
112			57,806	39.90	5,780	57,8					

Appendix 6 – Higher Road, Longridge Appeal



Appeal Decision

Hearing held on 17 April 2018

Site visits made on 17 April 2018 and 18 April 2018

by Gareth Wildgoose BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2018

Appeal Ref: APP/T2350/W/17/3186969

Land at Higher Road, Longridge

- 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 VH Land Partnership against the decision of Ribble Valley Borough Council.
 - The application Ref 3/2016/1082, dated 17 November 2016, was refused by notice dated 18 April 2017.
 - The development proposed is an outline planning application for residential development for up to 123 houses; demolition of an existing house (74 Higher Road) and formation of access to Higher Road.
-

Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for residential development for up to 123 houses; demolition of an existing house (74 Higher Road) and formation of access to Higher Road at Land at Higher Road, Longridge in accordance with the terms of the application, Ref 3/2016/1082, dated 17 November 2016, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application was submitted in outline with all detailed matters other than means of access reserved for future approval. Appearance, landscaping, layout and scale are reserved for later consideration and the appeal has been determined on that basis. The masterplan and illustrative material submitted with the planning application in so far as it relates to those matters has been taken into account for indicative purposes.
3. A signed and dated planning obligation by unilateral undertaking under Section 106 of the Town and Country Planning Act 1990 (UU) has been provided as part of this appeal. It includes obligations relating to affordable housing, off site leisure provision, highway and transport works and education. I consider the agreement in relation to the Regulatory tests of the Community Infrastructure Levy (CIL) in my decision.

Main Issue

4. The main issue is whether the development proposed would be consistent with the objectives of policies relating to the location and supply of housing.

Reasons

Location and supply of housing

5. The appeal site, except for No 74, is undeveloped land comprising a number of agricultural fields that lie adjacent to the edge of the built up area of Longridge, which includes the linear arrangement of houses adjoining the site that face Higher Road and Dilworth Lane. There is also a residential development immediately adjacent that is under construction which is accessed from Blackburn Road and also adjoins Dilworth Lane. The remaining site boundary adjoins Tan Yard Lane, a track and bridleway accessed from Blackburn Road with open fields and reservoirs immediately beyond. The submitted plans indicate that the development of up to 123 dwellings would include a new access from Higher Road which would utilise the land currently occupied by No 74 that is proposed to be demolished.
6. Key Statement DS1 of the Ribble Valley Borough Council Core Strategy 2008 - 2028 - A Local Plan for Ribble Valley (CS), adopted December 2014, sets out the development strategy. It seeks to guide development to the most appropriate locations through the identification of groupings of settlements in a hierarchy based upon 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. In that context, Longridge is identified as one of three principal settlements which are the highest order settlements within the hierarchy where the majority of new housing development will be located.
7. The housing requirement set out in Key Statement H1 of the CS indicates that 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 plan period. The supporting text to Key Statement DS1 at paragraph 4.11 and Appendix 2 of the CS include tables which identify the number of houses required for each settlement by 2028 to meet the housing requirement. The number to be delivered in Longridge is stated as 1,160 houses during the plan period, with a residual number of 633 houses remaining as at 31 March 2014¹ to meet that figure.
8. In seeking to deliver the above, the CS does not define an up-to-date settlement boundary for Longridge and Key Statement DS1 of the CS indicates that specific allocations will be made through the preparation of a separate allocations DPD. Consequently, the settlement boundaries currently utilised by the policies of the CS are those defined by the proposals map of the preceding Ribble Valley Districtwide Local Plan. During the Hearing it was confirmed by the parties that it is not a matter of dispute that the site is located outside of the existing settlement boundary of Longridge and therefore, lies within open countryside.
9. Policy DMG2 of the CS, indicates amongst other things, that development in the open countryside 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. In that regard, the

¹ Takes account of completions/permissions granted up to 31 March 2014, plus a reapportionment of 200 houses to other settlements in Ribble Valley to reflect a planning permission granted near to Longridge for 200 units at Whittingham Lane within Preston Borough.

landscape sensitivity of the site and its surroundings is assessed as medium by a landscape visual impact assessment (LVIA) accompanying the application. To my mind that assessment in the LVIA appropriately reflects the higher sensitivity of the open countryside generally, but takes into account that the steeply sloped topography of the land is viewed against the backdrop of existing properties that face Higher Road and Dilworth Lane with the rural character at the edge of the built up area further eroded by development under construction immediately to the south. Although the site lies close to the boundaries of the Longridge Conservation Area and the Bowland Forest Area of Outstanding Natural Beauty, it has no influence on the special character and interest of those areas due to the presence of intervening built form and landscaping.

10. With regard to the above, the construction of dwellings on the site would result in built development on greenfield land that currently consists of largely open fields in agricultural use. However, it is evident that when taken together with the development under construction immediately to the south that there is some scope to absorb development adjoining the existing settlement boundary and provide a more robust boundary between the built up area and open countryside. In that context, both Key Statement DS1 and Policy DMG2 of the CS, when taken together, permit development proposals in the principal settlements, including Longridge, which accord with the development strategy and consolidate, expand or round-off development so that it is closely related to the main built area. Nonetheless, although the site adjoins the principal settlement of Longridge it lies outside of it and therefore, does not meet the precise wording of either Key Statement DS1 or Policy DMG2 which require development proposals to be in the principal settlements and, therefore, it would result in a consequent loss of open countryside. In that respect, there is also conflict with Policy DMH3 of the CS that relates to dwellings in the open countryside and which seeks to limit residential development to a closed list of exceptions and criteria, which the proposed development would not meet.
11. In reaching the above findings, it is evident that the conflict with the above policies and the Development Strategy relates specifically to the existing designation of land as open countryside. Concerns have been expressed with respect to the oversupply of housing that would result from the development relative to the residual numbers for Longridge in paragraph 4.11 and Appendix 2 of the CS. However, I find no harm in that respect as those numbers are not intended to be interpreted as a ceiling and can be exceeded in circumstances to provide flexibility to meet the local needs set out in the CS and where there is infrastructure capacity to deliver the development. The development is intended to contribute to meeting significant local needs in terms of affordable housing and older persons housing in accordance with the CS. Furthermore, there is no substantive evidence before me that local infrastructure, utilities, services and facilities could not accommodate the development, including when taken cumulatively with development nearby within the administrative area of Preston City Council, subject to planning obligations that are considered in detail later in this decision.
12. I have also taken into account that the emerging Ribble Valley Housing and Economic Development - Development Plan Document (HED DPD) was submitted in July 2017 and did not include the site within its proposed allocations or its settlement boundary for Longridge. However, as the examination in public has yet to take place and there are unresolved objections

to the document including the proposed settlement boundary, the emerging HED DPD is not an influential factor upon the above findings. In addition, the Longridge 2028 Neighbourhood Development Plan - Regulation 16 Submission Draft - January 2018 (NDP) was also provided during the Hearing. However, the emerging NDP does not currently include specific housing policies relating to land beyond the Longridge settlement boundary or policies that add to those that are relevant to the proposal in the CS. In any case, the NDP is at an early stage of preparation and consequently, I can afford little weight to it.

13. When having regard to all of the above, there is conflict with Key Statement DS1 and Policies DMG2 and DMH3 of the CS and the associated objectives relating to the location of housing and the protection of the countryside. Nevertheless, to conclude on the main issue as a whole it is necessary to also assess the existing housing land supply position in Ribble Valley which I go onto to consider.

