RE: LAND ADJACENT TO BLAINSCOUGH HALL, COPPULL

CLOSING SUBMISSIONS OF THE APPELLANT

INTRODUCTION

1. The context for this appeal is the national imperative to boost significantly the supply of housing (NPPF 60). There is a recognition from Central Government that the planning system has simply failed to deliver sufficient homes for a protracted period of time and this can no longer be tolerated. The housing crisis (a daily news story) has been expressed most recently in the White Papers *Fixing Our Broken Housing Market* (2017)[1] and *Planning for the Future* (2020)[2].

2. The Government's response has been *inter alia* the requirement for LPA's to plan to meet *as a minimum* their Local Housing Need (LHN) derived using the Standard Method (SM). The LHN figure for Chorley Borough Council (CBC) is 537 d/pa. Applying LHN, CBC have a mere 2.4 to 2.6 year supply. By contrast, CBC are planning to an annualised requirement of just 104 d/pa, resulting in a collapse in the delivery of market and affordable housing.

3. The Appeal Site (A/S) was designated as Safeguarded Land since 1997 because the LPA accepted its development would constitute sustainable development. Their position has not changed in the intervening 25 years. The LPA do not allege any tangible land use planning harm from the

[1] CD 5.9

[2] CD 5.11

development of the site. On the contrary, it is agreed[3] that the site comprises a sustainable location for housing development, with no technical constraints or objections from statutory consultees.

4. This is a proposal which delivers the significant benefits of more market and affordable homes, with substantial economic benefits on an accessible site adjacent to a wide range of facilities in Coppull, without any land use planning harm (beyond the inevitable impact of placing housing on a greenfield site specifically identified for housing development). This is the form of sustainable development which national policy strongly supports.

5. Indeed, it is telling that professional Officers from the LPA do not support the Council's position, leaving Cllr Wilson (PW) to defend the decision.[4] Significant weight should therefore attach to the consensus of professional evidence that planning permission should be granted.

THE APPEAL

6. This appeal concerns an outline application for up to 123 dwellings (of which 30% or 37 dwellings will be affordable homes), structural planting and landscaping, public open space and vehicular access points from Grange Drive.[5] All matters are reserved save for access[6]. A full description of the development is contained in the DAS (CD 1.4) and SoCG (2.7). The application does not comprise EIA development.

[3] SoCG at 4.5 and 4.6

[4] XX of PW

[5] SoCG at 2.11

[6] Access means the points of access and does include the internal road layout for the purposes of this appeal, which is a reserved matter.

7. The application was refused planning permission, in a decision notice dated 13th April 2021 (CD 3.1) for 4 reasons:

(i) Development of Safeguarded Land (SL), contrary to Policy BNE 3.6 CLP (2012-2026);
(ii) Insufficient information on GCN's, contrary to BNE 9 CLP;
(iii) Lack of a comprehensive approach to the redevelopment of site BNE 3.6, contrary to policies BNE 3.6, ST 1 CLP and Policy 17 JCS;
(iv) Insufficient evidence on highway safety, contrary to BNE 1(d) CLP.

8. The Appellant has never considered RFR 2-4 to be properly arguable. Such issues could and should have been agreed earlier, had the LPA engaged meaningfully in the application process, prior to refusal. It is, however, now agreed that all matters in RFR 2, RFR 3 and RFR 4 have been addressed through the submission of additional information (see SoCG at 2.3). Further, topic-specific SoCG's have been agreed with: (i) the LPA in respect of Ecology; and (ii) Lancashire County Council (the LHA) in respect of Highways. There are no outstanding issues.

9. Accordingly, there is a single RFR, which concerns the site's designation as safeguarded land (RFR 1).

MAIN ISSUES

10. The Main Issues reflect the reasons for refusal:

(i) Does the proposal comply with the Development Plan, given the site's location on Safeguarded Land?
(ii) Are the policies of the Development Plan up to date and consistent with the NPPF, such that weight can be attached to them?
(iii) What are the benefits of the development?

(iv) What (if anything) is the adverse impact of the proposed development?

(v) **Whether, on balance, the proposal comprises sustainable development because the adverse impacts of the proposal significantly and demonstrably outweigh the benefits of the proposal (the Appellant relies on the application of the tilted balance);** and/or

(vi) **Whether, on balance, material considerations outweigh the conflict with the development plan?**

11. In addressing such Main Issues, the 4 Main Issues set out by the Inspector will be addressed.

12. The Main Issues fall to be determined in accordance with the development plan unless material considerations indicate otherwise (s.38(6) P&CPA 2004).

MATTERS FOR DETERMINATION

13. The Appeal seeks consent for two matters:

(i) The detail of the points of access;

(ii) The principle of development.

THE POINTS OF ACCESS

14. The detail of the access is not in issue.

15. Local residents raised concerns on the application about the proposed access. Lancashire County Council (LCC) took them into account and specifically required an addendum to the TA comprising *inter alia*: (i) junction capacity assessments for Preston Road/Spendmore Lane and Spendmore Lane/Grange Drive; and (ii) a review of road safety on

Spendmore Lane; (iii) a mitigation scheme for Spendmore Lane; and (iv) a review of walking routes and suggested improvements. There has been no reference (let alone criticism) of such information. Fully aware of the concerns of local residents, there is no objection from LCC (as LHA), Officers of CBC or the Planning Committee. **This is a matter of common ground (see SoCG(H)). Significant weight should be given to this consensus of professional evidence**.

THE PRINCIPLE OF DEVELOPMENT

16. It follows that the sole contested issue concerns the principle of development. In the light of the XX of PW, there is no remaining issue on the principle of development.

17. The site was designated as SL in 1997 in the CLP (1991-2006), applying PPG 2: Green Belt (PW at 3.9). It was designated to meet longer-term development needs i.e. needs after 2006. It is agreed that the designation of the site as SL meant that the LPA considered the site to be:

- "*genuinely capable of development when needed*"[7]; and
- "*an efficient use of land, well integrated with existing development, and well related to public transport and other existing and planned infrastructure, so promoting sustainable development*".[8]

18. PW confirmed that:

(i) There has been no material change in national planning policy on Green Belts in NPPF (2012) and (2018). Rather, there has been

[7] PPG 2 Annex 2 para B2

[8] *ibid* para B3

consistency in national policy on such points (PW at 3.5 and 3.6); and

(ii) The Council's position has never changed in the intervening 25 years. The site has been designated as SL in the CLP (2003) and CLP (2015). The Council consider the development of the site to be capable of delivering sustainable development.

19. Indeed, the SoCG(P) expressly records that:

- The site is "*a sustainable location for new housing development*" (4.5);
- There is no technical objection to the proposal (4.6);
- There is no objection from any statutory consulate (4.6);
- There is no objection on the grounds of environmental impact (4.6); and
- Development on the site is capable of delivering a Biodiversity Net Gain (see SoCG(E) at 4.1).

20. It is agreed that the emerging Central Lancashire Local Plan (eCLLP) will cover the period 2021-2036 (SoCG(P) at 3.8). CBC have resolved to allocate the site in this period (see Issues and Options version CD 6.5). As the Plan period has commenced, it follows that the LPA endorse the principle of development on the site *now* (i.e. from 2021 onwards).

21. **The Appellant therefore submits that there is no technical or tangible objection to the principle of development. The LPA agree (XX of PW)**.

