

Appeal by Gladman Developments Ltd
Land off Henthorn Road,
Clitheroe

Against the Refusal of Planning Permission of
Ribble Valley Brough Council

**“Outline application for up to 110 Dwellings with public open
Space, landscaping and sustainable drainage system (SUDs) and vehicular
access point from Henthorn Road with all matters reserved, except for
access.”**

Rule 6 Statement of Case

Appeal Ref: APP/T2350/W/19/3221189



January 2019

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APPENDICES

Appendix 1 - Justification for an inquiry

1 INTRODUCTION

1.1 Context

- 1.1.1 This Statement of Case (SoC) is submitted by Gladman (the Appellant) and it relates to an appeal against Ribble Valley Borough Council (the Council) to refuse the outline application for:

“Outline planning application for the erection of up to 110 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Henthorn Road. All matters reserved except for means of access.”

- 1.1.2 A draft list of Core Documents that will be referred to during the course of the appeal is appended to the submitted Statement of Common Ground (SoCG). These documents may be added to by the Appellant or Council prior to the commencement of the appeal.
- 1.1.3 The Appellant considers a public inquiry is the most appropriate forum in which to test the appeal proposal. A justification for this request is provided in accordance with the PINs Procedural Guide 2019 (Annex K) at Appendix 1.

1.2 Site and Surroundings

- 1.2.1 The 5.2 ha site lies adjacent to the existing residential development on the edge of Clitheroe. Clitheroe has a population of 14,765 and as identified at para. 2.6 of the Core Strategy is the main administrative centre of the Borough with a range of services and facilities. A residential development of 270 dwellings is, at the time of writing, near completion on the site adjacent to the north east boundary of the proposal site by Taylor Wimpey and Barratt Homes (Reserved Matters application reference: 3/2013/0035). There are also a further 130 dwellings currently being built on the fields opposite the proposed site by Story Homes Ltd (Reserved Matters application reference: 3/2015/0446).
- 1.2.2 A full description of the appeal site and surroundings is set out in the SoCG for agreement with the Council.

1.3 Background

- 1.3.1 The planning application for the proposed development was validated by the Council on the 9th August 2018 (Application ref: 3/2018/0688). The application was supported by a comprehensive suite of technical reports in accordance with the Council's planning application validation requirements, which are set out in the Planning Statement that accompanied the application.
- 1.3.2 The application went before Planning Committee on 1st November 2018 with a recommendation for approval. However, Members elected to defer the decision until the 29th November 2018 committee in order for officers to seek clarification from LCC highways on a few matters. At the 29th
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November 2018 committee, the Planning Committee were advised of LCC Highways comments on the queries Members raised. LCC Highways confirmed that they still raised no objection to the proposal. Despite this, Members resolved to refuse the application. The application was then taken back to committee on the 10th January 2019 to agree the wording of the reasons for refusal. The reasons drafted read:

1. The proposed development would result in an unsustainable form of development within the countryside. Due to the site's location, with a lack of cycling or suitable pedestrian access to the town centre, future residents will be wholly reliant on the car. As such the development is contrary to Key Statements DS2 and DMI2, as well as Policies DMG2 and DMG3, of the Ribble Valley Core Strategy and guidance contained within the National Planning Policy Framework.

2. The proposed development will introduce additional traffic onto the highway network immediately surrounding the site which will result in increased traffic congestion and risk to highway safety, in particular at the key traffic junctions of Henthorn Road, Woone Lane, Eshton Terrace and the railway crossing. The residual cumulative impacts on the road network would be severe and as such the development would be contrary to Key Statements DS2 and DMI2, as well as Policies DMG2 and DMG3, of the Ribble Valley Core Strategy and guidance contained within the National Planning Policy Framework.

- 1.3.3 Given that LCC raised no objections to the proposals, Members were advised verbally at the 10th January 2019 planning committee that the Council had contacted 5 independent highways consultants with a view of defending the proposed reasons for refusal at appeal and that all 5 consultants declined to defend the reasons. Despite this, Members resolved to refuse the application, but only on the basis of reason 1 above, which the Council confirmed by notice on 11th January 2019. The reason for refusal is included at CD2.21.

1.4 Housing Land Supply

- 1.4.1 The Council claims it can demonstrate a 5 year housing land supply. Evidence will be adduced to demonstrate the Council's claimed housing land supply of 6.1 years is incorrect and not founded on reasonable and credible evidence. The Appellant will therefore demonstrate the appeal proposal responds to the urgent requirement to identify new development sites to meet housing needs. In any event demonstrating a five-year housing land supply, is not in itself a reason for refusing planning permission for housing development. A five-year supply of housing is not a ceiling – it is the minimum that needs to be demonstrated at all times (applying paragraph 73 of the NPPF).