Housing land supply in Ribble Valley

14. In order to boost significantly the supply of housing, paragraph 47 of the National Planning Policy Framework (the Framework) requires local planning authorities to identify and update a supply of specific deliverable sites sufficient to provide five years worth of housing against their housing requirements. Footnote 11 of paragraph 47 states that to be considered deliverable, sites should be available now, offer a suitable location for development, and be achievable to ensure that housing will be delivered on site within five years.
15. During the Hearing, the appellant provided an up-to-date position² relative to the Council's Housing Land Availability Schedule - October 2017 (HLAS) which has a base date of 30 September 2017 for the calculation of housing supply and includes the shortfall of delivery during the plan period to date of 649 dwellings. In that respect, the appellant considers that the Council can demonstrate a housing land supply of approximately 4.3 years when including a 20% buffer relative to paragraph 47 of the Framework. The Council position in the HLAS as at September 2017 was a housing land supply of 5.9 years, including the application of a 5% buffer, the existing shortfall of delivery, 10% slippage applied to sites with planning permission that had not started and a windfall allowance.
16. The Council have subsequently provided an April 2018 update to the figures as at 30 September 2017 which reduced the expected yield from large sites within the five year land supply by 240 dwellings, thereby reducing the housing land supply to approximately 5.4 years, when including a 5% buffer, the shortfall of delivery in the plan period, 10% slippage applied to sites with planning permission not started and windfalls. Aside from the level of buffer to be applied in accordance with the Framework, the differences between the parties reflect the level of contribution from large sites with planning permission and proposed allocations in the emerging HED DPD. There is no dispute between the parties with respect to a windfall allowance of 115 dwellings in total and based on the evidence before me, I have no reason to take a different view in that regard.
17. The Council have justified the application of a 5% buffer, rather than a 20% buffer, on the basis that it accords with the approach of a 'housing

² Hearing document 5

delivery test' set out in a Government White Paper³ that has been taken forward in the National Planning Policy Framework - draft text for consultation, March 2018, and associated draft updates to Planning Practice Guidance. The approach of the proposed housing delivery test suggests that a 20% buffer would not apply in circumstances where the completions over the last three years of the monitoring period exceed the identified housing requirement as set out in the development plan. In that respect, the housing delivery in Ribble Valley has exceeded the annual requirement set out in Key Statement H1 of the CS for the last three years. However, appeal decisions have been drawn to my attention at Dalton Heights, Seaham⁴ and Lower Standen Hey Farm, Clitheroe⁵ where Inspectors considered the application of methodologies subject to consultation to be premature.

18. I concur with those Inspector findings as although the methodology set out in the March 2018 consultations relating to the draft Framework, Planning Practice Guidance and associated Housing Delivery Test - Draft Measurement Rule Book indicate the Government's intent, it remains subject to consultation with no certainty that it will be formally adopted and implemented in its current form. In existing circumstances, the improved housing delivery rates in Ribble Valley between 1 April 2014 and 30 September 2017 should not prevail over the longer period of persistent under-delivery of housing that was significantly below the annual requirement during each year between April 2008 and March 2014. The adoption of the CS has had an influence upon the recent increase in housing delivery rates, but the longer period of under-delivery has resulted in a considerable shortfall of housing delivery in Ribble Valley during the first half of the plan period that in total is more than two years of the annualised requirement in Key Statement H1. I, therefore, consider that there is a persistent record of under-delivery of housing in Ribble Valley and a 20% buffer should be applied to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land.
19. The application of a 20% buffer, rather than a 5% buffer, to the Council's updated position submitted prior to the Hearing results in a housing land supply of approximately 4.7 years. The remaining differences between the parties relate to the contribution of a list of disputed sites submitted as part of the appeal that I deal with in turn below.
20. *Higher Standen Farm*. The site is under construction by a single developer and the Council's figures of 200 dwellings to be delivered within five years are derived from a delivery rate of 20 dwellings in year 1, with a delivery rate of 45 dwellings per annum in the remaining years. During the Hearing, the Council have indicated that commencements have been recorded in the half year to date, but with no completions so far. Based on the evidence before me, the delivery rate applied by the Council is at the upper end of the range provided by the developer which was 40 - 45 dwellings per annum. In that respect, whilst the delivery of 20 dwellings in the first year may be achievable, the 45 dwellings per annum in the remaining years appears overly optimistic when compared with delivery rates experienced in Ribble Valley on most other sites with a single developer. I, therefore, consider the lower delivery rate of 40 dwellings per annum to be a more reasonable forecast for years 2 - 5.

³ Fixing our Broken Housing Market, February 2017

⁴ Appeal Ref: APP/X1355/W/16/3165490 - 29 September 2017

⁵ Appeal Ref: APP/T2350/W/17/3174924 - 25 October 2017

Based on the evidence before me, the contribution from this site is more likely to be in the region of around 180 dwellings in the five year period.

21. *Land South West and West of Whalley Road, Barrow.* The site is under construction in two phases and the parties reached an agreement prior to the Hearing that the site would contribute 150 dwellings during the plan period at an annual delivery rate of 30 dwellings per annum, which is lower than the Council forecast in the HLAS. Based upon the evidence before me, I have no reason to take a different view to the parties and consider that the contribution from this site is likely to be around 150 dwellings in the five year period.
22. *Land off Waddington Road, Clitheroe.* The site has outline planning permission and a reserved matters application has been submitted to, but has yet to be determined by the Council. During the Hearing it was confirmed that the Council's figures of 110 dwellings to be delivered within five years are based upon a delivery rate provided by a developer that is no longer proceeding, with anticipated completions in year 2 (2018/19) of 20 dwellings and a delivery rate of 30 dwellings per annum in the remaining years. In the circumstances, I consider that the Council's lead in times for commencement on site and completions are now overly optimistic. The appellant's lead in time of 24 months (from September 2017) for a new developer to receive approval for reserved matters, discharge the requirements of conditions and commence on site, with a delivery rate of 15 dwellings in the third year and 30 dwellings in each of the remaining years appears a more reasonable and realistic outcome. Therefore, based on the evidence before me, the contribution from this site is likely to be around 75 dwellings in the five year period.
23. *East of Clitheroe Road, Whalley - Lawsonsteads.* The site has reserved matters approval, but the Council since October 2017 have subsequently revised down the figures to 105 dwellings to be delivered within five years due to infrastructure constraints associated with Phase 1 that have delayed commencement of development on this site. During the Hearing, it was confirmed by the parties that the original developer is no longer proceeding and whilst a new developer has expressed interest it would likely necessitate a full application that has yet to be submitted to overcome existing drainage issues. In the circumstances, I consider that the Council's lead in times are overly optimistic. The appellant's lead in times of 24 months (from September 2017) for a new developer to obtain its own planning permission, overcome infrastructure constraints and commence on site, with a delivery rate of 15 dwellings in the third year and 30 dwellings each of the remaining years appears a more reasonable and realistic outcome. Therefore, based on the evidence before me, the contribution from this site is likely to be around 75 dwellings in the five year period.
24. *Land east of Chipping Lane, Longridge.* Based upon the evidence before me, the site has outline consent, with reserved matters consent for phase 1 comprising 118 dwellings that has commenced and a full planning permission granted for phase 2. The Council figures of 150 dwellings to be delivered within five years are based upon a delivery rate of 30 dwellings per annum in each year. During the Hearing, the Council indicated that commencements have been recorded in the half year to date, but with no completions so far. In the circumstances, I consider that a delivery rate of 30 dwellings in the first year is overly optimistic and a forecast of 15 dwellings in the first year, with 30 dwellings in each subsequent year would be a more reasonable and realistic

outcome. Therefore, based on the evidence before me, the contribution from this site is likely to be around 135 dwellings in the five year period.

25. *Land north of Dilworth Lane, Longridge.* The site is under construction and the Council's figures of 171 dwellings to be delivered within five years reflect the build out of the remainder of the site during the five year period. During the Hearing, the Council confirmed that 24 completions were recorded in the previous year with a further 10 completions having been recorded since October 2017 with commencements having also taken place. The appellants indicated that their own figures based upon 30 dwellings per annum should be revised down to match the lower delivery rate in the previous year resulting in a total contribution of 120 dwellings during the five years. However, when taking account of the evidence of the build out rates within the site to date and the fluctuations that can occur between each year, I consider that the application of a delivery rate of 30 dwellings per annum would be a more reasonable and realistic figure as an average that would be achievable across the five year period. Therefore, based on the evidence before me, the contribution from this site is likely to be around 150 dwellings in the five year period.
26. *Preston Road, Longridge.* The site has planning permission with the developer expected to start on site in July 2018. The Council's figures reflect no delivery in year 1 (2017/18) with a delivery rate of 30 dwellings in years 2-5, whilst the appellant indicated that due to lead in times delivery should only be expected in years 3-5. I consider that the middle ground between those figures would be realistic in year 2, with a build out rate of 15 dwellings to reflect the lead in times from anticipated commencement late in year 1 to the first completions in year 2, with delivery of 30 dwellings per annum in the remaining years. Therefore, based on the evidence before me, the contribution from this site is likely to be around 105 dwellings in the five year period.
27. *Sites allocated in the emerging HED DPD.* The proposed allocations within the submitted version of the emerging HED DPD are Land at Mellor Lane (HAL1) which contributes 15 dwellings to the Council figures and Land at Wilpshire (HAL2) which contributes 35 dwellings.
28. The allocations remain subject to objections and do not have planning permission, but were subject to a site selection process as part of the preparation of the HED DPD prior to its submission. The Council confirmed during the Hearing that there are no constraints to the delivery of HAL1 and no contrary evidence was provided. In that respect, I am satisfied that given the scale of the site, a developer would be capable of obtaining planning permission, commencing on site and building out HAL1 at the level indicated in the Council figures during the five year period.
29. With respect to HAL2, I observed that there are overhead power lines with a pylon located close to the access to the site, but I am satisfied that it would not preclude delivery given that there are existing dwellings nearby and a road that has already been built close to the pylon. Furthermore, I am satisfied that the Council's nominal capacity for the site incorporates reasonable deductions to reflect any reduction in developable area associated with the constraint of overhead power lines. Consequently, given the scale of the site, there is no substantive evidence before me which indicates that a developer would be incapable of obtaining planning permission, commencing on site and building

out HAL2 at the level indicated within the Council figures during the five year period. Therefore, based on the evidence before me, the contribution from HAL1 and HAL2 is likely to be around 50 dwellings in the five year period as indicated by the Council.