22. PW agreed that there were only 3 restrictions to the development of SL:

(a) A temporal restriction (PPG 2 B5);
(b) A requirement for comprehensive development (B5);
(c) A procedural requirement for a Local Plan review (B6).

(i) Comprehensive Development:

23. RFR 3 has been withdrawn (*supra*). The requirement for comprehensive development has been addressed.

(ii) Timing – The Temporal Restriction:

24. The CLP (2012-2026) expires in March 2026. It is agreed there must be continuity in the plan-led system. Accordingly, a new Plan must be in place a few years before 2026, to allow applications to be made on allocates sites, such that housing delivery can take place from 2026. The CL LPA's LDS states the CLLP will be adopted by Nov/Dec 2023 (CD 6.6).

25. PW accepted that both (i) the allocation of the site and (ii) this outline application, seek to determine the principle of development.

26. In XX, PW agreed that CBC had resolved: (i) to adopt a new Plan by Q4 2023 (see the LDS); and (ii) to allocate this site (2021-2036). **The development of this site would, therefore, be acceptable to this LPA in Nov/Dec 2023**.

27. If the appeal is successful, PW agreed consent could be granted in Q1 2022. The Appellant's delivery schedule is agreed (MS(P) at 4.18). **It is unlikely there would be housing completions on the site before Q4 2023**. First completions would be March 2024.

28. In XX, PW conceded that there was no material harm arising out of any timing issue. Indeed, on examination, there is no timing issue at all. **PW therefore conceded that there was no timing issue. On the evidence, this is the only rational conclusion to reach**.

(iii) Procedural Restriction:

29. In XX, PW confirmed that he had 3 concerns arising out of the procedural restriction (and no more), which afford weight to conflict with BNE 3.6:

(a) A concern that applications/appeals could be considered in isolation (PW at 3.1);
(b) A concern that the grant of consent could undermine the plan–led process (PW at 3.1 and 3.33);
(c) A concern that a consent now would increase pressure on GB releases through the Plan process (PW at 3.1 and 3.34/3.35).

(a) Decisions Taken in Isolation

30. Whilst the LPA have asked for a number of schemes to be called-in (and the SoS has not responded), the LPA have not asked for any appeals to be conjoined. PW conceded that, should this have happened, there would be no conceivable concern. This option is available to the LPA in respect of future applications (where applications could be considered on the same Agenda) and in respect of any future appeals. There is, therefore, no issue.

31. Further or alternatively, **PW conceded that once a decision is taken, it becomes a material consideration in the determination of any and all subsequent decisions. He therefore conceded that any cumulative impact can be taken fully into account**. Further, he conceded that he did not raise any issue of cumulative impact at all (save the generic concern over release of GB sites – see below).

32. There is, therefore, no rational basis for a concern over decisions being taken in isolation.

(b) Harm to the Plan-led System

33. It is common ground that there is no arguable harm to any emerging Coppull NDP. There is no such Plan. The NDP would need to await the adoption of the eCLPP, which would set the housing requirement for any designated NDP area (NPPF 68). The LPA agrees there is no arguable prematurity point (cf. Cllr Holgate).

34. PW claims the eCLLP could be undermined in two respects (PW at 3.33):

- The approach to establishing future housing requirements ("scale of housing");
- The distribution of such housing ("location of housing").

35. The NPPF expressly considers the circumstances in which the plan-making process may be undermined by decisions pre-determining the scale, location and phasing of development that is central to the emerging plan (see NPPF 49). PW concedes that his concerns are "expressly captured" by NPPF 49(a) which addresses the scale of housing and the location of housing. PW's claim that this is not a "prematurity point" is therefore flawed. These are issues expressly caught by NPPF 49.

36. PW accepts that the eCLLP is not an "advanced stage". NPPF 49(b) is therefore not met. The Plan has not yet been submitted for examination and the conditions of NPPF 50 are not met. Indeed, it is expressly conceded that there is no prematurity point (PW at 3.1 and in XX). Accordingly, whether or not the scale or location of development is predetermined, there is no arguable conflict with policy at all. Regrettably, PW repeatedly referred to the application as being "premature" (echoed by the Mayor and Sir Lyndsay Hoyle MP). That position is unarguable.

37. Further or alternatively, there is no substance in the point that the eCLLP would be undermined.

38. Firstly, **PW does not allege that the development in isolation would be so substantial as to undermine the Plan**. This is a proposal for a mere 123 homes (only 86 of which would be market homes), when the eCLLP plans for 15,495 homes (2021-2036) as a minimum (CD 6.5 at 3.6). That is 0.79%. In the absence of a cumulative point (which has been conceded), there is no arguable undermining of the Plan at all.

39. Secondly, **PW conceded that the scale of housing development would not (in fact) be predetermined at all**. The process to be followed by the HMA LPA's is set out in NPPF 61. LHN must be applied unless "exceptional circumstances" can be demonstrated. This is the approach of the draft Plan (Issues and Options CD 6.5 at 3.4-3.6). Accordingly, **PW conceded that a decision on this appeal would have "*no impact*" on CBC's future housing requirement at all**.

40. Thirdly, **this application does not predetermine decisions about the location of new housing development**. This site has been specifically and deliberately designated to meet the need for new housing (*supra*). Save for the requirement for a Local Plan review, the LPA accept that its development would be sustainable development (XX of PW). Indeed, it is agreed that there are a limited number of suitable housing sites in Chorley outside the Green Belt and such sites are safeguarded land (PW at 3.34). That is not a surprise; it is a Plan-led outcome (*supra*). It is inevitable that SL sites will be required in the Plan period (2021-2026), as specifically conceived by previous CLP's. Indeed, PW conceded expressly that there was a "*high probability*" that SL sites would have to be allocated. Currently, all of the SL sites are proposed to be allocated (XX of PW) and no land is proposed to be designated as SL (CD 6.5 at 8.24). Given the principle of development on this site is agreed (save for a Local Plan review), it is inevitable (on the basis of the evidence before this Inquiry) that this site will

be allocated in the next Plan. PW conceded that he had "no evidence" to explain (given agreement on the principle of development): (i) why the site should not be allocated in the eCLLP; and/or (ii) why the site might not be allocated. On that (agreed) basis, **there is no conceivable undermining of the Plan at all**.

41. Indeed, the LPAs have already had two call for sites exercises. 500 sites have been submitted and a further 200 have been promoted by the Councils (CD 6.5 at 8.12 and 8.13). All of those sites have been through the SHELAA (*ibid*). Elected Members and Parish Councils have been consulted (8.22). There has been no objection from Coppull PC, who support the allocation of this site because it is safeguarded land (XX of PW). Further, there has been a robust consultation process in the determination of this application and appeal. The scrutiny given to this appeal far outweighs any consideration to be given to an allocation through an EiP process. The result of such consultation and appraisal of the application and the call for sites (and SHELAA) process is that the principle of development is acceptable and the site should be allocated (in the period 2021-2026). Whilst the eCLLP can be afforded limited weight, in the absence of (literally) any evidence to the contrary, there is no arguable undermining of the emerging Plan. It is a baseless assertion unconstrained by the agreed evidence.