2 THE DEVELOPMENT PLAN

2.1 Introduction

- 2.1.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the Development Plan unless material consideration indicate otherwise.
- 2.1.2 The statutory Development Plan comprises:
- Ribble Valley Core Strategy, (2014);
 - The Joint Lancashire Minerals and Waste Development Framework Core Strategy DPD, (2009); and
 - The Joint Lancashire Minerals and Waste Local Plan: Site Allocation and Development Management Policies (2013).
- 2.1.3 A list of the planning policies relevant to the appeal proposal is enclosed in the submitted SoCG for agreement with the Council.

2.2 Weight to be Accorded the Development Plan

- 2.2.1 Applications should be determined in accordance with the Development Plan unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Act). This is confirmed by §2, 12 and 47 of the revised Framework which continues to place importance on the plan-led approach.
- 2.2.2 The NPPF2018 is a material consideration in decision making. It is a material consideration of very significant weight in circumstances as the Council cannot demonstrate a 5 year housing land supply and the tilted balance in paragraph 11 of the revised Framework is engaged.
- 2.2.3 The Appellant asserts that the appeal proposals fully accord with the up to date policies of the adopted Development Plan. However, even if it is concluded that the proposal does not accord with the Development Plan the tilted balance is engaged. It is acknowledged that the tilted balance does not dis-apply the statutory presumption in favour of the Development Plan. Material considerations (such as the revised Framework) can however outweigh any perceived conflict with the Development Plan. With due regard paid to any perceived conflict with the Development Plan, it is the Appellant's case that the perceived adverse impacts of granting permission do not significantly and demonstrably outweigh the considerable benefits (including but not limited to, 110 dwellings with 30% affordable in the context of significant shortfall and under delivery, significant economic benefits including construction spend and increased household expenditure, open space, ecology and biodiversity benefits) of the appeal proposal.
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- 2.2.4 The Council's policies which are most important for determining the appeal are out of date in the absence of a 5 year housing land supply (paragraph 11), this alone triggers the tilted balance in paragraph 11 of the revised Framework.
- 2.2.5 The presumption in favour of sustainable development set out in the revised Framework at paragraph 11, therefore applies, and even if there is a perceived conflict with the Development Plan a determination other than in accordance with the Development Plan is justified.

2.3 Principle of Development

- 2.3.1 The proposed development fully accords with the up to date policies of the adopted Development Plan, specifically Policies DS1 and DMG2. As confirmed in both the 29th November 2018 and the 10th January 2019 committee reports:

5.1.3 Core Strategy Key Statement DS1 states that as a part of the overall apportionment of future housing development in the Borough, Clitheroe is regarded as a principal settlement. Both Key Statement DS1 and DMG2 of the Core Strategy, when taken together, permit development proposals in the principal settlements, including Clitheroe, which accord with the development strategy and consolidate, expand or round-off development so that it is closely related to the main built up area.

This proposal fully accords with these policies.

- 2.3.2 Even if it is considered that the appeal proposals are in conflict with the Development Plan, the Council cannot demonstrate a 5 year supply of deliverable housing sites. The policies most important for determining the appeal (including policies DS1 and DMG2) are therefore out of date and, in accordance with paragraph 11 of the revised Framework, the presumption in favour of sustainable development applies.
- 2.3.3 While the proposed development is compliant with the Development Plan, the weight afforded to those policies which seek to manage the supply of housing should be considerably reduced as a result of the Council's inability to demonstrate a robust five year housing land supply, as discussed above. In this case, paragraph 11 of the Framework is engaged and the proposals should be permitted unless the harm caused significantly and demonstrably outweighs the benefits of the scheme. In light of the above, Gladman contend that limited weight should be attributed to the policies most important to determining the application including policies DS1 and DMG2 of the Ribble Valley Core Strategy.
- 2.3.4 These policies serve to restrict development and frustrate the revised Framework's objective of boosting significantly the supply of housing.

3 OTHER MATERIAL CONSIDERATIONS

3.1 National Planning Policy Framework (2018)

- 3.1.1 The Appellant will demonstrate that, having regard to the proper application of the revised Framework, the following can be said of the appeal proposals.

Sustainable Development

An economic role

- 3.1.2 Evidence will be adduced to demonstrate the beneficial economic impacts of the appeal proposal. Delivery of new market and affordable homes now in Clitheroe is a key contributor that will enable the Council to promote and sustain a strong, responsive and competitive economy.

A social role

- 3.1.3 It will be demonstrated that the appeal proposals will deliver new homes of the right type and mix, at the right place and at the right time to meet market and affordable housing need and in turn will support the Council's growth aspirations. Without a sufficient supply of new homes, the Council cannot meet the needs of present or future generations. It will be demonstrated that the site is located in an accessible and sustainable location close to key services and facilities, and the wider area that will help support the health, social and cultural wellbeing of Ribble Valley.