30. When having regard to my above findings with respect to the disputed sites, the Council's housing land supply is reduced by a further 136 dwellings in total during the five year period. As a consequence, I find that on the basis of the evidence before me the deliverable housing land supply demonstrated is approximately 4.5 years, including the application of a 20% buffer, the existing shortfall of delivery, 10% slippage applied to sites with planning permission not started and a windfall allowance, in accordance with the Framework. In that respect, even if the Council's predictions relating to some of the sites prove to be more accurate, it would not significantly alter the housing land supply position and would only marginally reduce the shortfall within the range of 4.5 years and a maximum of 4.7 years of deliverable housing land supply.
31. Having regard to all of the above, I conclude that the development would conflict with Key Statement DS1 and Policies DMG2 and DMH3 of the CS in terms of their objectives relating to the location and supply of housing. However, the restrictions in those policies are not consistent with national policy objectives in the Framework to boost significantly the supply of housing in circumstances where a five-year supply of housing land has not been demonstrated and therefore, they are not up-to-date. In that respect, to conclude on the compliance of the proposal with the development plan and the Framework as a whole as part of the planning balance, it is necessary to firstly consider any other matters that are relevant to the proposal.

Other Matters

Highway and pedestrian safety

32. The effect of the proposal on highway and pedestrian safety is not a matter contested by the Council. The Framework advises that development should only be prevented where the residual cumulative impacts are severe. The highway authority is satisfied that the additional traffic arising from the development could be accommodated on Higher Road and the surrounding highway network without a severe impact. This would be subject to certain measures, such as the formation of the new access following the demolition of No 74. It would also require contributions to and delivery of specific highway improvements including traffic calming measures on Higher Road and upgrades to the junctions and pedestrian crossings at Preston Road-Chapel Hill, Preston Road-Kestor Lane and the Longridge Road roundabout, together with public transport upgrades and off site contributions to walk routes and cycling (linked to the emerging NDP) as listed in Schedule 4 of the UU. Based on the evidence before me and my observations of the site and its surroundings at different times of the day, I have no reason to take a different view to those of the highway authority.
33. With regard to the above, the Council and the highway authority have also raised no objection with respect to the proposed access, its layout and agreed visibility splays and sight lines, subject to the new footpath connections and alterations proposed to each side of the access as referred to in Schedule 4 of the UU. Based on the evidence before me and my observations, I have no

reason to take a different view and consider that the proposal would ensure that safe and suitable access to the site can be achieved for all people.

34. In reaching the above findings I have taken into account the concerns expressed by interested parties in terms of existing parking arrangements and access for emergency vehicles on Higher Road, particularly at its narrowest point near the Club Row terraces where I observed that on-street parking is at its most prevalent but passing places were still available. In that respect, the development would not increase the demand for on-street parking or increase traffic flows on Higher Road to an extent that existing highway conditions and parking arrangements would be significantly altered or worsened. I am satisfied, therefore, that the development would not have a detrimental impact upon highway safety or preclude access for emergency vehicles, which is capable of being secured within the site as part of the detailed site layout to be submitted as part of the reserved matters.

Living conditions

35. The masterplan and illustrative material submitted with the planning application demonstrate that adequate separation distances to neighbouring properties facing Higher Road, Dilworth Lane and the on-going development immediately adjacent could be achieved to preserve the living conditions of their occupiers and future occupiers of the development in terms of outlook and privacy. Existing views from the rear elevations and rear gardens of the adjoining properties facing Higher Road and Dilworth Lane would be affected by the development. However, that is generally the case with development on the edge of an existing settlement. A well-designed and appropriately landscaped development would be capable of limiting the perception of the site being suburbanised, whilst providing a suitable outlook for occupiers of neighbouring properties around the site. I am satisfied that the detailed issues in those respects could be appropriately addressed through the reserved matters relating to layout, scale, appearance and landscaping, taking account of the variations in topography.
36. The proposed access road between Nos. 70 and 76 would increase the noise and activity experienced by occupiers of those properties. However, I do not consider that the extent of those effects would result in significant harm or disturbance to their existing living conditions. In reaching that view, I have taken into account that potential mitigation measures could be provided at reserved matters stage or by condition, such as appropriate use of land levels for the access relative to the slab levels of surrounding properties, additional landscaping buffers and acoustic fencing. The construction phase could also be suitably controlled to prevent unacceptable impacts in terms of noise and disturbance through the agreement of a Construction Method Statement.
37. Interested parties have also expressed concerns with respect to the impact on property values. However, it is a well-established principle that the planning system does not exist to protect private interests such as the value of land and property. The issue of restrictive covenants relating to the site has also been raised. However, I see no reason why the grant of planning permission would supersede any private legal rights relating to land ownership or a leaseholding. Consequently, those matters fall outside of my jurisdiction and have not had any material bearing on my assessment of the planning issues in this appeal.

Ecology, trees and open space

38. The Ecological Appraisal submitted with the application found no substantive evidence of any protected species within the site or the surrounding area that would be adversely affected by the development. Based upon the evidence before me, I have no reason to take a different view. Furthermore, I am satisfied that the compensatory planting, habitat enhancement and precautionary measures identified relating to amphibians, bats, badgers, nesting birds, brown hares, invertebrates and reptiles would be suitable and could be secured through conditions, and the detailed site layout and landscaping submissions as part of the reserved matters. I, therefore, find that the development would not have an adverse impact upon ecology and biodiversity.
39. The Tree Report submitted with the application indicates that the masterplan and illustrative details that accompanied the application could require the removal of one high quality tree, two moderate quality trees, one low quality tree and three low quality groups within the site. Additionally, it indicates that five trees and one group located within the site are considered unsuitable for retention for reasons unrelated to the development. However, the layout and landscaping proposals are illustrative and the specific details remain subject to a reserved matters submission. In that regard, I am satisfied that the detailed submissions could suitably incorporate existing high and moderate quality trees within the site, together with the trees and hedgerows along the site boundary and those located on neighbouring land with crown overhangs or root protection areas within the site. Tree protection measures in those respects can be secured by condition. In addition, the landscaping within the site would be capable of including extensive new tree and hedge planting to adequately compensate for any loss of lower quality trees within the site.
40. The detailed provision of public open space within the site, including useable spaces, natural play spaces, pedestrian footpath links and cycle routes, can be secured as part of the reserved matters and conditions in accordance with the illustrative details within the masterplan accompanying the application, including potential links to the Longridge Loop as set out in the emerging NDP. The public open space provision in that respect would have wider recreational benefits to the Longridge area given that the site has no public access at present, even though the primary purpose would be to meet policy requirements.

Drainage and flood risk

41. The development would not be at unacceptable risk of flooding or increase the risk of flooding to surrounding properties, subject to the suitability of the detailed site layout as part of the reserved matters, together with foul and surface water drainage measures, including sustainable drainage systems (SuDs). Those drainage details are capable of being secured by conditions.

Planning obligation and infrastructure

42. There is a signed and completed UU. As previously mentioned, it requires the appellant to deliver affordable housing (30% affordable housing provision and 15% of the overall number of dwellings on site for occupation by those over 55 years of age, with half in the affordable provision) as set out in Schedule 1. It would also make the following contributions towards improving local

infrastructure that would serve the development: an off site leisure contribution to be paid relative to the reserved matters in accordance with occupancy ratios set out in Schedule 1, education contributions calculated in accordance with primary and secondary places as set out in Schedule 3 and Appendix 1 of the UU, highways and transport works and contributions specified in Schedule 4.