42. Notwithstanding such concessions, IP asserts that the housing requirement for CBC has not been fixed. That is correct (XX of MS). However, **there is no evidence <u>at all</u> that there are exceptional circumstances which will reduce the LHN figure in CBC from 579 d/pa[9] to such a level that no safeguarded land will be required. That contention is irrational, as this site is acceptable in principle if considered through a review**. There is

[9] This is the Plan figure – see CD 6.5 at 3.5. The same point applies even if 537 d/pa is used as the basis of the Plan.

no basis for arguing that the CBC LHN should be reduced so as to exclude acceptable sites. That proposition is absurd.

43. If (which is not accepted) this is not a prematurity point, there is no rational evidential basis on which it can be concluded that there is any undermining of the emerging Plan. This is not a consideration to which any material weight can attach. There is, therefore, no merit in the *de facto* moratorium on the development of SL.

(c) Harm to the Green Belt

44. There can be no doubt that this concern lies at the heart of the LPA's objection (and those of local residents and representatives). It is equally clear that this site does not lie in the Green Belt. If consent is grant, there would be no direct impact to the Green Belt at all.

45. PW's concern is that the grant of consent would lead to the release of GB sites through the next Plan (PW at 3.35). That concern is misplaced and has been expressly conceded by PW.

46. It is agreed that **the next Plan period is 2021-2036** (SoCG(P) at 3.8). This is explained further in the Issues and Options version (CD 6.5 at para 16, (301, 3.4 and 3.6). The central fact is not referenced anywhere in PW's evidence and explains the basis for this misplaced concern. We are already in the next Plan period (as PW conceded).

47. PW agreed that the LPA must (in essence) through the Plan process:
    (i) Resolve its housing requirement (see NPPF 61, 64, 11 and PPG);
    (ii) Establish its deliverable supply (inside and outside the Green Belt);
    (iii) If there is a shortfall against the housing requirement, consider whether there are exceptional circumstances (NPPF 140) for the release of Green Belt sites (NPPF 140).

48. PW conceded that this site (as SL) *already* forms part of the LPA's deliverable supply to meet identified housing needs in the next Plan period. This will not change if consent is granted.

49. In that agreed context, PW conceded that (whatever the base date of the Plan), the grant of consent means the difference (for Plan preparation) between:

(i) The site being **an allocation *with planning permission*** in the non-Green Belt housing supply: or

(ii) The site being **an allocation *without planning permission*** in the non-Green Belt supply.

50. Either way, **PW conceded (rightly) that the site will count towards the LPA's forward supply**. Whether this site has planning permission or not does not affect a judgment on exceptional circumstances and GB release because (either way) it would count in the non-Green Belt supply.

51. In the light of such concessions, **PW finally conceded that: "*There was no issue regarding Green Belt release*"**. This is the only rational conclusion to reach, based on the agreed evidence.

52. Finally, faith in the Pled-led system cuts both ways (as Appeal decisions recognise). The public (those who seek a new or affordable home) lose faith is the planning system repeatedly fails to deliver the homes which people need, in the right locations, when they need them. Regrettably, those disenfranchised without a home rarely (if ever) make appearances at Public Inquiries.

53. **It follows that the LPA's central allegation of land use planning harm has evaporated on examination. There is no remaining concern about the development of the site now. The principle of development is (unanswerably) acceptable.**

THE DEVELOPMENT PLAN

54. So far as relevant, the statutory development plan comprises:

- The Central Lancs Joint Core Strategy (JCS), adopted July 2012 (CD 6.1); and
- The Chorley Local Plan (2012-2026) - Site Allocations and Development Management Policies DPD - adopted 21st July 2015 (CLP).

55. Art 35(1) DMPO 2015 requires the RFR to be full. It is agreed that the proposal complies with the JCS (especially Policies, 1, 4 and 7). Conflict is alleged solely with policy BNE 3.6 CLP.

56. It is common ground that the proposal conflicts with policy BNE 3.6, which is consistent with NPPF (143). It is, therefore, necessary to understand whether the development plan is up to date and consistent with the NPPF.

57. The Appellant submits that BNE 3 is out of date and inconsistent with the NPPF for 2 reasons (MS at 6.53):

(i) The SL policy is based on an out of date and constrained housing requirement derived from a revoked RSS and applied without further analysis in the CLCS and CLP;
(ii) CBC cannot demonstrate a 5YHLS.

58. For both reasons, the tilted balance is engaged (NPPF 11(d)(i)).

A. POLICY BNE 3 IS OUT OF DATE

59. BNE 3 is out of date because it is derived from an out of date housing requirement. In the Richborough Estates case (CD 9.21), the Supreme Court held *inter alia*:

> *63. … **He was clearly entitled to conclude that the weight to be given to the restrictive policies was reduced to the extent that they derived from "settlement boundaries that in turn reflect out-of-date housing requirements**" …*

60. Applying that dicta in Chorley, Inspector Hayden concluded in August 2020 (Second Pear Tree Lane Appeal (PTL2) CD 9.1):

> *Case law[10] has confirmed that **settlement boundaries may be out-of-date to the extent that they derive from out-of-date housing requirements, constraining the ability to meet housing need**. That is evidently the case here...*

61. This is not an issue which PW addressed in his written or oral evidence at all (save for the points raised in XX), despite it being highly material to the outcome of this Appeal.

Background to the JCS and CLP[11]

62. **The RSS for the North West** was based on the PPS 3: Housing methodology (see PPS 3 para 33). It was based on the 2003 household

[10] At footnote 34 the Inspector referred to para 63 of the SC decision in ***Richborough Estates*** (*supra*)

[11] This issue is set out comprehensively in the Proof of Evidence of Nick Ireland (to the CHL2 Inquiry) at CD 6.33 at 5.38 *et seq* and MS(HLS) at 5.22 *et seq*

projections, which were based on demographic evidence from 1998-2003. The 2003 HHP's were then manually re-distributed across the North West (and Central Lancs) in accordance with the RSS spatial strategy.

63. The 2003 HHP's were (MS (HLS) Table 4 p.21):

- **Chorley - 573 d/pa;**
- Preston - 401 d/pa;
- South Ribble - 458 d/pa;
- **Total - 1432 d/pa.**

64. The RSS housing requirement (2003-2021) was:

- **Chorley - 417 d/pa;**
- Preston - 507 d/pa;
- South Ribble - 417 d/pa;
- **Total - 1341 d/pa.**

65. It is unanswerable that:

(i) **The CBC housing requirement was heavily constrained** (-156 d/pa and 2,808[12] fewer homes over the Plan period); and

(ii) **The Central Lancs HMA housing requirement was heavily constrained** (-91 d/pa and 1,638 homes over the Plan period).

66. **The Joint Core Strategy** was required to be in general conformity with the RS.[13] The JCS was submitted for EiP in March 2011 with a requirement 80% of RS. This was found not to be sound and the EiP Inspector *required*

[12] (573d/pa x 18 yrs) – 417d/pa x 18 yrs) = 2,808

[13] The Plan was adopted in 2012, prior to the revocation of the RSS in 2013 and the amendment to s.20P&CPA 2004.

the JCS to "adopt" the RS housing requirement without further analysis (see MM 1 and IR 10, 11, 47 and 48 CD 6.19). **It is agreed that the minimum housing requirement in Policy 4 is based *solely* on the RSS for the NW, without further analysis** (XX of PW).

