



Ribble Valley
Borough Council

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APPEAL STATEMENT

TOWN & COUNTRY PLANNING ACT 1990

Appeal by Oakmere Homes (NW)

Following the High Courts decision to quash the Planning Inspector's decision dated 10 November 2020 for the Erection of 39 dwellings with landscaping, associated works and access from adjacent development site.

Land at the junction of Chatburn Road and Pimlico Link Road
Clitheroe BB7 2EQ

Planning Inspectorate Reference:
APP/T2350/W/20/3253310

**STATEMENT OF CASE SUBMITTED ON BEHALF OF
THE LOCAL PLANNING AUTHORITY**

APRIL 2022

1. INTRODUCTION

- 1.1 The appeal relates to the erection of 39 dwellings with landscaping, associated works (access from adjacent development site) at land at the junction of Chatburn Road and Pimlico Link Road Clitheroe. The matter was considered by the Secretary of State's appointed Inspector, Graeme Robbie BA(Hons) BPI MRTPI, via the written representations procedure who determined that the appeal should be allowed on 10th November 2020.
- 1.2 Following the appeal decision Ribble Valley Borough Council made an application under section 288 of the Town and Country Planning Act 1990 to the High Court seeking an order quashing the decision. Permission to proceed was granted by His Honour Judge Eyre QC on 21 January 2021.
- 1.3 The Secretary of State did not resist Ribble Valley Council's application to quash the Inspector's decision and the application was pursued solely by the developer.
- 1.4 On 16th November 2021 His Honour Judge Bird concluded that the inspector's decision is firmly rooted in a misunderstanding of the policy and quashed to appeal decision. The Court has ordered that the appeal be redetermined by the Planning Inspectorate. This statement relates solely to the specific issues on which the appeal was quashed.

2. Reasons the decision was quashed.

- 2.1 The Council's challenge to the High Court was based on the Planning Inspector's interpretation of Policy DMG2 of the Adopted Core Strategy. The Council considered that the Inspector made an error of law when interpreting (and applying) Policy DMG2.
- 2.2 Policy DMG2 of the Adopted Core Strategy is as follows:

Development should be in accordance with the core strategy development strategy and should support the spatial vision.

1. Development proposals in the principal settlements of Clitheroe, Longridge and Whalley and the tier 1 villages should consolidate, expand or round-off development so that it is closely related to the main built up areas, ensuring this is appropriate to the scale of, and in keeping with, the existing settlement.

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

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

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

In protecting the designated area of outstanding natural beauty, the council will have regard to the economic and social well-being of the area. However, the most important consideration in the assessment of any development proposals will be the protection, conservation and enhancement of the landscape and character of the area avoiding where possible habitat fragmentation. Where possible new development should be accommodated through the re-use of existing buildings, which in most cases is more appropriate than new build. Development will be required to be in keeping with the character of the landscape and acknowledge the special qualities of the AONB by virtue of core strategy adoption version 90 its size, design, use of material, landscaping and siting. The AONB management plan should be considered and will be used by the council in determining planning applications.

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

- 2.3 As set out with the Council's original Appeal Statement (appended to this Statement) Policy DMG2 is twofold in that the primary part of the policy DMG2(1) is engaged where development proposals are located 'in' principal and tier 1 settlements with the second part of the policy being engaged when a proposed development is located 'outside' the defined settlement areas or within tier 2 villages. The High Court concurs with this application of Policy DMG2 in that the relationship between the proposed development and the settlement (described by the preposition "in") is a condition precedent which must be satisfied before there can be any consideration of consolidation, expansion or rounding-off. In the case of a site outside the principal or tier 1 settlements, as is the case of the appeal site (which is within the open countryside), the second part of Policy DMG2 is engaged.
- 2.4 A key aim of the Adopted Core Strategy is to concentrate new development in certain identified areas. Policy DMG2 assists the interpretation of the development strategy and underpins the settlement hierarchy for the purposes of delivering sustainable development. The Local Authority does not consider that the development subject to this appeal accords with any of the types of development listed within the second part of Policy DMG2.
- 2.5 After correctly identifying the proposed site of the development the correct policy needs to be applied. The appeal site is within the open countryside which engages Policy DMH3 of the Adopted Core Strategy. The Policy is as follows:

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

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

3. The rebuilding or replacement of existing dwellings subject to the following criteria:

- the residential use of the property should not have been abandoned.
- there being no adverse impact on the landscape in relation to the new dwelling.
- the need to extend an existing curtilage.