43. Having regard to the above and based on the evidence before me, I am satisfied that the proposed contributions are necessary, directly related and fairly and reasonably related in scale and kind to the proposed development in accordance with CIL Regulation 122 and paragraph 204 of the Framework, given the precise financial contributions are dependent upon calculations relative to the details that come forward as part of the reserved matters. I have, therefore, attached weight to them in my decision. In reaching such a view, I have taken into account that there are minor typographical issues within the UU agreement relating to the off site works proposed on Higher Road in Schedule 4(2) and 4(7). However, I am satisfied that such matters would not prevent the implementation of the planning obligation given that those off site highway works and walking routes are also supported by specific details in associated plans that are before me.
44. It is not contested by the Council that the development would have a harmful effect upon existing infrastructure, subject to the planning obligations in the UU. In that respect, I also observed that the development would be within walking distance of a wide range of local services and facilities within Longridge. Furthermore, there is no substantive evidence before me which indicates that the available services, facilities and utilities would not have sufficient capacity to accommodate demand arising from the development beyond those that require planning obligations as set out in the UU.

Planning Balance

45. The Framework does not change the statutory status of the development plan as the starting point for decision making. The proposal is not in accordance with Key Statement DS1 and Policies DMG2 and DMH3 of the CS in so far as they are relevant to the location and supply of housing and the protection of the countryside. Whilst the Council decision notice also refers to conflict with Key Statement DS2 of the CS it is a broad repetition of paragraphs 11 and 14 of the Framework and the planning balance necessary where conflict with the development plan is identified. Proposed development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In that respect as the Council cannot demonstrate a deliverable five-year housing supply, the relevant policies for the location and supply of housing are out-of-date through the operation of paragraph 49 and 215 of the Framework. Paragraph 14 of the Framework is, therefore, engaged.
46. Paragraph 14 of the Framework states that for decision making this means 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 the Framework taken as a whole, or specific policies in the Framework indicate development should be restricted.
47. There are economic and social benefits arising from the provision of up to 122 additional homes including the potential for delivery of affordable housing and accommodation for over 55s to meet local needs in an accessible location,

which are important considerations that carry significant weight. There would also be associated economic benefits in terms of job creation during construction and support for local services and facilities after occupation, which carry significant weight based on the scale of the development proposed. Furthermore, considerable weight is given to the contribution which the appeal proposal would make to significantly boosting the supply of housing, where the supply of housing in Ribble Valley is constrained due to an inability to demonstrate a five year housing land supply, with a 0.5 year shortfall having been identified. In that respect, the proposal would contribute to a clear need for more market, affordable and older persons housing to be delivered in Ribble Valley. Based upon my findings, the scale of the development would not fully address the shortfall to an extent that a deliverable five year supply of housing land would be demonstrated. Nonetheless, the contribution to meeting housing need is significant and is afforded considerable weight.

48. The development would result in a loss of open countryside. However, given that the site is already mostly enclosed by development on three sides with varied topography, I have found no significant harm to the character and appearance of the area, landscape character and visual amenity, including views from neighbouring properties and a nearby bridleway, subject to the details of the reserved matters. There would also be no unacceptable impact in terms of highway safety, the living environment for future residents, the living conditions of existing residents, ecology and trees, and drainage that could not be resolved by the imposition of suitable conditions.
49. Having regard to the above, the adverse impacts of allowing this appeal would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. In that respect, there are also no specific policies in the Framework which indicate that the development should be restricted. The proposal constitutes sustainable development when assessed against the Framework as a whole. Consequently, I find that there are material considerations which indicate that the proposal should be determined otherwise than in accordance with the development plan and planning permission, therefore, should be granted.

Conditions

50. I have had regard to the planning conditions that have been suggested by the Council. Where necessary I have reordered the conditions, amended the wording to ensure consistency with paragraph 206 of the Framework and consolidated the conditions where possible.
51. Conditions 1 - 5 relate to the submission of reserved matters, timescales, phasing, provide certainty of the outline permission granted and require compliance with approved details, design principles and parameters which are necessary. In that respect, conditions 6 and 7 necessarily restrict the height of any dwellings to not exceed two storeys in height and require full details of proposed ground levels and building finished floor levels in any subsequent reserved matters. Those conditions are required in the interest of the character and appearance of the area, to ensure that the development responds appropriately to the topography of the land and to preserve the living conditions of occupiers of neighbouring properties.
52. Conditions 8 and 9 necessarily require the submission of full details of proposed surface water attenuation ponds and other water bodies on the site, and works

for disposal of foul water and sewage, as part of the reserved matters. Condition 10 requires full details of boundary treatments to be erected within the site and is necessary in the interest of the character and appearance of the area, the living conditions of future occupiers and occupiers of neighbouring properties and to assess wildlife movement as part of the reserved matters. Condition 11 requires full details of proposed play areas and play equipment as part of the reserved matters which is necessary to ensure acceptable and adequate forms of useable public open space.

53. Condition 12 relates to the submission and approval of a detailed scheme for the construction of the pedestrian and vehicular site accesses, together with a retaining structure adjacent to the site access. The pre-commencement condition is required in the interest of highway and pedestrian safety and it is necessary that the development is carried out in strict accordance with the approved details prior to the first occupation of a dwelling.
54. Conditions 13 and 14 are pre-commencement conditions that are necessary to secure full details of precautionary ecology measures mentioned previously relative to the full details of any subsequent reserved matters approval. Condition 15 is a pre-commencement condition for each phase that secures a Construction Method Statement which I consider is necessary to preserve the living conditions of occupiers of neighbouring properties in terms of noise and disturbance.

Conclusion

55. For the reasons given above, I conclude that the appeal should be allowed and planning permission granted subject to the conditions set out in the attached schedule.

Gareth Wildgoose

INSPECTOR

SCHEDULE

CONDITIONS

- 1) No part of the development hereby permitted shall be commenced on any phase (as referred to in Condition 3) until full details of the layout, scale and appearance of the buildings and landscaping within that phase (hereinafter called 'the reserved matters') have been submitted to and approved in writing by the local planning authority.

In relation to landscaping, the details for each phase shall include: the types and numbers of trees and shrubs to be planted, their distribution on site, those areas to be seeded, turfed, paved or hard landscaped, including details of any changes of level or landform, full specifications of all boundary treatments and a scheme of maintenance, including long term design objectives. The submitted landscape details shall take full account of the mitigation measures as contained within the submitted Ecological Appraisal (Report Ref: 3089 V1).

- 2) Application(s) for approval of all of the outstanding reserved matters related to the consent hereby approved must be made not later than the expiration of three years beginning with the date of this permission and the development must be begun not later than whichever is the latter of the following dates:
 - a) The expiration of three years from the date of this permission; or
 - b) The expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 3) The submission of reserved matters relating to layout shall be accompanied by a phasing scheme, including the parcels which shall be the subject of separate reserved matters applications (where applicable), for the approval in writing by the local planning authority. For the avoidance of doubt the submitted information shall include anticipated commencement dates and annual delivery rates of housing for each phase or parcel of development.
- 4) The details in respect of the submission of any reserved matters shall be in accordance with the design principles and parameters as set out in the following documentation:
 - RF15-293-IN03-02: Green Infrastructure and Character document (February 2017)
 - Masterplan SK10 (February 2017)
 - Indicative Site Sections (February 2017)
 - Movement Framework (February 2017)
- 5) No more than 123 dwellings shall be developed within the application site edged red on the submitted Red Line Boundary Plan (VHLP/7782/2194/01 Rev: A).
- 6) Notwithstanding the submitted details, the height of any of the dwellings proposed in any subsequent reserved matters application(s) shall not exceed two storeys in height.

- 7) Applications for the approval of reserved matters shall be accompanied by full details of existing and proposed ground levels and proposed building finished floor levels (all relative to ground levels adjoining the site) including the levels of the proposed roads.

For the avoidance of doubt, the submitted information shall include existing and proposed sections through the site including details of the height, scale and location of proposed housing in relation to adjacent existing development/built form (where applicable). The development shall be carried out in strict accordance with the approved details.

- 8) Applications for the approval of reserved matters shall be accompanied by full details of the proposed surface water attenuation ponds and all other water bodies on the site. Before any details are submitted to the local planning authority, an assessment of site conditions shall be carried out having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. The submitted details shall as a minimum:

- a) provide information about the design storm period and intensity, the methods to be employed to delay and control the surface water discharged from the site and the measures to be taken to prevent pollution of the receiving groundwater and/or surface waters;
- b) include a timetable for its implementation; and,
- c) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

For the avoidance of doubt, the submitted information shall also include existing and proposed sections through each pond including relevant existing and proposed land levels and details of all associated landscaping and boundary treatments, together with means of access for maintenance and easements where applicable. The development shall be carried out in accordance with the approved details prior to the first occupation of any dwelling, and subsequently maintained in strict accordance with the approved details.