67. The LPA submit that because the Plan was adopted *after* the publication of the NPPF, it significantly boosted the supply of housing (as the Inspector concluded at IR 49 CD 6.19). However, it must be noted that the IR is dated 7th June 2012. It therefore pre-dated the decisions in ***Hunston*** (CD 9.14) and ***Gallagher*** (CD 9.15), in which it was held (30th April 2014):

> *97. However, that fails to acknowledge **the major policy changes in relation to housing supply brought into play by the NPPF**. As I have emphasised, in terms of housing strategy, unlike its predecessor (which required a balancing exercise involving all material considerations, including need, demand and relevant policy factors), **the NPPF requires plan-makers to focus on full objectively assessed need for housing, and to meet that need unless (and only to the extent that) other policy factors within the NPPF dictate otherwise**. That, too, requires a balancing exercise – to see whether other policy factors significantly and demonstrably outweigh the benefits of such housing provision – but **that is a very different exercise from that required pre-NPPF. The change of emphasis in the NPPF clearly intended that paragraph 47 should, on occasions, yield different results from earlier policy scheme; and it is clear that it may do so**.*
>
> *98. Where **housing data survive from an earlier regional strategy exercise, they can of course be used in the exercise of making a local plan now** – paragraph 218 of the NPPF makes that clear – but where, as in this case, the plan-maker uses a policy on figure from an earlier regional strategy, even as a starting point, **he can only do so with extreme caution – because of the radical policy change in respect of housing provision effected by the NPPF** …in my judgment, in his approach, he failed to acknowledge the new, NPPF world, with its greater policy emphasis on housing provision; and its approach to start with full objectively assessed housing need and then proceed to determine whether other NPPF policies require that, in a particular area, less than the housing needed be provided. **The WM RSS Phase 2 Revision Panel did not, of course, adopt that approach**. Nor did the guidance provided by the Secretary of State on the revocation of regional strategies in 2010 (see paragraph 71 above) take the new policy into account. Both were pre-March 2012, when the NPPF was published.*

99. The Inspector did not acknowledge, or take into account, that change. I accept that the Inspector might have taken that change into account in a number of ways. ***However, in one way or another, he was required to assess, fully and objectively, the housing need in the area. In the event, he made no attempt to do so. Mr Dove conceded – as he had to do – that neither the SLP nor the Inspector provided any full and objective assessment of housing need. Nor is there any evidence that the WM RSS Phase 2 Revision Panel made such an assessment, either: they had evidence of need before them, but there is no evidence that, as required by the NPPF, they assessed the full and objective housing need before considering constraints on meeting that need. Indeed, the evidence is that they went straight to policy on figures for the region in a conventional planning balancing exercise, with all material factors in play – as they were entitled to do under the pre-NPPF regime – and then proceeded to carve up that policy on requirement between the various areas within the region. Even as a surrogate, that did not comply with the NPPF requirements, properly construed****. The further projections and 2009 SHMA did nothing to assist in this regard.*

68. It is agreed that the EiP Inspector found the housing requirement to be sound (XX of MS). However, that conclusion must be considered in the light of this judgment (endorsed by the Court of Appeal). The constrained housing requirement for Chorley/Central Lancs is exactly the sort constrained RS housing requirement which cannot be considered (even as a proxy) to comprise an objective assessment of housing need. In the light of the relevant caselaw, it cannot be concluded that the RS/JCS housing requirement significantly boosted the supply of housing (in accordance with the NPPF).

69. **The Chorley Local Plan** simply rolled forward the RS/JCS housing requirement. This is lawfully permitted (as it is a Part 2 Plan) but it does not mean that the adopted figure is thereby upto date and/or consistent with the NPPF (see ***Gladman v Wokingham BC*** [2014] EWHC 2320 (Admin) paras 44-50). The CLP applies the JCS housing requirement of 417 d/pa, to derive a residual requirement in the remaining Plan period of 6,834 (see CD 6.2 at 5.9). The housing allocations (policy HS 1) meet the RS/JCS housing requirement.

70. **It is, therefore, agreed (unequivocally) that the CLP was adopted exclusively on the basis of the RS/JCS housing requirement (XX of PW)**.

71. It is in this context that CBC considered SL: (i) a considerable amount of SL was allocated (PW at 3.12); and (ii) the residue is now to be allocated in the eCLLP (*supra*). The CLP therefore has 4 areas: (a) the urban areas, (b) safeguarded land (policy BNE 3), (c) Green Belt (policy BNE 5), and (d) Other Open Countryside (Policy BNE 2). The purpose of the settlement boundaries is to define the interface/boundary between the urban area and safeguarded land (or Green Belt). It is agreed that the settlement boundaries have two purposes:

(i) To define an area inside of which housing is in principle acceptable to meet the requirements of the RS/JCS (the urban area); and

(ii) To define an area outside of which housing is in principle restricted because it is not required at this time to meet the requirements of RS/JCS (SL/GB/OOC).

72. PW agreed that BNE 3.6 *Blainscough Hall* prevents development (pending a review of the CLP) because it was not required to meet the housing requirements of the RS/JCS. **PW therefore accepted that *the effect* of the SL and GB policies is to confine development to a restricted area planned to meet the constrained housing requirement of the RS/JCS**.

73. It is unanswerable that the RS/JCS housing requirement is out of date and inconsistent with the minimum LHN figure in the NPPF (2018). As PW conceded, it is:

- Based on demographic evidence and HHP's which are significantly out of date (1998-2003);
- Based on a PPS3 methodology which embodies constraints and cannot lawfully be used as a proxy for an OAN or the LHN (***Gallagher*** supra);
- Based on a PPS 3 methodology which is significantly different from the NPPF (2012) and NPPF (2018) which were *intended* to be different and to achieve different results (see the White Papers *supra*);
- Based on a constrained RS figure which manually re-distributed housing away from Chorley and Central Lancs;
- Based on a Regional Spatial Strategy which was revoked almost a decade ago (2013);
- Based on a PPS which has been revoked and replaced by an NPPF (2012), which itself has been revoked and replaced;
- Based on an RS Plan period (2003-2021) which is time-expired.

74. Whether a policy is "*out of date*" or "*inconsistent with the NPPF*" are separate but related concepts. If a policy is "*out of date*", the tilted balance is engaged (NPPF 11(d)). If a policy is "*inconsistent*", due weight should be given to it, depending on its degree of consistency with the NPPF (NPPF 219).

(i) Whether BNE 3 is "Inconsistent" with the NPPF:

75. **It is agreed that BNE 3.6 is inconsistent with the NPPF** (XX of PW).

76. PW conceded that the RS/JCS housing requirement is inconsistent with the LHN methodology and housing requirement. He accepted the difference is "*significant*" (417 d/pa cf 537 d/pa). He agreed that the area of safeguarded land is based on an inconsistent housing requirement. **He therefore conceded that BNE 3.6 is inconsistent with the NPPF (2021)**. He conceded that this was the case regardless of whether there is a 5YHLS.

77. The inconsistency is significant. **It follows, applying NPPF 219, that BNE 3.6 must be afforded significantly reduced weight** (whether in the application of the flat or tilted balance). Only limited weight can attach to the conflict with BNE 3.6. This is not an issue/concession which PW's evidence addresses at all.

(ii) Whether Policy BNE 3.6 is out of date

78. PW did not accept *initially* that Policy BNE 3.6 is out of date. He conceded that *inter alia*:

(i) Iceni had concluded that LHN should form the basis of the HMA housing requirement and that Policy 4 was out of date;
(ii) The 3 LPA's had concluded expressly that Policy 4 was out of date in MOU 2 (CD 6.30 at 2.4);
(iii) The LPA's evidence to the PTL2 Inquiry had stated that Policy 4 was out of date;
(iv) Inspector Hayden had concluded that Safeguarded Land boundaries had been based on the Policy 4 housing requirement which is now out of date (CD 9.1 DL 48).