The creation of a permanent dwelling by the removal of any condition that restricts the occupation of dwellings to tourism/visitor use or for holiday use will be refused on the basis of unsustainability

- 2.6 Policy DMH3 also includes the following note: “The protection of the open countryside and designated landscape areas from sporadic or visually harmful development is seen as a high priority by the Council and is necessary to deliver both sustainable patterns of development and the overarching core strategy vision”
- 2.7 The appeal proposals do not accord with any of the acceptable forms of development set out within Policy DMH3 and would erode the countryside in direct conflict with the overarching core strategy vision.

3. CONCLUSION

- 3.1 The High Court decision made it clear that interpreting a policy in context requires the court to consider the aim of the policy. That in turn requires consideration of the aim of the core strategy and adopted plan. Key statement DS1 sets out the development strategy at which the local plan is aimed. The plan also refers to open countryside: “The Council will also seek to ensure that the open countryside is protected from inappropriate development.” (Paragraph 5.3 under the heading: “strategic spatial policies”).
- 3.2 The High Court decision sets out clearly that the aim of any policy is important when interpreting that policy. In this case it is clear that Key Statement DS1 and Policies DMG2 and DMH3 of the Adopted Core Strategy are relevant to the appeal proposals and these policies seek to protect the open countryside to deliver sustainable patterns of development.
- 3.3 The Local Authority do not consider that the appeal proposals meet any of the criteria for acceptable development included within Policies DMG2 and DMH3 of the Adopted Core Strategy and the only conclusion therefore is that the appeal proposals are contrary to these relevant policies. Additionally, there are no recognised or clearly evidenced regeneration benefits associated with the development which would outweigh the harm of the development. The proposed development would result in inappropriate development within an area of open countryside in direct conflict with the development strategy for the Borough as set out within Key Statement DS1 of the Ribble Valley Core Strategy.
- 3.4 It is for the above reasons and having regard to all material matters that the Inspector is respectfully requested to dismiss the appeal.

RIBBLE VALLEY BOROUGH COUNCIL



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STATEMENT OF CASE

TOWN & COUNTRY PLANNING ACT 1990

Planning Inspectorate Reference:	APP/T2350/W/20/3253310
LPA Application Reference:	3/2019/0877

Appeal by Oakmere Homes (NW)

Against the failure of Ribble Valley Borough Council to determine application 3/2019/0877 within the appropriate time period.

Erection of 39 dwellings with landscaping, associated works and access from adjacent development site.

Land at the junction of Chatburn Road and Pimlico Link Road Clitheroe BB7 2EQ

**WRITTEN REPRESENTATIONS SUBMITTED ON BEHALF OF
THE LOCAL PLANNING AUTHORITY**

- 1.1** The appeal is against the failure of Ribble Valley Borough Council to determine the application for the erection of 39 dwellings with landscaping, associated works (access from adjacent development site) at land at the junction of Chatburn Road and Pimlico Link Road Clitheroe within the requisite agreed timeframe.
- 1.2** Following the receipt of the non-determination appeal the application was taken forward to the local authority's Planning and Development Committee on the 25th of June 2020 to seek a resolution as to how the application would have been determined should the authority have been given the opportunity to do so. The officer report was taken forward with a recommendation to refuse the granting of planning permission. The Planning Committee resolved to agree with the officer recommendation and in doing so determining that the application would have been refused for the following reason(s):
1. The proposal is considered contrary to Key Statement DS1 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that approval would lead to the creation of new residential dwellings in the defined open countryside, located outside of a defined settlement boundary, without sufficient justification insofar that it has not been adequately demonstrated that the proposal is for that of local needs housing that meets a current identified and evidenced outstanding need. It is further considered that the proposal fails to meet the requirements Key Statement DS1 insofar there are no identified regeneration benefits associated with the proposal.