- 9) Applications for the approval of reserved matters shall be accompanied by full details relating to works for the disposal of foul water and sewage. The development shall be carried out in accordance with the approved details prior to the first occupation of any dwelling, and subsequently maintained in strict accordance with the approved details.
- 10) Applications for the approval of reserved matters shall be accompanied by elevational and locational details including the height and appearance of all boundary treatments, fencing, walling, retaining wall structures and gates to be erected within the development.

For the avoidance of doubt, the submitted details shall include the precise nature and location for the provision of measures to maintain and enhance wildlife movement within and around the site by virtue of the inclusion of suitable sized gaps/corridors at ground level. The development shall be carried out in strict accordance with the approved details.

- 11) Applications for the approval of reserved matters, where relevant, shall be accompanied by full details of all proposed play areas and associated play equipment.

For the avoidance of doubt, the submitted details shall include the specification and nature of all proposed surfacing, informal/formal play equipment and details of existing and proposed land levels and all associated landscaping and boundary treatments where applicable, including timescales for delivery. The development shall be carried out in strict accordance with the approved details.

- 12) Notwithstanding the submitted details, no development, including any site preparation, demolition, scrub/hedgerow clearance or tree works/removal shall commence or be undertaken on site until a scheme for the construction of the pedestrian and vehicular site accesses, together with a retaining structure adjacent to the site access, has been submitted to, and approved in writing by the local planning authority in consultation with the Highway Authority. The development shall be carried out in strict accordance with the approved details prior to the first occupation of any dwelling.

For the avoidance of doubt, the submitted details shall also include the precise nature and design of all pedestrian/cycleway accesses into and out of the site including details of their interface with existing pedestrian/cycle routes or networks.

- 13) Notwithstanding the submitted details, no development, including any site preparation, demolition, scrub/hedgerow clearance or tree works/removal shall commence or be undertaken on site until details of the provisions to be made for building dependent species of conservation concern, artificial bird nesting boxes and artificial bat roosting sites have been submitted to, and approved in writing by the local planning authority.

For the avoidance of doubt, the details shall be submitted on a dwelling/building dependent bird/bat species site plan and include details of plot numbers and the numbers of artificial bird nesting boxes and artificial bat roosting site per individual building/dwelling and type. The details shall also identify the actual wall and roof elevations into which the above provisions shall be incorporated.

The artificial bird/bat boxes shall be incorporated during the construction of those individual dwellings identified on the submitted plan and be made available for use before each such dwelling is occupied, and thereafter retained. The development shall be carried out in strict accordance with the approved details.

- 14) Notwithstanding the submitted details, no development, including any site preparation, demolition, scrub/hedgerow clearance or tree works/removal shall commence or be undertaken on site until details of a package of proposed mitigation measures, as outlined in Section 6 of the approved Ecological Appraisal (Report Ref: 3089 V1) has been submitted to and approved in writing by the local planning authority.

For the avoidance of doubt the mitigation shall include, but be limited to the provision for bat and bird boxes, the improvement of existing hedgerow, creation of refugia/hibernacula/habitat features and bee and wasp nest boxes. The submitted details shall include the timing and phasing for the

creation/installation of mitigation features and a scheme for future management and maintenance where applicable. The development shall be carried out in strict accordance with the approved details.

- 15) No development shall take place within a phase (pursuant to condition 3 of this consent) until a Construction Method Statement for the relevant phase has been submitted to and approved in writing by the local planning authority. For the avoidance of doubt the submitted statement shall provide details of:
- a) The location of parking of vehicles of site operatives and visitors
 - b) The location for the loading and unloading of plant and materials
 - c) The location of storage of plant and materials used in constructing the development
 - d) The locations of security hoarding
 - e) The location and nature of wheel washing facilities to prevent mud and stones/debris being carried onto the Highway (For the avoidance of doubt, such facilities shall remain in place for the duration of the construction phase of the development) and the timings/frequencies of mechanical sweeping of the adjacent roads/highway
 - f) Periods when plant and materials trips should not be made to and from the site (mainly peak hours but the developer to identify times when trips of this nature should not be made)
 - g) Days and hours of operation for all construction works.
 - h) Details of good practice and management measures to be employed during the development, including the identification of suitable of suitable highway routes for plant and material deliveries to and from the site, and measures to ensure that construction and delivery vehicles do not impede access to and from the site.

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

APPEARANCES

FOR THE APPELLANT:

Peter Vernon (Did not attend site visit)	VH Land Partnerships
Gary Hoerty	Gary Hoerty Associates Ltd
Kieran Howarth (Did not attend site visit)	Gary Hoerty Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Colin Hirst (Did not attend site visit)	Ribble Valley Borough Council
Rachel Horton	Ribble Valley Borough Council
Stephen Kilmartin	Ribble Valley Borough Council

INTERESTED PARTIES:

Kenneth Cooper	Local Resident
Brian Holden	Local Resident
Anthony Ingham (Did not attend site visit)	Local Resident
John Murphy	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Planning Obligation by Unilateral Undertaking dated 16 April 2018
- 2 Updated 5 year housing land position provided by the appellant
- 3 Written statement from Mr Cooper
- 4 Written statement from Mr Murphy
- 5 Written statement from Mr Holden
- 6 Written statement from Mr Ingham
- 7 Longridge 2028 - Neighbourhood Development Plan – Regulation 16 Submission Draft, January 2018
- 8 Appeal decision - APP/T2350/W/17/3174924
- 9 Letter from Indigo Planning to Council dated 13 April 2018 – Draft Allocation (HAL2) in submission version of the Housing and Economic Development – Development Plan Document

DOCUMENTS SUBMITTED AFTER THE HEARING (BY AGREEMENT)

- 1 Indicative Site Sections (February 2017) upon which the Council made its decision
- 2 Movement Framework (February 2017) upon which the Council made its decision
- 3 E-mail update received from the Council on 20 April 2018 relating to the dates for the Examination in Public of the HED DPD

Appendix 7 – RVBC “5 Yr Supply Statement” Nov 2018



Ribble Valley
Borough Council

www.ribblevalley.gov.uk

Housing Land Availability

**5 YR SUPPLY
STATEMENT**

As at 30 September 2018

Published November 2018



Contents

	<u>Page(s)</u>
Introduction	1 - 2
	2 - 3
5 Year Housing Requirement	3-6
Identifying the 5 Year Supply as of 30 th September 2018	7 - 11
Identified Supply	12 - 13
Other Identified Supply	14 - 16
Assessment of Housing Land Position – Sense Testing	
Large Sites Not Started & Large Sites Under Construction – 5 Year Delivery	APPENDIX A

Disclaimer

The factual information within this document is believed to be correct at the time of survey. Each site has been identified from approved planning applications. Whilst every effort is made to give accurate information no responsibility can be accepted for matters arising due to the information in this document being incorrect in any detail whatsoever. Marshal Scott – Chief Executive

1. INTRODUCTION

- 1.1 In line with Government priorities to help boost the supply of housing The National Planning Policy Framework (NPPF July 2018) sets out that Local Planning Authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a five years' worth of housing against their housing requirements. It is expected that local planning authorities should have an identified five-year housing supply at all points during the plan period.
- 1.2 The Council monitors Housing Land which takes into account the revised National Planning Policy Guidance (September 18) on an ongoing basis and generally publishes its Housing Land Availability Scheme every 6 months as part of the council's strategic planning monitoring. In addition the Council does prepare interim updates often in response to planning appeals to ensure the most up to date information is available. This current assessment updates the previous 30 June 2018 interim position by outlining the status of the following sites as of the 30 September 2018:
- Sites with Full Planning Permission.
 - Sites with Outline Planning Permission.
 - Sites on which development has commenced, including number of completions and those under construction.
 - Conversions to dwellings – Sites Not Started.
 - Conversions to dwellings – Sites Not Commenced.
- 1.3 The revised NPPF was published in July 2018. Within this new Framework what constitutes as 'deliverable' has changed to the following definition:
- “To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years’ (Pg 66. Appendix of the NPPF – July 2018).*
- 1.4 MHCLG are currently inviting responses to a consultation document entitled 'Technical consultation on updates to national planning policy and guidance' (Oct 2018) in which MHCLG intend to amend the definition of 'deliverable'. It should be noted that the definition of 'deliverable' as outlined within the adopted NPPF (July 2018) is the one applied for the purposes of this assessment.