79. PW's *sole* point was that there had been a review in Oct 2017. However, even looked at uncritically, the review in Oct 2017 cannot serve to make the out of date RS/JCS housing requirement up to date in the light of the NPPF (2018):

(i) The review concludes with MOU 1 in Oct 2017. It significantly pre-dates NPPF (2018);
(ii) MOU 1 states that it will be reviewed every 3 years (CD 6.9 at 7.1);
(iii) MOU 1 states that it will be reviewed when new evidence emerges which renders the MOU out of date (*ibid*);

(iv) The introduction of an intentionally different standard method is "*new evidence*" which renders MOU 1 out of date;

(v) The conclusion of the subsequent review[14] (comprising the CLHS (2020) and MOU 2) concluded that MOU 1 was out of date and LHN should be applied;

(vi) MOU 1 does not change any of the above conclusions: (a) the demographic evidence is still out of date; (b) PPS 3 still cannot be a proxy for an OAN; (c) PPS 3 and the RS have still been revoked; (d) the RS is still time-expired (etc);

(vii) **The review does not, therefore, change the fundamental conclusion that the area of SL was based on a constrained housing requirement which is agreed to be inconsistent with the up to date LHN need in extant national policy**.

80. Moreover, the review is relevant to NPPF 74 and fn 39, which refer to a review in the context of the calculation of HLS only. The sole consequence of the review relates to the calculation of 5YHLS (as PW accepted). The operation of NPPF 74 and fn 39 does not (and cannot) apply more broadly to a planning judgment on whether policy BNE 3.6 is out of date. That planning judgment is not constrained by NPPF 74 and fn 39. It follows that the MOU 1 review process does not support the conclusion that policy BNE 3.6 is up to date (for the purposes of NPPF 11(d)(i)).

81. **Indeed, PW ultimately conceded that, regardless of whether there has been a review (for the purposes of a 5YHLS calculation), it doesn't change the conclusion that BNE 3 is out of date.**

82. **It follows (on that agreed basis) that:**

[14] PW referred to this process as a review

(i) The tilted balance is engaged; and

(ii) The conflict with Policy BNE 3.6 must be afforded significantly reduced weight in the application of the tilted balance;

(iii) The conflict with Policy BNE 3.6 must be afforded significantly reduced weight in the application of the statutory test (s.38(6)).

83. As policy BNE 3.6 is agreed to be out of date and inconsistent with the NPPF, the conflict with it can only be afforded limited weight. Further, there are no adverse land use planning impacts which flow from any such policy conflict. There is no prejudice to the plan-led system and no additional pressure created on the Green Belt.

B. HOUSING LAND SUPPLY

84. Further or alternatively, the Appellant submits the LPA do not have a 5YHLS. There are 3 contested issues:

(i) Whether Policy 4 or Local Housing Need (LHN) derived using the Standard Method (SM) should form the basis of the 5YHLS calculation;

(ii) Whether the annual housing requirement should be significantly reduced to take account of "oversupply[15]" in the plan period;

(iii) The deliverable supply - neither Party considers this difference to be material and/or to require determination. The 5YHLS can appropriately be reported as a range between 1,377-1,504.

85. There is no scenario in which an oversupply discount is applied to LHN, as it is rebased annually. **It is common ground that the LPA must win on**

[15] It is not accepted that this is a correct use of the term but it has been applied as a shorthand by the Parties.

both issues (i) and (ii) to demonstrate anything more than a 3.5 year supply (XX of PW).

86. The outcomes are agreed (SoCG HLS):

- If you apply LHN - there is a **2.4 to 2.6** year supply;
- If you apply Policy 4 – there is a **3.1to 3.4** year supply;
- If you apply Policy 4 with an oversupply discount – **12.6 to 13.8** yrs;

(i) The Basis of the 5YHLS Calculation

87. These submissions address 2 points:

(i) Whether the Inspector can exercise a planning judgment on the basis of the 5YHLS calculation, in the light of NPPF 74 and fn 37;
(ii) If so: how that planning judgment should be exercised.

88. The first point is not contested. The second point is.

(a) A Matter of Planning Judgment:

89. The application of NPPF 74 and fn 39, together with the associated PPG, is agreed (XX of MS). It has never been in dispute (see MS(HLS) at 4.8). It provides that Policy 4(a) should be used as the basis of the 5YHLS calculation because the parties agree there has been a review, for the purposes of fn 39. It is, however, agreed that this is not the end of the matter (XX of MS). **The Inspector is entitled to exercise a planning judgment departing from the policy/guidance provided clear reasons are given.** That proposition is agreed.

90. Firstly, **neither the NPPF nor the PPG represent comprehensive or complete policy/guidance which address <u>all</u> the circumstances in which a planning judgment is required** e.g. nowhere does it address where settlement boundaries may be out of date (EiC of MS).

91. Secondly, **it is agreed that neither the NPPF nor the PPG *preclude* changes in circumstances since October 2017 being taken into consideration in deciding whether Policy 4 is out of date**. On the contrary, it is agreed that the significant changes brought in by the NPPF (2018) and the new standard method are relevant (XX of PW).

92. Thirdly, **the Planning Court have been clear that planning policies can become out of date as a result of events which have happened since adoption, such as a change in national policy**, or for some other reason such as the consequences on the ground of such a change. Decision makers must reach a decision, in the light of such changes in circumstances, on whether policies are out of date, as a matter of fact and judgment (per Lindblom J in ***Bloor Homes*** paragraph 45 CD 9.16). This judgment applies to Policy 4, as to any other development plan policy. In reaching such a judgment, <u>all</u> relevant circumstances must (as a matter of law) be taken into consideration.

93. Fourthly, **the Appellant's submissions are entirely consistent with the judgment of Dove J** in ***Wainhomes*** (CD 9.13). Inspector Hunt had concluded (CHL1 Inquiry) that LHN should form the basis of the 5YHLS calculation (see CD 9.2 DL 37). Addressing Grounds 1 and 3, the Judge held *inter alia* that:

> *43.* ***There may be many material changes in the planning circumstances of a local authority's area which would properly render their existing plan policies out of date and in need of whole or partial review. <u>I am unable to accept Mr Fraser's submission that it is impermissible to regard the emergence of a local housing need figure which is greatly reduced from</u>***

that in an extant development plan policy as having the potential to amount to a significant change. *Whilst he is entitled to point to the wider national planning policy context of boosting significantly the supply of housing land, as Mr Cannock points out in his submissions, the use of the standard method to derive local housing need is part and parcel of the Framework's policies to achieve that objective. Moreover,* ***the question of whether or not any change in circumstances is significant is one which has to be taken on the basis of not only the salient facts of the case, but also other national and local planning policy considerations which may be involved***. ***In short, in my view, the language of the PPG and its proper interpretation did not constrain the Inspector and preclude her from reaching the conclusion that she did, namely that the significant difference between the housing requirement in Core Strategy Policy 4(a) and that generated by the standard method was capable of amounting to a significant change rendering Core Strategy Policy 4(a) out of date.*** [Emphasis added]

94. Further, at paragraph 45, the Judge concludes:

...I am satisfied that the conclusion the Inspector reached in paragraph 37(iii), that there had been a significant change pursuant to the PPG arising from the introduction of the standard method, was ***a planning judgment reasonably open to her*** *based upon a correct interpretation of the PPG (****albeit other conclusions might reasonably be reached by other Inspectors****), and therefore* ***she was entitled to conclude that Core Strategy Policy 4(a) was out of date***. (Emphasis added)

95. Fifthly, **Inspector Dawe (at the CHL2 Inquiry) relied on this judgment in concluding that (as a matter of planning judgment) there had been a material change in circumstances rendering Policy 4(a) out of date as a basis for the 5YHLS calculation** (CD 9.3 at DL 14 and 30).