Appeal Site and Surrounding Context

- 2.1** The application relates to an area of greenfield land located to the northern-eastern extents of the settlement of Clitheroe. The site is 1.8 Hectares in size being located outside of but directly adjacent the defined settlement boundary of Clitheroe, as such the site is located on land that benefits from a defined open countryside designation.
- 2.2** The site is bounded to the south-east by the A671 with the A671/Pimlico Link Road roundabout also being located adjacent the north-eastern extents of the site.

- 2.3** The northern and eastern extents of the proposal site are bounded by a significant area of woodland planting, with the site directly interfacing with the adjacent housing development site to the south-west.
- 2.4** Vehicular access to the site is provided via an existing vehicular access off Chatburn Road that has been constructed pursuant to an extant consented development (3/2017/0653) that is currently under construction directly to the south-west. A further pedestrian access is also provided directly off the Chatburn Road footway towards the north-eastern extents of the site.

Relevant Planning Policy & Guidance

- 3.1** The planning policy context for the appeal site is set out at a national level by the National Planning Policy Framework (NPPF) and at a local level by the Ribble Valley Core Strategy (Adopted 16th December 2014).

National Policy Context

- 4.1** The National Planning Policy Framework (February 2019) provides the most up to date national planning policy context for the determination of the appeal and is therefore a material consideration in the determination of the appeal.
- 4.2** The NPPF (Para.2) reaffirms that the planning system is plan-led and that Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

Local Policy Context

- 5.1** The Inspector's final report into the examination of the Core Strategy is dated 25th November 2014 and was made public at 9.00am on Tuesday 2nd December 2014. The Inspector (Simon Berkeley) concluded that, with the recommended main modifications set out in the Appendix to the Inspector's report, the Ribble Valley Core Strategy satisfies the requirements of Section 20(5) of the 2004 Act and meets the criteria for soundness in the National Planning Policy Framework. The formal adoption of the Core Strategy (including the Inspector's modifications) was considered and adopted at a Meeting of Full Council on Tuesday 16th December 2014.

5.2 In view of the Inspector's conclusions and the subsequent formal adoption of the Core Strategy the local planning authority considers that full weight can now be given to the Core Strategy which fully supersedes the Districtwide Local Plan (1998) and is therefore the starting point for all decision making within the Borough.

5.3 Subsequent to the submission of the application the authority, on the 15th of October 2019 formally adopted the Housing and Economic Development, Development Plan Document (HED DPD) which outlined detailed policy coverage in relation to matters of housing and economic development to assist in the full implementation of the policies of the adopted Core Strategy. Amongst other matters the document allocated land for residential development to meet housing requirements for the duration of the plan period (2008 – 2028).

Principle of Development

6.1 The application site lies within the defined open countryside being located outside of the defined settlement of Clitheroe, as such and given the application seeks consent for new residential development Policies DMH3 and DMG2 are fully engaged. Both policies seek to restrict residential development within the defined countryside to that which meets a number of criteria, one of which being that which satisfies an identified local need.

6.2 In this respect, when assessing the locational aspects of the development, Policy DMG2 states that within the tier 2 villages and outside the defined settlement areas development must meet at least one of the following considerations:

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

6.3 In this respect the applicant has not provided any supporting information as to how the application seeks to meet an identified or evidence outstanding need nor does the Local

Authority consider or have evidence that there is a clear identified need for housing that must be met in this location.