An environmental role

- 3.1.4 It will be demonstrated that the appeal proposals have no unacceptable adverse effects on environmental considerations. The proposals involve the provision of a significant area of informal and formal public open space, landscaping and ecological mitigation works which together deliver a net gain to biodiversity.

The Presumption in Favour of Sustainable Development

- 3.1.5 It will be demonstrated that the appeal proposals benefit from the presumption in favour of sustainable development. Paragraph 11 of the Framework is clear that decision takers should approve development proposals that accord with an up-to-date development plan without delay.
- 3.1.6 In the event that it is not considered that the proposal accords with the development plan, Gladman will demonstrate that the Council is unable to demonstrate a five year housing land supply. Paragraph 11 d) Footnote 7 of the revised Framework makes it clear that the presumption in favour of sustainable development applies where policies which are most important for determining applications are out of date and that policies are considered to be out of date for applications involving the provision of housing in situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites.
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3.1.7 In both circumstances, it is reasonable to conclude that the presumption in favour of sustainable development is applicable to the appeal proposals.

3.1.8 The appeal proposals will deliver new housing development which will assist Ribble Valley by contributing towards providing the requisite land supply and will also assist in meeting the central government objective of “boosting significantly” the supply of housing whilst also serving to remedy a position of deficit.

3.2 The Emerging Development Plan

3.2.1 Ribble Valley are currently working on a Housing and Economic Development DPD (HED DPD). The intention of this plan is to set out more detailed policies on housing and economy to support the Core Strategy. The HED DPD was submitted to the Secretary of State on the 28th July 2017. Due to numerous delays the hearing sessions have been split between November 2018 –January 2019.

3.2.2 Paragraph 48 of the Framework provides guidance on the weight to be attributed to emerging plans. It allows decision makers to give weight to emerging development plan policies according to their degree of consistency with the framework, the stage of preparation and the extent of unresolved objection to it. There are still considerable unresolved objections to the HED DPD. In accordance with paragraph 48 of the Framework, because of the number of unresolved objections, the HED DPD carries only limited weight. This approach was advocated by Inspector Lewis for the Hammond Ground, Read, Ribble Valley appeal (14th November 2018):

12. Although I have been provided with little specific information, I understand that there are unresolved objections to the relevant policies of the HED DPD and in regards to the proposed allocations. Therefore, having regard to paragraph 48 of the Framework, on the evidence before me, I afford any conflict with the relevant policies of the HED DPD little weight.

3.3 Other Documents

3.3.1 The Appellant may also refer to the following documents:

Supplementary Planning Documents/ Guidance

- Sustainability Appraisal
 - Addressing House Need in Ribble Valley
 - Open Space and Sport and Recreation Provision Topic Paper
 - Settlement Boundary Definition Topic Paper
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Planning Decisions / Appeals

- 3.3.2 The Appellant will refer to other planning decisions/appeal decisions of relevance to the appeal proposal. These will be agreed with the Local Authority and provided as Core Documents.

4 RESPONSE TO THE COUNCIL'S REASONS FOR REFUSAL

4.1 Introduction

- 4.1.1 This section of the Statement of Case sets out the Appellant's position in relation to the Council's Reason for Refusal, provided in CD2.21.

4.2 Reason for Refusal 1:

1. The proposed development would result in an unsustainable form of development within the countryside. Due to the site's location, with a lack of cycling or suitable pedestrian access to the town centre, future residents will be wholly reliant on the car. As such the development is contrary to Key Statements DS2 and DMI2, as well as Policies DMG2 and DMG3, of the Ribble Valley Core Strategy and guidance contained within the National Planning Policy Framework.

- 4.2.1 The appellant will demonstrate that the proposed development represents a sustainable form of development securing net gains across all three strands of sustainable development (economic, social and environmental). There are no technical or environmental impacts that would significantly or demonstrably outweigh the substantial benefits of the proposal and specific policies of the revised Framework and Development Plan do not indicate that development should be restricted. In accordance with paragraph 11 c) of the revised Framework, the proposal should be approved without delay.
- 4.2.2 Evidence will be adduced to demonstrate that the site is located sustainably with access to a range of services and facilities. The appeal site sits immediately adjacent to the settlement boundary of the principle settlement of Clitheroe, in an area where the Council are seeking to extend the settlement boundary through the HED DPD. The appellant will demonstrate that there are alternative sustainable modes of transport such as walking, cycling and public transport and that future residents will not be reliant on the car.
- 4.2.3 There were no objections from the highways authority in relation to the locational sustainability of the site nor the submitted Transport Assessment. Neither did the highways authority raise any concern in relation to the independent third party review of the submitted Transport Assessment nor any queries in relation to the findings of the Inspector for the adjoining site who in approving the adjoining site confirmed that this was an area where it would be expected growth to be directed. Members at the 10th January 2019 planning committee were also advised that the 5 highway consultants that they had contacted had all declined to defend this reason refusal if the application was appealed.
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5 PLANNING CONDITIONS AND SECTION 106 OBLIGATIONS

5.1 Planning Conditions

- 5.1.1 The parties will seek to reach agreement on other planning conditions in advance of the Inquiry. An update will be provided accordingly.