96. Sixthly, **MOU 1 (CD HA 22) expressly states that it will be reviewed no less than every 3 years and will be reviewed when new evidence emerges which renders it out of date (7.1)**. The 3 year period expired in Oct 2020. MOU 1 expressly recognises that the basis of the 5YHLS calculation is a dynamic issue, on which new evidence or policy may emerge, which may render the review out of date. Plainly the introduction of new national policy

and a new basis for the calculation of LHN is capable (legally) of rendering the review and MOU 1 out of date.

97. Seventhly, at DL 33 (CD 9.4), the Cardwell Farm Inspector states: "… *it seems to me that there may be justification to revert to LHN even if the requirement had been previously reviewed and found not to require updating...*" (emphasis added). The Inspector is therefore concluding that the LPA/Inspector can lawfully consider whether Policy 4 is out of date. Such a planning judgment is not precluded by the NPPF/PGG and a review is not the end of the matter.

98. IP (nonetheless) argues that the introduction of the SM (NPPF 2018) cannot be a reason for departing from Policy 4(a) because NPPF 74 and fn 39 were introduced at the same time (XX of MS). This is not a point in PW's evidence and misses the point. The significant change is not the introduction of new NPPF *per se* (in 2018). Rather, it is the practical consequences of the new national planning policy which constitute the significant change for this LPA. That is precisely the approach adopted by Inspector Dawe at CHL2 (CD 9.3):

> *15.* ***I acknowledge the concern raised by the Appellant*** *that the Framework, and paragraph 73 in particular, could not have been written with the expectation of the use of the SM rendering reviewed policies out of date. However,* ***I do not consider that the introduction of the SM in itself represents a significant change in circumstances. Rather, the question is whether the outcome of applying the SM represents a significant change****, if it is appropriate to apply the SM in the first place.*

99. It follows that there is no difference between the Appellants' and the LPA's approach: **whether policy 4 is out of date requires a planning judgment, taking into account all material considerations**.

(b) Is Policy 4 Out of Date as the Basis of the 5YHLS Calculation?

100. The Appellant submits that there has been a significant change in circumstances since the review concluded in October 2017, which renders Policy 4 out of date, as the basis of the 5YHLS calculation.

101. The Appellant relies on 3 significant changes.

(a) Significant Change in Methodology

102. The SM was introduced because the Government wanted to deliver sufficient housing *in the right locations*. PW agreed that the White Paper identified methodological issues, delivery/numbers issues and spatial issues with the NPPF 2012 methodology. The intention was to deliver a significantly different methodology in order to address issues of complexity, delay, expense and transparency (see CD 5.11 at 1.2-1.12).

103. The SM has two stages: (i) household growth; plus (ii) affordability adjustment. This results in the LHN figure. The change in methodology intentionally removed the reference to the HMA (figures are set at the local level) and removed NPPF 2012 step 2 – consideration of economic forecasts. It is agreed that:

(i) **This is a significantly different methodology to RSS/PPS3, which underpinned Policy 4 JCS**;

(ii) **This is a significantly different methodology to NPPF 2012, which underpinned the SHMA (2017), which formed the basis of the review**.

104. **The change in methodology is a significant change since the review in 2017, which is intended to yield different results in the amount and distribution of housing**.

(b) Significant Reduction in Local Housing Need in Chorley

105. It is agreed that the application of the standard methodology results in CBC's housing figure significantly increasing from 417/pa to 537d/pa – an increase of ~30%.

106. PW accepts that this is a significant change in circumstance since the review in 2017.

107. Indeed, NPPF 33 states: *Relevant strategic policies will need updating at least once every 5 years if their applicable local housing need figure has changed significantly*. Indeed, the accompanying PPG provides:

> ***There will be occasions where there are significant changes in circumstances which may mean it is necessary to review the relevant strategic policies earlier than the statutory minimum of 5 years****, for example, where new cross-boundary matters arise.* ***Local housing need will be considered to have changed significantly where a plan has been adopted prior to the standard method being implemented, on the basis of a number that is significantly below the number generated using the standard method****, or has been subject to a cap where the plan has been adopted using the standard method.* ***This is to ensure that all housing*** *need is planned for as quickly as reasonably possible.*
>
> *Paragraph: 062 Reference ID: 61-062-20190315"*

108. Those precise circumstances apply in this case and yet CBC have failed (on their analysis) to undertake such a review in the 3 years since NPPF and the SM was published (July 2018) and despite the express requirement for a review in MOU 1 7.1.

(c) Significant Change in the Distribution of Housing

109. It is agreed that the application of the standard methodology results in a significant change in the distribution of housing across Central Lancs (XX

of PW). Housing moves away from Preston and South Ribble towards Chorley:

Distribution of Housing Need – Policy 4 & Standard Method (MS Table 6)

	Chorley	Preston	South Ribble
Standard Method LHN	569	250	191
	56%	25%	19%
CS Policy 4 - Annual Requirement	417	507	417
	31%	38%	31%

110. It is agreed that (consistent with the White Paper intention to deliver housing *in the right locations*) the SM requires Chorley to deliver the most housing. This is consistent with the 2003 HHP's which underpinned the RSS, before they were manually re-distributed [573d/pa]. It is also consistent with the SHMA (2017) [519 d/pa]. Whilst PW complains that Chorley is over-delivering, this is simply not reflected in the objective assessments of need which consistently require >500d/pa in Chorley.

111. **PW conceded that this re-distribution of housing across the HMA is a significant change in circumstances**.

112. **PW therefore concedes that there have been significant changes in circumstances, since the 2017 review resulting from this redistribution**.

113. **The LPA submit that such changes render Policy 4 out of date, as the basis of the 5YHLS calculation**. That conclusion is further supported by the findings of the CLHS (CD 6.21).

Central Lancs Housing Study (CLHS) CD 6.21

114. PW explained that the CLHS was intended to be the "review" of MOU 1. Its purpose was (PW at 3.20 and CD 6.21 at 1.2-1.4):

(i) To advise on the implications of LHN and whether it should be applied ;

(ii) To advise on an appropriate distribution of LHN in Central Lancs.

115. The Appellant submits that they are separate matters and addressed as such in the CLHS by Iceni.

116. **At 3.25 the CLHS concludes that the minimum LHN figure of 1,026 should form the basis on which to calculate 5YHLS across the HMA**. That conclusion could not have been clearer. **It is a conclusion which is emphatically *not* reliant on any subsequent distribution of the LHN** (as PW conceded). Having concluded that LHN should apply, an appropriate distribution is considered (in section 4).

