

RE: LAND OFF HENTHORN ROAD

CLOSING NOTES OF THE LOCAL PLANNING AUTHORITY

1. Accessibility

- It is agreed that if this issue is resolved in the Appellant's favour then the proposal is Development Plan compliant and planning permission should be granted.
- Key Policy: DM12 which seeks to minimise the need to travel and provide good access by foot and cycle and to provide convenient links to public transport.

NB: DMG3 is also referred to in the Reasons for Refusal, but DMG.3 is not a prescriptive policy, ie it identifies matters which will carry significant weight in decision-making.

- It is agreed that DM12 is NPPF compliant.
- It was agreed in cross-examination of Mr Lewis that DM12 is an important policy and that if you decided it was breached then that could enable an overall conclusion of breach of the Development Plan.

Issues arising under DM12:

- Accessibility by foot; and
- The quality/adequacy of bus connections.

NB: It is agreed that access by cycle is adequate and it is agreed that the quality of connections to facilities by foot are adequate.

Accessibility by Foot

- The CIHT Guidelines are widely used and are a material consideration (see cross-examination of Mr Lewis). The same can be said for MfS.
- The CIHT advice (CD 10.5, para.6.4) looks to provide a range of facilities within 800 – 1,200 m of new housing (this is reflected in the MfS concept of a walkable neighbourhood).
- There are no facilities within 800 m and barely any within 1,200 m (primary school, small convenience store and place of worship).
- The edge of the town centre = 1,650 m from the centre of the appeal site.
- The rail halt is 1,985 m away from the centre of the site.
- These distances are well beyond the preferred maximum distances in the guidance. Moreover, the town centre facilities are much closer to the 2 km mark.
- Appellant's Response = National Travel Survey states that most journeys up to one mile are undertaken by foot. That response = not helpful:
 - (a) What does up to one mile mean? The NTS says the average distance walked is 0.6 mile - the town centre/rail halt are well beyond that; and

- (b) The last part of the walk into the town centre is uphill. It is no answer to say that that is Clitheroe's topography (a statement of the obvious). The simple fact is that it adds to the challenge of accessing facilities by foot. Dr McKinley said topography was a disincentive to walking and that is no more than sound common sense.

Summary: The site is not well located to encourage journeys by foot to the town centre (or to places of work within and beyond Clitheroe).

Accessibility by Bus

- The Lune Road "ghost stop" is 325 m away. It is due to be upgraded to be marked by a pole.
- Inspector Stephens was encouraged to understand that this would be upgraded to a quality stop. It will not be. Why LCC have not insisted upon it is not known. Quality upgrades are no part of the appeal proposal.
- CIHT Guidance (CD 10.04 (January 2018)) advises that stops should be covered, have seating and be lit. The comfort and safety need for this is obvious. Using the ghost stop on a "wet Wednesday" is "not ideal" (cross-examination of Mr Lewis).

NB: It is of little value to point out that this is no part of the Reasons for Refusal. It is brought into play by DMI2 and the stop's self-evidence deficiencies are undeniable. The infrastructure does not, therefore, encourage use of the bus. Mr Lewis in re-examination said it was not a determinative issue. True; but it weighs against the proposal on the accessibility issue.

- Linkages via the bus to places of work beyond Clitheroe are poor, ie the interface with rail times means that it is not possible to access locations to be available for normal working start and finish times.

The bus service, therefore, is of limited value.

Overall, the proposal is in breach of the aims and objectives of DMI2.

Five Year Housing Land Supply

2. The Appellant is broadly critical of the LPA's approach to four issues:

- (a) The use of post-November 2018 site information;
- (b) The absence of reference to "comparable sites" re build-out rates;
- (c) The absence of reference to "comparable sites" re lead-in times;
- (d) The approach to small sites/windfall.

- Post-November 2018 data/information:

Much of this complaint refers back to PPG advice, ie testing developer information against comparable sites and the Woolpit appeal decision (CD 4.03). However, the PPG advice presupposes the presence of comparable site data while the Woolpit decision is being used out of context by the Appellant. In that case the Inspector said the five year calculation by the LPA was, in effect, guesswork which they subsequently sought to validate. He criticised the LPA for failing to engage with site promoters/developers. In the present case there was full engagement (as part of the LPA's normal monitoring regime) leading to the November 2018 SoCGs. This LPA therefore followed good practice. Subsequent post-November 2018 contact has simply been to seek to discover whether the November 2018 date is being translated into delivery on the ground. A sense check is a perfectly reasonable approach.

- Build-out Rates:

The Appellant has effectively argued that whatever a promoter/developer says about a site, the LPA should nonetheless use comparable build-out rates. In

this case “local” is used by the Appellant as a proxy for “comparable”. If that is the case, why does the PPG advice contact with promoters/developers? If the appellant is right, the advice requires a great deal of work for no good purpose. Moreover, are the sites chosen true comparator sites - the simple fact that they are local and controlled by medium or large volume developers is not determinative of whether they are truly comparable.

- Lead-in Times:

The Appellant has taken 11 sites and derived an average lead-in time. The problem with this exercise is that the lead-in times range from six months to 2.75 years. With such a wide variation, deriving an average and simply applying it to any given site is crude and unhelpful. The LPA;s approach of seeking to discover the prompter/developer’s proposals re lead-in and then making a judgment as to whether it is credible is to be preferred.

- Site 1 - Higher Standen (LPA 308/Appellant 150) - The difference is build-out rate with the Appellant applying 30 dpa and the LPA working to the developer’s November 2018 assessment. In fact, the evidence “on the ground” is that the developer is doing what it said it would do in November 2018 and there is no good reason to doubt Mr Bancroft’s email of 30th April 2019. The LPA’s estimates are not fanciful - Table 13.5 (Mr Pycroft’s proof) reveals very high completion rates on the proximate Henthorn Road site and while there are two builders on that site the data reveals that a single site in this location can sustain high levels of annual completions.
- Site 2 - Chipping Lane (LPA 246/Appellant 140). As Site 1, ie the appellant simply uses 30 dpa regardless of the developer’s intentions.
- Site 3 - Land south-west of Whalley Road. This site involves a difference of one year over lead-in assumptions. Again, there is no good reason to doubt the developer information above and beyond the fact that it would be above the average lead-in time.

- Site 4 - Agreed.
- Site 5 - (LPA 24/Appellant 0). The site has an outline approval and it is accepted that the onus is on the LPA to produce “clear evidence” to support its assumed yield. That evidence can be constituted by common sense. We suggest that as the promoter is being proactive and the site is without any physical constraint to delivery, a conclusion that 24 units are likely to be built by 2023 is entirely reasonable. (There has been no evidence to demonstrate why they might not be built.)
- Windfalls/Small Sites:

Conclusion

3. It is the LPA’s submission that it has a [] year housing land supply. However, even if you are against us and the tilted balance is therefore engaged, it is our submission that the appeal should be refused. The benefits associated with the provision of additional housing, as noted by Mr Carter in Opening are acknowledged, as is the benefit of providing additional housing in a Tier 1 settlement which is currently behind its delivery aspirations. Nonetheless, the accessibility profile of the site is poor by modes other than the car and that is a significant negative factor which weighs decisively in the planning balance against allowing the development.

D E MANLEY QC

9th May 2019