- 1.5 The Authority has consulted developers, landowners and agents to establish the delivery of sites via e-mail and letter. Furthermore, and to address the above requirement, the Council has also sought agreement between certain parties using a Statement of Common Ground (SOCG), and assessed the completions that will be delivered on the site within the next five years (01/10/2018 – 30/09/2023) in accordance with Para. 036 of updated PPG Guidance 'Housing and Economic Land Availability Assessment'.
- 1.6 Evidence of delivery, including signed SOCG'S can be found in the accompanying document to this statement entitled '5 Yr Supply - Evidence of Delivery Compendium'.
- 1.7 The evidence obtained and subsequent assessment of the Council's Housing Land Supply shows that the Authority can demonstrate a 6.1 Year Supply with a 5% buffer.
- 1.8 It should be noted that this document represents a specific position in time (as of the 30 September 2018). The situation changes constantly as permissions are implemented, new permissions are granted and schemes amended.

2. FIVE YEAR HOUSING REQUIREMENT

Annualised Requirement

- 2.1 Policy H1 of the Ribble Valley Core Strategy sets an overall requirement of 5600 dwellings for the full plan period from 2008 – 2028 which equates to 280 dwellings per year (approx. 23 per month). 2362 dwellings have been completed in the plan period to date (refer to page 1 of the HLAS); a ten year and 6 months period. This gives rise to a shortfall of 576 dwellings against planning delivery. The Council consequently takes the backlog into account in determining the 5 year supply position as illustrated below.

Shortfall / Backlog

- 280 dwellings per year requirement (approx. 23 per month)
- Plan Period to date = 10 years 6 months
- 10 Years 6 Months = 10 x 280 + 138 for the extra 6 months = 2938
- 2938 minus completions so far (2362) = **576**

Buffer

- 2.2 Paragraph 73 of the recently adopted National Planning Policy Framework (July 2018) outlines the use of the appropriate buffer. As the Authority can demonstrate that the number of completions over the last four years is above the annualised requirement of 280 (refer to page 1 of the HLAS) the 5% buffer is applied. This approach accords with the provisions of the Housing Delivery Test (HDT).

Annualised Requirement with a 5% Buffer		
A	Planned Provision 2008-2028	5600
B	Annual Equivalent	280
C	Five year requirement (Bx5)	1400
D	Completions in the plan period 1 April 2008 – 30 Sep 2018	2362
E	Shortfall / Backlog	576
F	Plus 5% Buffer (5% of C + E)	99
G	Total 5 Year Requirement (C+E+F)	2075
H	Annualised Requirement (G ÷ 5)	415

3. IDENTIFYING THE FIVE YEAR SUPPLY AS OF 30 SEPTEMBER 2018

3.1 The tables below categorise the sites into the following:

- Sites with Full Planning Permission
- Sites with Outline Permission
- Sites in which Development Has Commenced
- Conversions Not Started
- Conversions Started

3.2 The number of dwellings included within the 5 year supply and the number expected to be delivered beyond the 5 year period has been ascertained by gathering evidence from landowners, agents and developers. Evidence of delivery can be found within the accompanying document '5 Year Supply – Evidence of Delivery Compendium'. A reference has been applied to each site and is noted in the first column. This reference can then be used to find a particular piece of evidence within the compendium.

3.3 Appendix A of this document outlines in more detail the expected delivery for all large sites (over 0.4 hectares).

Small Sites Allowance

- 3.4 The NPPF states that local planning authorities may make an allowance for windfall sites in the five year supply if there is compelling evidence that such sites have consistently become available in the local area and that they will continue to provide a reliable source of supply.
- 3.5 The allowance is based upon an assessment of past development rates over a ten year period from 31 March 2008 – 31 March 2018 and in accordance with definitions in the NPPF para. 70 with regards to windfall allowance. In this respect new build developments and conversions to dwellings were only considered when permission had been granted since 2008, and when they fell into the categories below:
- Net new dwellings arising from new build, change of use or conversion in the Principal and Tier 1 settlements that have been constructed or under construction (Lapsed permissions and permissions not started are excluded).
 - The sites were within the settlement boundaries (as defined on the former Districtwide local plan).
 - The site was a brownfield site.
 - The site is not allocated.
 - The site is not a residential garden.
 - The site is within one of the Principal Settlements of Clitheroe; Longridge and Whalley where the Core Strategy seeks to direct the majority of housing development; and the Tier 1 settlements of Barrow, Billington, Chatburn, Gisburn, Langho, Mellor, Mellor Brook, Read and Simonstone (taken as a single settlement) and Wilpshire where a limited amount of development might be allowed in accordance with the Core Strategy.
- 3.6 The remaining 23 Tier 2 settlements and locations outside any settlement were not considered as the Core Strategy does not anticipate that a significant number of dwellings will come forward in these locations unless certain criteria are met.
- 3.7 Thresholds were also applied to ensure large sites did not skew trends as follows:
- | | |
|-----------------------------------|--------------|
| Clitheroe, Whalley and Longridge: | 10 dwellings |
| Tier One Settlements: | 5 dwellings |
- 3.8 Monitoring a period of 10 years showed that a total of 259 dwellings were built or under construction in a 10 year period which met the above criteria. This amounts to an average of 26 per year.

No. Dwellings completed or under construction on windfall sites 2008 – 2018:

	2008 - 2009	2009 - 2010	2010 – 2011	2011- 2012	2012- 2013	2013- 2014	2014- 2015	2015- 2016	2016- 2017	2017- 2018
Clitheroe	9	12	3	4	19	14	18	5	13	11
Longridge	8	13	6	6	6	8	3	16	22	8
Whalley	6	3	0	0	0	0	0	5	6	0
Barrow	0	0	0	1	0	0	1	5	0	0
Billington	1	0	0	0	0	0	2	0	0	0
Chatburn	2	1	0	0	4	0	0	0	1	0
Gisburn	0	1	0	0	1	0	0	0	0	0
Langho	0	1	0	0	0	0	1	0	1	0
Mellor	0	0	0	0	0	0	1	0	0	0
Mellor Brook	0	0	0	0	0	0	0	0	0	0
Read and Simonstone	1	0	2	0	0	0	0	0	0	0
Wilpshire	1	2	0	2	0	0	0	0	1	2
Total	28	33	11	13	30	22	26	31	44	21

Total Over 10 Year Period	259
Average Per Year	26
Amount over years 3-5	78

- 3.9 The Council applies the annual rate of 26 dwellings per annum from windfalls from years 3-5. The windfall rate is not applied to Years 1 and 2 due to the assumption that windfall completions for these years will be within the supply figures at the start of the period and generally it is considered reasonable to allow a 2 year period for sites to come in to supply and deliver consequently the first 2 years are discounted although permissions will be granted and potentially delivered.
- 3.10 In line with NPPF the Council includes an allowance for windfall based upon past completion rates. The purpose of a windfall allowance is to take account of the contribution of unknown, small sites based upon past trends that can be realistically relied upon to contribute to supply. It is a measure of trends in supply backed up by evidence.

- 3.11 The allowance is considered to be a modest figure, realistic and deliverable. Which our monitoring demonstrates can be easily delivered and as illustrated by the table on page 14 which confirms that in the period 2014 – 2018 on average well above 26 dwellings have been provided each year.
- 3.12 It is important to acknowledge that the windfall allowance is aimed at addressing the provisions of NPPF at paragraph 70. NPPF recognises that windfall sites play an important role in anticipated supply, and the council considers that it is appropriate to reflect this in its analysis. Paragraph 70 expects that Local Planning Authorities should have any assessment of windfall potential where there is compelling evidence that supports that such sites provide a reliable source of supply. The Council's approach is to use the evidence of past completion rates to test what can be anticipated in supply. This is done by the Council monitoring completion rates to identify anticipated supply rather than trends in planning permissions. And provides a robust approach to identifying relevant supply.
- 3.13 It must be stressed that the total amount of 259 dwellings over the past ten years relates to those developments which meet the above criteria and have been completed or under construction. The number does not represent the total number of windfall sites that the Authority has permitted over the last ten years.
- 3.14 The windfall calculation will continue to be monitored, to show if it needs to be modified in the light of up to date trends. For the avoidance of doubt, the inclusion of a windfall allowance does not imply that planning permission will be forthcoming for a particular development.