117. The CLHS conclusions are relied upon by all 3 LPA's who signed MOU 2, which states *inter alia*:

The Councils consider that maintaining the use of the housing requirements set out in Policy 4, which is now out of date, until such time as the review of the Local Plan is complete, is not appropriate and has been superseded by the standard methodology *...*

118. In reliance on the CLHS, MOU 2 reaches two conclusions (at 8.1):

(a) ***To adopt the use of the standard method formula to calculate the minimum number of homes*** *needed in Central Lancashire (1,026 pa as at April 2019),* ***in accordance with national policy, in replacement of the out-of-date housing requirements set out in Policy 4*** *of the Central Lancashire Core Strategy.*

(b) to apply the recommended distribution of homes as follows: Preston: 40%; South Ribble: 32.5% Chorley: 27.5% Total: 100%.

119. In August 2020, Inspector Hayden (PTL 2) concluded that the contested arguments about the proposed distribution need to be properly tested through the eCLLP preparation and EiP (CD 9.1 at DL 29-33). The LPA have no criticism of that approach/conclusion at this Inquiry.

120. **It follows from the analysis of the CLHS (2020), endorsed by all 3 LPA's in MOU 2, and the PTL 2 decision that LHN should form the basis of the 5YHLS calculation, without any manual re-distribution which should be left for the emerging Plan**. The CLHS is, itself, a change in circumstances since the 2017 review. It provides good reasons for the LPA's change in position and reliance on LHN.

121. It is agreed that MOU 2 is "defunct". However, **the underlying analysis and rationale is still robust**: (i) PCC and SRBC continue to rely on the CLHS to argue that LHN should apply; (ii) Nick Ireland continues to rely in the CLHS to argue LHN should apply (see PTL 2 and CHL 2 Appeals); (iii) CBC relies on the CLHS at this Inquiry.

122. It is accepted that it was not argued at PTL2 that there had been a review. This is because the LPA argued Policy 4 was out of date and MOU 2 applied. PW argues that the logic of the PTL2 decision, with the CHL1 High Court decision on Ground 1[16], is that: (i) the manual distribution of MOU 2 cannot apply; consequently (ii) the LPA reverts back to Policy 4 rather than the conclusion of the CLHS and MOU 2 that policy 4 is out of date and LHN should apply. **PW takes the LPA back 2 steps rather than one**.

123. As the conclusions of the CLHS on the application of LHN are distinct from the conclusion on distribution (as PW concedes), there is no basis for the

[16] This concluded that there had been a review for the purposes of (then) NPPF 73 and fn 37

LPA's position. PW explained that there has been no transparent consideration of this matter. There has been no report and/or no formal decision of the Council. To the extent that there have been discussions with professional officers (XX of PW), we do not know the content of such advice/discussion but it has apparently resulted in Planning Officers failing to give evidence in support of the RFR (XX of PW).

Counter-Arguments to LHN:

124. The sole explanation for the Council's position is therefore contained in PW PoE at 4.40 to 4.51. It raises 4 points.

125. Firstly, it is argued that the SM itself is: (a) "***not an appropriate basis for calculating 5YHLS in CBC***" (4.42); and (b) "***the standard method is flawed***" (4.48). This is a frontal attack on the SM (albeit it doesn't use the zeitgeist phrase "*mutant algorithm*"). PW conceded the Inquiry cannot question the methodology and did not invite a conclusion on this point. It betrays, however, the true feelings of the local politicians.

126. Secondly, **it is argued that Chorley is being "*harmed by its previous good delivery*", whilst PCC and SRBC are being "*rewarded*" for their under-delivery** (PW at 4.48 and Sir Lyndsay Hoyle). This is the language of NIMBY's. The proposition that new housing development above minimum housing requirements is harmful, whilst under-delivery is celebrated is the antithesis of national policy to boost significantly the supply. There is (in any event) no evidence of any such planning harm (*supra*).

127. Thirdly, **high levels of supply in the early years of the Plan (2009-2014) have fed into the HHP's used in the SM** (PW at 4.45). This is not a methodological flaw. This is the methodology. This is (again) an impermissible attack on the SM and national policy itself. This Inquiry must (respectfully) interpret and apply policy, not critique and invent a new one.

Further, it is absurd to seek to argue Policy 4 should apply because of oversupply in 2009-2014, when this is the central component of the SM. **The central component of the SM cannot (rationally) be used as means of discrediting the same methodology** (cf XX of MS).

128. Fourthly, **PW alleges harm to the City Deal (PW at 4.49) and relies on the analysis of the CLHS to suggest an alternative distribution of the LHN** (4.50). IP relies on the 4 factors in the Cardwell Farm (CD 9.4 DL 30). Such arguments are hopeless:

(i) Factor 1 - There is no evidence of any adverse impact on the delivery of the Cottam SL and the NWP SL at all. There is no suggestion this consent would cause any delay. There is no objection from any house builder engaged in those sites. PCC do not object. On the contrary, PCC specifically argue that LHN should be the basis of the 5YHLS calculation across the HMA;

(ii) Factor 2 - There is no evidence to suggest any site allocation meeting the spatial pattern of the JCS would be adversely affected (*supra*);

(iii) Factor 3 - Development in CBC, as opposed to PCC or SRBC would not impact on levels of containment inside the HMA because CBC forms part of the HMA;

(iv) Factor 4 - Out-migration from Preston is being addressed through the Cottam and NWP SL. As there is no adverse impact to them, there will be no impact on out-migration. There is no evidence a scheme of 123 homes would impact migration patterns across the HMA. That is fanciful;

(v) There is, therefore, no arguable impact on the City Deal aspirations of PCC and SRBC;

(vi) *Precisely* the same points were put and emphatically rejected at the PTL 2 Inquiry (CD 9.1 at DL 28-30). There is no arguable basis for reaching a different conclusion at this Inquiry;

(vii) Reliance on the distribution arguments in the CLHS (2020) is perverse. The substance of the argument was expressly put at the PTL2 Inquiry by the author of the CLHS (Nick Ireland), who was intimately familiar with this own report. The Inspector concluded such arguments did not undermine the use of LHN but should be considered through an EiP. Now that MOU 2 is defunct, the LPA simply seek to resurrect *precisely* the same arguments (but under the aegis of the CLHS). There is no evidential basis for reaching a *different conclusion* on the *same distribution evidence* (see CD 9.1 DL 30-33).

129. Finally, some reliance is placed on the Cardwell Farm decision. The Appellant (like others, such as PCC) has a concern about this decision. The Inspector accepts that MOU 1 could be reviewed (DL 32) but then invents a requirement unknown to law or policy: *the decision to depart from the findings of a review undertaken in the last 5 years would need to be supported by a robust process* (DL 33). Having invented such a requirement, it is then used as the basis to revert back to the out of date Policy 4 (DL 40). In this case, it is agreed that a planning judgment must be exercised. There is no requirement (legal/policy/guidance) that such a judgment can only be exercised after "*a robust process*". Accordingly, this decision needs to be treated with caution. Further, it was expressly considered in the CHL 2 decision (DL 28) and rejected. The Appellant submits greater weight should attach to CHL 2. PCC and SRBC agree.