- 6.4 Whilst the authority recognises there is a borough-wide need for affordable housing and the benefits associated with the delivery of such housing, in this case, the development of open-market residential development within this location (in the absence of identified or evidenced need) would be considered to be indirect conflict with Policies DMH3 and DMG2.
- 6.5 The Ribble Valley Core Strategy states that local needs housing is *'the housing developed to meet the needs of existing and concealed households living within the parish and surrounding parishes which is evidenced by the Housing Needs Survey for the parish, the Housing Waiting List and the Strategic Housing Market Assessment.'* with the supporting text to Key Statement H2 reaffirming that *'the most recent SHMA and Housing Needs Survey and waiting list evidence would always be used in determining if the proposed development meets the identified need'*.
- 6.6 Key Statement H2 reiterates this approach stating that *'planning permission will only be granted for residential development providing it can be demonstrated that it delivers a suitable mix of housing that accords with the projected future household requirements and local need across the Ribble Valley as a whole as evidenced by the Strategic Housing Market Assessment'*.
- 6.7 In ensuring that a suitable proportion of housing within the borough meets local needs, the adopted Core Strategy states that information contained in the LDF evidence base assists in ensuring that this is made possible. The Strategic Housing Market Assessment (SHMA) is the most appropriate way of doing this as it incorporates information from the Housing Needs Surveys and combines this information with future population and household projections. Linking this information with the SHLAA assists in highlighting where the housing to meet local needs is required to be located.
- 6.8 In this respect it is clear that the adopted development plan places a full emphasis on the currently held evidence base being used to determine whether an outstanding housing need still exists. Based on the latest published monitoring position (HLAS March 2020 Appendix 02) the authority is of the opinion that it has granted sufficient consents, for new residential dwellings, to take account of the needs and projections as reflected within the evidence base.
- 6.9 As such, and in the absence of the applicant providing evidence to suggest otherwise, the Local Planning Authority considers that the proposal cannot be supported given there is no

evidenced need to meet the exception criterion contained within DMG2 or DMH3 and as such it cannot be argued that there exists any impetus to grant further consents for residential dwellings, outside the defined settlement boundary, in this location.

Observations/Comments Appellants Case

Matters Relating to Housing Supply

- 7.1 The Inspector will note that prior to the submission of the appeal the authority published its latest housing monitoring position contained within the Housing Land Availability Survey (March 2020) (Appendix 01) and an additional Housing Land - 5 Year Supply Statement (March 2020) (Appendix 02) in respect of the methodologies adopted. Both these documents have been appended separately as part of the submission on behalf of the Local Planning Authority.

Matters Relating to Conflict with the Adopted Development Plan

- 8.1 Turning to Policy DMH3, the requirements of the policy are explicit insofar that residential development in the defined open countryside will be limited to (among other criterion) development 'which meets an identified need'. In this respect the authority contends that the policy does contain a test related to need insofar that need must clearly be evident, evidenced or proven if a proposal is to be considered to be in compliance with this requirement of DMH3.
- 8.2 The appellant further states that they do not consider that *'the proposed development must meet an outstanding housing need'* nor is there any requirement to demonstrate as such. However, it is clear that when engaged, the exception criterion of both Policies DMG2 and DMH3 (among other exceptions) require that residential development outside of defined settlements be restricted to that of local needs housing which meets an identified need. Furthermore Key Statement H2 clearly reaffirms that the currently held evidence base will be used to determine whether an outstanding housing need still exists when determining such applications.
- 8.3 The Local Authority, based on the current evidence base, does not consider that any such outstanding local housing need exists. Therefore, in the absence of any compelling contradictory evidence being put forward by the appellant, the Local Planning Authority cannot reasonably consider that the proposal aligns with or meets the exception criterion of Policies

DMG2 or DMH3 in respect of the proposal being for that of local needs housing that meets an identified need.

