

CHAIN HOUSE LANE

APPELLANT'S OPENING STATEMENT

1. The appeal proposal seeks outline planning permission for the construction of up to 100 dwellings with all matters reserved apart from access, on a site of approximately 3.6 ha located on greenfield land to the south of Chain House Lane¹.
2. The site is located within a linear ribbon of development which is established along Chain House Lane, with existing residential properties directly to the north, east and west. The north eastern part of the site abuts Church Lane². Access to the site can be served directly from Chain House Lane³. The site benefits from good accessibility to local services and amenities⁴.
3. The Council refused planning permission on 27th June 2019 on 3 grounds. However, the third reason for refusal was removed in September 2019. The two remaining reasons for refusal allege conflict with Policy G3 of the South Ribble Local Plan.
4. This is a redetermination of the appeal following a successful High Court challenge to the original decision dated 13th December 2019 which had dismissed the appeal⁵.
5. The development plan comprises the Central Lancashire Core Strategy (“CS”) adopted in 2012 and the South Ribble Local Plan (“LP”) adopted in 2015⁶. The site is within an area of safeguarded land subject to policy G3 in the LP⁷. As such the land has been identified as suitable for development when needed.
6. The Council’s evidence is that the most important policies for determining the appeal are CS Policy 1 and 4, and LP Policy G3⁸.

¹ SOCG paras 2.1 and 3.1

² SOCG para 3.2

³ SOCG para 3.3

⁴ SOCG para 3.9 and SH 8.24-8.28

⁵ SOCG paras 1.3 and 1.4

⁶ SOCG para 4.2

⁷ SOCG para 4.5

⁸ NI para 7.16

7. The CS covers the three local authorities South Ribble (“SR”), Preston (“PCC”) and Chorley (“CC”) which reflects the close relationship between the three authorities and importantly that the Housing Market Area encompasses the three authorities.
8. Policy 4 of the CS sets out a minimum requirement for each authority area. The minimum requirement reflected the need over the housing market area distributed appropriately between the three authorities. The requirement for SR was a minimum of 417 dwellings per annum.
9. It is common ground that the three authorities undertook a review of the CS housing requirement in 2017 and concluded that the figure remained up to date⁹. This resulted in a Memorandum of Understanding (“MoU1”) which recorded that the authorities had agreed to retain the CS requirements.
10. Provision in SR against the CS requirement has been poor. As at 31st March 2020 there had been under-delivery against this figure of some 1,108 dwellings¹⁰. Essentially the same figure as found in the 2019 SR Housing Land Position Statement (“HLP”)¹¹.
11. It is common ground that calculated against the CS requirement the 5 year housing land requirement is 3,353 and that the Council is unable to identify a 5 year housing land supply¹².
12. Despite the fact that the CS housing requirement was reviewed in 2017 and found to be up to date the Council seeks to calculate its 5 year housing land requirement using local housing need (“LHN”) calculated using the standard method (“SM”). This approach conflicts with clear government policy and guidance¹³. The matter has furthermore been recently and conclusively determined in an appeal into a residential application at Cardwell Farm in Preston which found that CS Policy 4 remained up to date and should be used for calculating 5 year housing land supply¹⁴. The importance of that case to the central issue in this case is identified in the Council’s evidence¹⁵, and the Council has stressed the importance of a consistent approach across the 3 Central Lancashire Authority (“CLA”)

⁹ SOCG para 1.6

¹⁰ SOCG (HS) para 2.4

¹¹ CD 1.20 p9 Table 1 – the figure was 1,110

¹² SOCG (HS) para 3.6 and Table 2

¹³ NPPF para 73 and fn 37 and PPG 68-005

¹⁴ DL para 40

¹⁵ NI 1.14

areas. In the circumstances the Council's continued attempt to rely upon the SM calculation for assessing 5 year housing requirement is unreasonable.

13. The Council's reliance upon the SM calculation is all the more surprising because it has significant ramifications for the development plan. This is because the housing market area comprises the three CLA areas and the distribution of the need across the three areas is a key element of the development plan. Use of the SM would result in a radical change in the distribution of housing need across the area and the relevant development plan policies would consequently be out of date. The previous inspector's failure to recognise this led to the quashing of the previous decision. Furthermore it is the joint position of the 3 CLA (including the Council) that the distribution resulting from application of the SM is at odds with the distribution of people, jobs and services and undermines key principles underpinning the City Deal¹⁶. The position is only exacerbated if a common approach is not taken across the three authority areas.
14. The position is accordingly clear. The development plan housing requirement remains up to date, and should be used for the purposes of calculating housing land supply. In such circumstances the Council is unable to identify a 5 year housing land supply and the first reason for refusal falls away.
15. It is an unusual feature of this case that it is common ground that the tilted balance under NPPF 11(d) applies irrespective of which approach is taken to the calculation of the 5 year housing land requirement. If the CS figure is used the tilted balance applies because of the absence of a 5 year housing land supply. If the SM calculation is used it applies because the consequent radical redistribution of housing across the 3 CLA areas renders policy G3 out of date¹⁷.
16. Although the Council accept the application of the tilted balance, and on their case the fact that policy G3 is out of date, in practice they then disregard both of these considerations. It remains necessary to undertake a proper balancing exercise when the tilted balance applies, and weight can still be given to development plan policies that are out of date. However, the fact that a policy is out of date reduces the weight that should properly be given to it, and the application of the tilted balance inevitably weighs in favour of a

¹⁶ CD 1.9 para 6.7

¹⁷ SOCG para 6.1

proposal. Neither of these factors appears to have been recognised by the Council who continue as if they were not present.

17. The second reason for refusal claims that the proposal would harm the Council's ability to manage the comprehensive development of the area. This contention is without any substance.
18. The appeal site forms part of a wider allocation of safeguarded land designated S3. The S3 area is itself divided by the railway line. The two areas are in reality quite separate because of the railway line and the Council's own evidence recognises that they can be separately developed. The appeal site is within that part of S3 to the west of the railway line. The remainder of this land to the west of the railway line is controlled by Homes England. An illustrative masterplan has been produced which shows how the development of the wider area can be developed and Homes England is satisfied that the proposal does not prejudice its ability to develop the remaining land. In reality a masterplan is not going to alter how the site is accessed or otherwise planned for.
19. The Council is unable to identify a 5 year supply of housing land. This proposal would make a valuable contribution to much needed housing land. There is also a significant need for affordable housing in the area. The site has been identified as safeguarded land. It is safeguarded for development when needed. The land is clearly needed for residential development now.
20. The tilted balance in NPPF 11 applies in this case, irrespective of the position taken with respect to 5 year housing land, and the policies in the development plan most important for determining the application are out of date. The proposal would provide significant benefits in the form of general market housing and affordable housing in an accessible and sustainable location. The development of this site now will not prejudice the longer term development of the wider area. In the circumstances, applying the tilted balance, any adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits when assessed against the development plan and the Framework as a whole.
21. Even if, contrary to both parties case, one were not to apply the tilted balance, the limited harm arising from the proposal is clearly outweighed by the benefits of the proposal, and granting planning permission is justified even if a "flat" balance were to be applied.

22. In all the circumstances we would ask that the appeal be allowed.

VINCENT FRASER QC

16th November 2021
Kings Chambers,
36, Young Street,
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