5.2 Section 106 Obligations

- 5.2.1 It is proposed that the obligation will be provided by way of Unilateral Undertaking (UU). This will be issued to the Council for comment in advance of the appeal in order to provide reasonable opportunity for agreement to be reached and in order for a draft UU to be provided to the Inspector 10 days in advance of the Inquiry.
- 5.2.2 The following planning obligations are considered necessary to mitigate or compensate for the effects of the development:
- The provision and management of on-site open space, including a children's play area and SUDs;
 - 30% onsite affordable housing;
 - Public Transport financial contribution;
 - Education financial contribution; and
 - Leisure facilities financial contribution.
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6 THE PLANNING BALANCE AND CONCLUSIONS

6.1 The Planning Balance

- 6.1.1 The appellant will demonstrate that the proposal accords with the Development Plan and therefore in accordance with paragraph 11 c) of the revised Framework the appeal proposals should be approved without delay.
- 6.1.2 In the event that it is considered that the proposal does not accord with the Development Plan and the appeal proposals are considered to constitute a departure from certain policies of the Development Plan, the Appellant will also demonstrate that the policies of the adopted Development Plan most important to determining the appeal are out-of-date by virtue of the Council not being able to demonstrate a 5 year supply of deliverable housing sites and therefore must be accorded limited weight.
- 6.1.3 On the basis that the proposal constitutes sustainable development and the Council does not have the minimum requisite five year land supply, the Appellant submits that the presumption in favour of sustainable development, set out in the revised Framework paragraph 11 d), applies.
- 6.1.4 In addition, a five-year supply of housing is not a ceiling – it is the minimum that needs to be demonstrated at all times (applying paragraph 73 of the NPPF). Therefore, demonstrating a five year supply should not prevent further, sustainable development such as this where there is no identified harm. Consequently, if at the time of the inquiry the Council can demonstrate a five year housing land supply, this should not in itself amount to a reason for dismissing the appeal.
- 6.1.5 The appeal proposal will secure a range of benefits that will be demonstrated in full in evidence. These include, *inter alia*:
- Up to 110 market and affordable dwellings to meet pressing housing needs;
 - 30% affordable housing provision;
 - 15% housing onsite for over 55's
 - Provision of new public open space of a high quality, including a children's play area;
 - Pedestrian improvements on Henthorn Road;
 - A financial contribution towards Public Transport;
 - Economic benefits including construction and operational benefits;
 - Significant areas of additional planting, providing green infrastructure, ecology and wildlife benefits;
 - Provision of a large SUDs attenuation basin;
 - Creation of up to 98 FTE jobs over a 3-year build out period and 107 indirect jobs in associated industries;
 - £700,000 in New Homes Bonus to the Council; and
 - Additional expenditure of around £2.8m annually to support the local economy.
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- 6.1.6 It will be demonstrated that the harm arising in respect of the appeal proposal is no more than might reasonably be anticipated when changing a green field to one of built form.

6.2 Conclusions

- 6.2.1 In accordance with Paragraph 11 of the Framework, it will be demonstrated there are no material adverse impacts arising from the appeal proposals, which would significantly and demonstrably outweigh the benefits the development will deliver. There are no specific policies of the revised Framework which would either preclude or restrict the development and in the circumstances, the Framework directs that planning permission should be granted.
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APPENDIX 1 – JUSTIFICATION FOR AN INQUIRY

With reference to Annex K of The Planning Inspectorate's Procedural Guide for Planning Appeals – England (16 January 2019), the Appellant requests a Public Inquiry for the following reasons:

Need for the Evidence to be tested through Formal Questioning by an Advocate

Matters in relation to planning policy, highways and housing land supply, are contested between the Council and the Appellant. Emerging case law in relation to the interpretation of national policy means detailed legal submissions will be necessary.

Complexity of Issues

The Appellant disputes objections made by the Council in relation to locational sustainability and planning policy will need to be dealt with through evidence adduced by both parties. Detailed scrutiny of the Council's claimed housing land supply is also a matter that will require detailed evidence. As such, it is the view of the Appellant that these matters will require cross examination to establish the extent of the evidence which underpins the Council's claims.

Likely Length of Inquiry

It considered that to address all matters, 4 sitting days will be required. This exceeds the single day usually reserved for a hearing (or even a two day hearing, which are understood to be used only in exceptional circumstances). The Annex therefore suggests that a public inquiry is necessary.

Summary

For the above reasons, the Appellant considers a public inquiry is the only appropriate procedure in this case.