- 8.4** The appellant, in relation to the application, also makes reference to a recent appeal (APP/T2350/W/19/3223816) at land off Henthorn Road Clitheroe (Henthorn Decision) in relation to the Local Planning Authority's interpretation an application of Policies DMG2 and DMH3.
- 8.5** Policy DMG2 allows for '*consolidation*' which is defined as development which '*adjoins the main built up area*' of a settlement, with the policy also allowing for '*expansion*' which allows for the '*limited growth of a settlement*'. The authority is mindful of the Henthorn Decision but maintains that DMG2 should be interpreted in its truest sense.
- 8.6** The appellant points to internal conflict within Policy DMG2 in that the policy firstly relates to development 'in' the principal settlements, which is then contradicted by the policy's support of consolidation or expansion which allows for development outside of the current defined settlement limits.
- 8.7** The authority considers that the appellant has wrongfully interpreted the policy in this respect. Policy DMG2 is two-fold in its approach to guiding development. The primary part of the policy DMG2(1) is engaged where development proposals are located 'in' principal and tier 1 settlements with the second part of the policy being engaged when a proposed development is located 'outside' the defined settlement areas or within tier 2 villages.
- 8.8** The policy is clear in this respect insofar that it contains explicit triggers as to when the former or latter criterion are applied and the triggers are purely locational and clearly based on a proposals relationship to defined settlement boundaries and whether, in this case, such a proposal is 'in' or 'outside' a defined settlement.
- 8.9** The adopted Core Strategy defines expansion as '*limited growth of a settlement generally it should be development which is in scale and keeping with the existing urban area*'. The appellant, in this respect, clearly considers that the 'growth of a settlement' cannot be undertaken within a defined settlement boundary and therefore the policy must clearly allow for development outside of defined settlement limits.
- 8.10** The assumption that the growth of a settlement cannot be undertaken within a defined settlement boundary is erroneous. The physical 'growth' of a settlement can be undertaken

within a defined settlement boundary, particularly where such a settlement boundary encompasses or includes land that is yet to be developed, such as a greenfield site.

8.11 In this respect, should a proposal come forward on such land (Principle and Tier 1 settlements), it would both constitute 'expansion' of development (assuming the proposal benefitted such a relationship with existing built form), represent the growth of a settlement and be considered as being 'inside' the defined settlement boundary and a such would align with the requirements of DMG(1).

8.12 In respect of the above it is clear that the policy is supportive of the growth of settlements, but that such growth must be undertaken inside the defined settlement boundaries. An example of this would be Housing Allocation Land (HAL) allocated through the Housing and Economic Development DPD (HED DPD). Whereby defined settlement boundaries are revised to take account of Housing Allocation Land but these HAL sites would not necessary be considered to constitute 'development' that formed part of that settlement. However DMG(1) would be permissive of 'expansion' of existing 'development' into these sites given they are 'in' a defined settlement boundary and would also be representative of the general 'growth' of a settlement.

8.13 Whilst the authority accept that historically a number of housing proposals may have been granted consent that were located outside of the defined settlement limits such decision may have been taken at a time when the Local Planning Authority could not robustly demonstrate a 5 year Housing Land Supply or whereby such supply was marginal and therefore there was a clear impetus to boost supply.

8.14 In respect of the 'Henthorn Decision', the authority notes the appellants reference to the original officer recommendation in respect of the application. However the Inspector is requested to respectfully note that the Henthorn recommendation was made at a time whereby 5 Year Housing Land Supply was considered marginal and as such the boosting of supply was a priority for the Local Planning Authority.

8.15 Notwithstanding the above matters, a number of previous Inspectors decisions (Appended) have also identified conflict with DMG2 where residential development is proposed outside defined settlement boundaries.

For ease of reference for the Inspector these are summarised below:

APP/T2350/W/17/3186969 - LPA Ref: 3/2016/1082: Appendix 03

The Inspector concluded, at Higher Road Longridge, that proposed housing adjacent but outside the defined settlement boundary was *'not in accordance with key Statement DS1 and Policies DMG2 and DMH3 of the CS insofar as they are relevant to the location and supply of housing and the protection of the open countryside'*.

APP/T2350/W/17/3174924 – LPA Ref: 3/2016/1196: Appendix 04

The Inspector stated that *'when development occurs outside settlement boundaries, as defined by the retained proposals map of the former local plan, it is deemed to be in the open countryside and policies DMG2 and DMH3 of the CS apply'* concluding that the proposed residential development *'would be in the open countryside and that the full weight of locational policies applies. The proposal would therefore be contrary to policies DMG2 and DMH3 of the CS and would not be in accordance with the development plan'*.