IDENTIFIED SUPPLY

Table 1 SITES WITH FULL PLANNING PERMISSION						
Evidence Ref.	No. of Dwellings Granted Planning Permission	NO SITES	HA	LOCATION	No. of dwellings expected to be delivered beyond the 5 year period	No. of dwellings included within the 5 Year Supply
EV1	79	32	4.42	Small Sites	0	77*
EV2	225	1	6.03	Land SW Barrow & West of Whalley Road, Barrow - Parcel B	45	180
EV3	41	1	1.35	Land off Dale View, Billington	0	41
EV4	39	1	1.77	Mills Way, Chipping	0	39
EV5	36	1	1.34	Greenfield Avenue, Clitheroe	0	36
EV6	3	1	0.54	Land off Mill Lane, Gisburn	0	3
EV7	18	1	5.40	Land off Longsight Road, Langho	0	18
EV8	34	1	1.80	Spout Farm Preston Road, Longridge	0	34
EV9	17	1	0.63	Land r/o Pendle Street East, Sabden	0	17
EV10	30	1	1.13	Former Victoria Mill, Sabden	0	30
EV11	77	1	2.97	Land at Accrington Road, Whalley	0	77
EV12	160	1	5.80	Land East of Clitheroe Road (Lawsonsteads) Whalley – Phase 2 – see note below.	160	0
EV13	6	1	1.00	Oakhill College, Wiswell Lane, Whalley	0	6
		44	34.18			
	765				205	558 A

NOTE: Land East of Clitheroe Road, Lawsonsteads – A Reserved Matters appn. has been approved for Phase 2 which was submitted by Bloor Homes (Appn. 3/2015/0489). Bloor Homes no longer intend to develop the site. No Dwellings have been accounted for in the 5 yr supply for phase 2 on this basis. However, a full application has been submitted for 188 dwellings on Phase 2 which has been submitted by Trafford Housing Trust in partnership with Laurus Homes (refer to EV12 in Evidence Compendium for SOCG).

Table 2 SITES WITH OUTLINE PERMISSION						
Evidence Ref.	No. of Dwellings Granted Planning Permission	NO SITES	HA	LOCATION	No. of dwellings expected to be delivered beyond the 5 year period	No. of dwellings included within the 5 Year Supply
EV14	8	6	0.53	Small Sites	8	0
EV15	23	1	0.96	Old Row, Whalley Road, Barrow	0	23
EV16	4	1	0.81	Land Malt Kiln Brow, Chipping	0	4
EV17	23	1	1.82	Land at Chatburn Road, Clitheroe	0	23
EV18	24	1	1.54	Land off Henthorn Road, Clitheroe	0	24
EV19	812	1	36.72	Higher Stand Farm & Part Littlemoor Farm, Clitheroe - 2nd Phase	712	100
EV20	275	1	9.20	Land off Waddington Road, Clitheroe (refer to note below)	27	180
EV21	239	1	19.45	Land East of Chipping Lane, Longridge – Phase 2&3	117	122
EV22	122	1	6.50	74 Higher Road & Land r/o, Longridge	122	0
EV23	5	1	0.79	Land Whalley Road, Mellor Brook	0	5
EV24	15	1	0.43	Land Worthalls Farm, Westfield Avenue, Read	0	15
		16	78.75			
	1550				986	496 B
Note: Land off Waddington Road (3/2018/0181) – Reserved Matters Application for 207 dwellings yet to be determined but taken into consideration for the purposes of this report. 180 dwellings expected to be delivered within 5 yr period as per signed SOCG thus 27 are to be delivered beyond the 5 yr period to make the total delivered on site to 207 dwellings.						

Table 3 SITES IN WHICH DEVELOPMENT HAS COMMENCED						
Evidence Ref.	No. of Dwellings Remaining to be Completed on the Site	NO SITES	HA	LOCATION	No. of dwellings expected to be delivered beyond the 5 year period	No. of dwellings included within the 5 Year Supply
EV25	79	43	3.91	Small Sites	0	76**
EV26	9	1	0.73	1-9 Stonewater Close, Barrow	0	9
EV27	179	1	8.31	Land SW Barrow & Whalley Road, Barrow - Parcel A	29	150
EV28	35	1	1.55	Elbow Wood Drive, Barrow (Hansons)	0	35
EV29	3	1	0.30	1-7 Whitethorne Fold, Barrow	0	3
EV30	15	1	0.65	Land off Dale View, Billington	15	0***
EV31	7	1	0.48	Hare Hill Croft, Chatburn	0	7
EV32	60	1	2.01	Coplow View, Clitheroe (Clitheroe Hospital)	0	60
EV33	65	1	2.48	Appleby Square (Henthorn Road), Clitheroe	0	65
EV34	208	1	7.78	Standen - Pendle Road - Audley Clough, Clitheroe	0	208
EV35	26	1	0.80	Berkeley Square, Clitheroe (Milton Avenue) - Manor Place	0	26
EV36	13	1	0.57	Sycamore Walk, Clitheroe	0	13
EV37	66	1	2.02	Alexandra Close, Clitheroe - Primrose	0	66
EV38	31	1	2.44	Fox Fall Drive, Hurst Green (Land Whalley Road)	0	31
EV39	53	1	3.40	Land at Chapel Hill, Longridge	0	53
EV40	124	1	5.35	Bluebell Crescent, Longridge (Chipping Lane - Phase 1)	0	124
EV41	137	1	4.41	Broomfield Road, Longridge (Dilworth Lane)	0	137
EV42	256	1	9.77	Alston Meadow, Longridge (Preston Road)	121	135
EV43	48	1	2.14	Mitton Road, Whalley	0	48
EV44	1	1	0.08	Cherry Drive, Brockhall Village	0	1
EV45	3	1	0.23	Eden Gardens, Brockhall Village	0	3
EV46	1	1	0.14	Hillside, Brockhall Village	0	1
EV47	7	1	0.42	Meadow View, Read	0	7
EV48	4	1	0.73	The Moorcock Inn, Slaidburn Road, Waddington	0	4
		65	59.97			
	1430				165	1262C

Table 4 CONVERSIONS NOT STARTED						
Evidence Ref.	No. of Dwellings Granted Planning Permission	NO SITES	HA	LOCATION	No. of dwellings expected to be delivered beyond the 5 year period	No. of dwellings included within the 5 Year Supply
EV49	78	34	3.10	Small Sites	0	78
EV50	2	1	0.58	Little Dudlands Farm, Rimington	0	2
		35	3.68			
	80				0	80 D

Table 5 CONVERSIONS STARTED						
Evidence Ref.	No. of Dwellings Granted Planning Permission	NO SITES	HA	LOCATION	No. of dwellings expected to be delivered beyond the 5 year period	No. of dwellings included within the 5 Year Supply
EV51	76	47	4.43	Small Sites	0	69****
	76	47	4.43			
	76				0	69 E

WINDFALL ALLOWANCE Windfall Allowance (26 x 3 yrs)	78 F
TOTAL SUPPLY (A+B+C+D+E+F) = 2543	

FIVE YEAR POSITION

TOTAL SUPPLY ÷ ANNUALISED REQUIREMENT (2543 ÷ 415) = 6.1 Year Supply

* 2 Dwellings taken out of the supply - Refer to pg. 2 of the accompanying '5yr Supply Evidence of Delivery'

** Refer to pages 57-59 of the Housing Land Availability Survey for a full list of sites and page 15 of this report which states the sites taken out of the supply.