APP/T2350/W/17/3185445 – LPA Ref: 3/2016/1192: Appendix 05

The inspector stated that (Para.9) *'the appeal site is situated outside of the defined settlement boundary adjacent to the village of Read and it is common ground that it is within the 'countryside'. Policy DMG2 also includes that within the open countryside, development will be required to be in keeping with the character of the landscape and acknowledge the special qualities of the area. Whilst the policy makes provision for development proposals in Tier 1 settlements that should consolidate, expand or round-off development so that it is closely related to the main built up areas, the appeal site in this case is not in the defined settlement boundary.'* The Inspector further concludes (Para.14) *'that the appeal site is situated in the countryside and not within the settlement of Read and Simonstone as defined by the settlement boundary. Consequently, the appeal scheme conflicts with CS Policies DMG2 and DMH3.'*

APP/T2350/W/19/3235162 – LPA Ref: 3/2018/0507: Appendix 06

The Inspector concurred with the Local Authorities application of DMG2 stating that Policy DMG2 *'relates to development outside of the defined settlement areas and requires that development must meet at least one of the listed considerations, including "that the development is for local needs housing which meets an identified need and is secured as such".'*

Further stating that the 'proposal would introduce build development into the open countryside outside of the defined settlement boundaries and is therefore contrary to Key Statements DS1, DS2 and Policies DMG2 and DMH3 of the CS which set out the Council's approach to the location of development'.

APP/T2350/W/18/3202044 – LPA Ref: 3/2017/0857: Appendix 07

The Inspector found that (Para.6) *'The consolidation, expansion or rounding off of development referred to in policy DMG2 applies only to development in the settlements referred to (my italics) and I disagree with the appellant that the wording in Key Statement DS1 'towards' could reasonably mean 'outside'.*

- 8.16** The appellant further argues that DMH3 should in some way be disengaged due to potential conflict with the primary part of Policy DMG(1). The authority considers that DMH3 remains engaged in perpetuity where a site lies within an open countryside designation and therefore cannot be selectively disengaged, in this respect the requirements of the policy can only be met or unmet with policy conflict either being absent or present .
- 8.17** DMH3, in areas of defined open countryside, supports residential development which meets an 'identified local need' with DMG2 also supporting 'local needs housing which meets an identified need' outside of defined settlement boundaries. In this regard it is clear that both policies should be read in concert and in parallel given they seek to limit residential development outside of defined settlement boundaries to that which would meet specific 'exception criterion', with neither being selectively engaged or disengaged where a proposal is located in a defined open countryside location.
- 8.18** A further component of the proposal is its potential conflict with Key Statement DS1 of the Adopted Core Strategy. Key Statement DS1 states that development will need to meet proven local needs, deliver regeneration benefits or satisfy neighbourhood planning legislation. Whilst it is accepted that the proposal will result in the delivery of additional housing provision, this in isolation cannot be reasonably argued as constituting regeneration or that the proposal would deliver any recognised regeneration benefits, particularly given it cannot be argued that the site is in a condition whereby its redevelopment would be considered advantageous given its greenfield nature and relatively well-maintained condition.

Conclusion/Statement of Case

- 9.1** Taking account of the above matters and all material considerations, the authority considers that it has not been demonstrated that the proposal is for that of local needs housing that meets a current identified and evidenced outstanding need as required by Policy DMG2 and DMH3 of the Adopted Core Strategy.
- 9.2** In addition, given there are no recognised or clearly evidenced regeneration benefits associated with the development and given it has been established that the proposal fails to be that which satisfies an identified a local need it is considered that the appeal proposal is in direct conflict with not only Policies DMG2 and DMH3 but also Key Statement DS1 of the Ribble Valley Core Strategy.
- 9.3** It is for the above reasons and having regard to all material matters that the Inspector is respectfully requested to dismiss the appeal.