*** Refer to pg. 15 of this report which confirms that this site has been taken out of the supply

**** Refer to pg. 15 of this report which confirms the sites that have been taken out of the supply

4. OTHER IDENTIFIED SUPPLY

4.1 Proposed Allocations

Summary

1. The Council in preparing its Housing and Economic Development DPD proposed in the submission plan a small number of allocations including sites for residential development aimed at meeting the identified residual in their respective locations. Sites HAL1 and 2 refer. In addition as a consequence of housing land monitoring and the review of 5yr supply, the Council identified a series of further allocations to be proposed as main modifications. These have been subject to public consultation and remain to be considered as part of the Examination process.
2. The table below sets out the number of units to be anticipated from each of these sites over the plan period informed by the Council's monitoring and information received in response to the consultation where an adjustment needs to be made to the net, likely delivery. The Council has, through these proposed allocations, identified a net of 222 units that can contribute to supply. If the net figure of identified units is added to the supply the Council can demonstrate a 6.6 year supply. Evidence that supports the deliverability of the proposed allocations is included at pages 99 - 123 of the '5 year Supply Evidence of Delivery'

ALLOCATIONS				
Evidence Ref	Site Allocation Ref	Site Address	No. of Dwellings Proposed to be Delivered as Outlined Within HED DPD Process	Net Anticipated
EV52	HAL1 - Mellor	Land at Mellor Lane, Mellor	18	0
EV53	HAL2 - Wilpshire	Land at Wilpshire	32	32
EV54	MM1 – Site 15	Chatburn Road	40	20
EV55	MM2 – Site Devpr 3	Land off Hawthorne Place, Clitheroe	40	40
EV56	MM3 – Site 13	Highmoor Farm, Clitheroe	100	100
EV57	MM4 – Langho Site 1	South of Laycocks Farm, Langho	10	10
EV58	MM5 – Site 24	Haugh Head, Whins Lane, Read & Simonstone	20	20
			260	222

4.2 [Applications comprising over 5 Dwellings Determined Post The Base Date of 30 September 2018](#)

Applications for Over 5 Dwellings – Approved Post 30 September 2018			
Site Name	Application Ref	No. of Dwellings Approved	Date of Determination
Falcon House Whalley Road, Sabden, BB7 9DZ	3/2018/0738	9	17/10/2018
30 Peel Park Avenue, Clitheroe	3/2018/0008	34	30/10/2018
Land at Chatburn Road, Clitheroe	3/2017/0653	30	S.106 Signed 31/10/2018

4.3 [Applications Pending Upon which Committee Defer their Approval Subject to Work Delegated to Director of Economic Development and Planning Being Satisfactorily Completed](#)

Applications for over 5 Dwellings – Approved Subject to Additional Details / S.106 Agreement			
Site Name	Application Ref	No. of Dwellings	Date of Determination at Committee and Notes
Land to the east of Clitheroe Road, Barrow	3/2018/0500	10	01/11/2018 – That the application be DEFERRED and DELEGATED to the Director of Economic Development and Planning for approval subject to receipt of acceptable highway and drainage details, amended plans and the satisfactory completion of a Legal Agreement
Land off Henthorn Road, Clitheroe	3/2018/0688	110	01/11/2018 = That the application be DEFERRED and DELEGATED to the Director of Economic Development and Planning for approval subject to the satisfactory completion of a Legal Agreement

5. ASSESSMENT OF HOUSING LAND POSITION – SENSE TESTING

- 5.1 The monitoring of housing delivery requires the Council to record and update the progress of development on all sites with planning permission.
- 5.2 As highlighted at para. 1.5 of the Introduction to this document the Authority has contacted a number of developers, landowners and agents to establish the delivery of sites. The following provides a breakdown of the sites that have been taken out of the supply as a result of responses received.

Large Sites (Over 0.4 hectares) – Full and Outline Permissions

- 5.3 Sites identified within the 5 year supply must be deliverable as per paragraph 73. of the NPPF (July 2018). For a site to be considered deliverable it must comply with the definition as outlined within the Glossary of the NPPF:

*“**Deliverable:** To be considered deliverable, sites for housing should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years. Sites that are not major development, and sites with detailed planning permission, should be considered deliverable until permission expires, unless there is clear evidence that homes will not be delivered within five years (e.g. they are no longer viable, there is no longer a demand for the type of units or sites have long term phasing plans). Sites with outline planning permission, permission in principle, allocated in the development plan or identified on a brownfield register should only be considered deliverable where there is clear evidence that housing completions will begin on site within five years.”*

- 5.4 Of the large sites (over 4 hectares) that have full or outline planning permission the Authority has sought clarification from developers or agents expected delivery over the next 5 years. A list of those sites and expected delivery can be found at Appendix A of this report. Evidence which has been obtained by the Local Authority to demonstrate delivery of these sites can be found in the accompanying document ‘5 Yr Supply Evidence of Delivery’.

Small Sites (under 0.4 hectares) Not Started – Full and Outline Permissions

- 5.5 Of the small sites (under 4 hectares) that have full or outline planning permission the Authority has sought clarification from developers or agents the expected delivery over the next 5 years. Evidence which has been obtained by the Local Authority to demonstrate delivery of these sites can be found in the accompanying document ‘5 Yr Supply Evidence of Delivery’.

From the responses received to date, the Authority has taken out 2 dwellings from the supply as a result of confirmation from the owner that the remaining dwellings to be completed on the site will not be delivered within the next 5 years:

Small Sites – Full Planning Permission		
Address	Application No.	No. of Dwellings
55 Pendle Road, Clitheroe	3/2012/1010	2

Sites Under Construction – Stalled or No Longer Wish to Complete

- 5.6 A number of small sites are currently not active and so are deducted from the five year supply. Letters were also sent and phone calls made to establish the status of sites in which a large number have responded providing current updates. The table below lists those sites currently considered as stalled.
- 5.7 In those cases where it was not possible to contact the applicant or they did not respond. In such cases applications that have been determined and commenced more than 5 years ago but have not yet been completed have been taken out of the supply.

The table below lists those sites that are considered stalled or responses have been received which confirm that the owner/developer no longer intends to implement the consent.

New Build Under Construction (Small Sites)		
Address	Application No.	No. of Dwellings Taken Out of 5yr Supply
Land adj. Alderleigh, Henthorn Road, Clitheroe	3/1994/0128	1
Land at Higher Highfield Farm, Tinklers Lane, Sabden	3/2006/0586	1
19 Waverley Road, Ramsgreave	3/2009/0307	1
Land off Dale View, Billington	3/1999/0834	15
Conversions/Change of Use		
16,18,18A Well Terrace, Clitheroe	3/2008/0775	3

44-46 Berry Lane, Longridge	3/2012/0577	1
Carlinghurst Farm, Huntingdon Hall Lane, Dutton	3/2010/0627	1
Dewhurst Barn, Longsight Road, Langho	3/2016/0662	1
Billingtons Farm, Longridge	3/2012/0778	1
Total		-25

APPENDIX A

APPENDIX A									
LARGE SITES NOT STARTED			DELIVERY PER YEAR						
Name of Site	Developer	Total No. of Dwellings	1 st October 2018- 30 th September 2019	1 st October 2019- 30 th September 2020	1 st October 2020- 30 th September 2021	1 st October 2021- 30 th September 2022	1 st October 2022- 30 th September 2023	TOTAL WITHIN 5 YR SUPPLY	Net Outstanding Beyond 5 Years
Land east of Clitheroe Road, Whalley (Lawsonsteads)	Potential Developer - Laurus Homes in partnership with Trafford Housing Trust (as per application 3/2018/0914)	160	0	0	0	0	0	0	160
Land to south-west of Barrow & west of Whalley Road, Barrow (Parcel B)	BDW North West and Taylor Wimpey	225	0	30	50	50	50	180	45

Land at Accrington Road, Whalley	Oakmere Homes	77	0	0	15	30	32	77	0
74 Higher Road, Longridge	Not Known	122	0	0	0	0	0	0	122
Higher Standen Farm – 2 nd Phase	Taylor Wimpey	812	0	0	20	40	40	100	712
Land off Waddington Road, Clitheroe	Barratts & David Wilson Homes	207	0	30	50	50	50	180	27
Land East of Chipping Lane, Longridge – Phases 2&3	Barratt Homes	239	0	20	34	34	34	122	117

LARGE SITES UNDER CONSTRUCTION			DELIVERY PER YEAR						
Name of Site	Developer	Total No. of Dwellings	1st October 2018-30 th September 2019	1 st October 2019-30 th September 2020	1st October 2020-30 th September 2021	1 st October 2021-30 th September 2022	1 st October 2022-30 th September 2023	TOTAL WITHIN 5 YR SUPPLY	Net Outstanding Beyond 5 Years
Land at Higher Standen Farm, Clitheroe (Phase 1)	Taylor Wimpey	208	50	50	48	45	13	206 (As per SOCG)	0
Land to south-west of Barrow & west of Whalley Road, Barrow (Parcel A)	Redrow	179	30	30	30	30	30	150	29
Land North of Dilworth Lane, Longridge	Taylor Wimpey	137	34	37	33	30	0	134 (As per SOCG)	0
Land east of Chipping Lane, Longridge – Phase 1	Barratt Homes	124	20	34	34	34	2	124	0

Preston Road, Longridge	Kier Liivng	256	15	30	30	30	30	135	121
-------------------------	-------------	-----	----	----	----	----	----	------------	------------