130. Further, CBC recognise that their approach would lead to **an inconsistency across the HMA**. It is airily dismissed by the Cardwell Farm Inspector (DL 41) and the LPA. It is, however, a significant matter. These 3 LPA's have produced a single JCS and intend to do so again. The JCS is clear that the combined area functions as one integrated local economy and travel to work area. It is a single HMA with nearly 80% of house moves take place within

it. The JCS therefore addresses the similar issues facing Central Lancashire in a collaborative way and so better plan for the future of the area (CD 6.1 at 1.5). An inconsistent approach is the antithesis of the JCS approach. Further, it would lead to housing delivery dropping off a cliff, as the LPA's plan for 190 d/pa (SRBC), 250 d/pa (PCC) and 104 d/pa (CBC). This is less than half the minimum LHN requirement. It cannot be countenanced.

131. **It follows that LHN must apply. There is a 2.4 to 2.6 year supply**.

(ii) Oversupply

132. The LPA have delivered 6,316 units. There is a residual requirement of 518, against the minimum plan requirement of 6,834. 518 over years to March 2026 results in an annual requirement of 104 d/pa, which is used as the basis of the 5YHLS calculation (see CD 6.15). At a time when their LHN is a minimum of 537 d/pa, CBC's planning alchemy has reduced this to 20%.

133. It is common ground that there is an absence on policy/guidance on this approach. It follows (as the Courts have confirmed) that this approach does not amount to an error of law, as it does not amount to a misinterpretation of policy. It is in that context that the LPA's planning judgment must be tested. The Appellant submits the approach is deeply flawed.

134. Firstly, **there is not an "oversupply"**. There has been housing delivery over the minimum constrained JCS housing requirement. That does not equate to an "oversupply". **The LPA fail to identify *any* adverse land use planning impacts which flow from such "oversupply"**. On the contrary, PW conceded that all such homes would have been consented by either the LPA or PINS and would have been considered to be sustainable development. The consequences of delivering more than a minimum number of homes is entirely beneficial (consistent with the NPPF) and does not need to be addressed, especially not in the midst of a housing crisis.

135. Secondly, **it is based on the premise that CBC is "harmed" by good housing delivery, whilst SRBC and PCC are "rewarded" for poor delivery**. Such an approach is the antithesis of the NPPF imperative to boost significantly the supply of housing, using the LHN as a minimum.

136. Thirdly, **it is inconsistent with an objective interpretation[17] and application of policy 4(a)**. Policy 4(a) contains two minimum requirements:

(i) A minimum requirement of 417 dwellings per annum. That means (and can only mean) a minimum of 417 dwellings "each year" (as PW accepted);

(ii) A minimum requirement 22,158 across the plan period.

137. IP is wrong to assert that Policy 4 is concerned solely (or even principally) with delivery across the Plan period. It is concerned with both annual delivery/continuing forward supply and delivery across the Plan period. This is abundantly clear from Policy 4 (a) and (c) together.

138. Policies 4 requires CBC to "set" and "apply" a minimum requirement of 417 dwellings per year. This is not (on the wording) an annual average requirement. **It is a minimum annual requirement**. An annualised requirement derived from the residual plan requirement is inconsistent with the wording of the policy.

139. Fourthly, **it is inconsistent with an objective interpretation and application of policy 4(c)**, which requires a "continuous forward looking 5 year supply" from the start of each annual monitoring period to provide the range and mix of house types necessary to meet the requirements of the Plan

[17] Per Lord Reed in ***Tesco v Dundee***

area. The LPA' approach is not "*continuous*", it is reducing over time and will reach zero (when 6,834 is passed) before the end of the plan period. It is not "*forward looking*", as it looks back to delivery at the start of the Plan period. It is not based at the start of the annual monitoring period because it looks back across the Plan period. Policy 4(a) and (c) must be read together, requiring a continuous 5 year supply based on an annual minimum requirement of 417 d/pa. In contrast, the LPA's approach will fail (totally) to address the need for AH identified in the JCS. 30AH pa max (30% of 104 d/pa) is nothing short of a conscious decision to refuse to meet objectively assessed AH need, contrary to (i) Policy 7, (ii) CLP strategic objective 5 and 8 and (iii) the Council's corporate priorities. The approach is flatly inconsistent with policy 4. PW fails even to consider the policy.

140. The CLP trajectory is not part of the JCS (let alone part of policy 4). It is not even part of the CLP policy. It is not, therefore, relevant to an interpretation of Policy 4. It certainly cannot override the clear words of policy 4 (per the ***Cherkley case***). Further, the trajectory is silent on the 5YHLS. It sets out lower levels of delivery in the latter stages of the Plan based on the CLP allocations. It is silent on whether that should translate into a sharp reduction in the annual housing requirement for the purposes of 5YHLS calculation (contrary to Policy 4). The trajectory is evidence from 2015 demonstrating that the <u>minimum</u> housing requirement can be met, such that the Plan can be found sound. It is not seeking to *curtail* housing development. There is no policy support for that approach at all.

141. Fifthly, **the approach is inconsistent with NPPF**. A 5YHLS is the minimum requirement of Government policy against a minimum housing requirement. By contrast, the LPA seek to use the 6,834 figure as a "target" not a minimum because for every year the minimum is exceeded, the LPA reduce the annual requirement (as PW conceded). That is inconsistent with national policy to boost significantly the supply by using minimum

requirements. This may apply to any and all such LPA's who apply this approach. That does not diminish its force nor preclude the exercise of a planning judgment on a case by case basis, taking *all* of these factors into account. Rather, it is a factor which suggests (without conclusively determining) that the the LPA's judgment is a poor one.

142. Sixthly, **the approach is inconsistent with the HDT**. If completions fall below 95% of the HDT, an action plan is required to remedy the shortfall (NPPF 76). The HDT is separate but complementary to the requirement for a 5YHLS. Failure to meet either can result in the application of the tilted balance. The HDT therefore ensures consistent strong levels of housing delivery. The LPA's approach would deliver ~20% of its HDT (well below the 75% at which the tilted balance is engaged), which would then require an action plan to remedy the shortfall. This must indicate that the approach is flawed and inconsistent with the NPPF.

143. Seventhly, **there is no support in PPG for this approach**. The SoS is well aware of this issue, on the basis of the High Court challenges. PPG is a live document which can be easily amended. Had the SoS considered that there was merit in this approach, the SoS could (and would) have amended the guidance.

144. Eighthly, it is common ground that there are a number of decisions which pull in different directions. MS (HLS) provides a comprehensive analysis. None of them are binding. **The Appellant submits that the reasoning in the decisions dismissing this approach contain the reasoning which is the more compelling** (consistent with the analysis above).

145. By contrast, PW raises a single point: that "*the same logic*" should apply to oversupply as to undersupply (PW at 4.64 and 4.65). The proposition is risible. The "*same logic*" does not apply, as PW conceded because there is

"*a clear conceptual difference*". Undersupply must be remedied to meet the minimum requirement of Government policy to have a 5YHLS. Delivery over a minimum does not require remedying (at least not in the absence of some land use harm which flows from genuine "oversupply" such as housing market failure etc).

146. Whilst the Courts may decline to rule that oversupply is unlawful (in the absence of policy) but that does not suggest that there is any merit in this approach.

SUSTAINABLE DEVELOPMENT

147. **The NPPF requires decision-making to be approached in a positive way. Decision-makers at all levels should seek to consent proposals for sustainable development where possible** (NPPF 38), consistent with the imperative to boost significantly the supply of new homes (NPPF 60). The following matters need to be weighed in the planning balance.

SOCIAL ROLE

Need for Market Housing

148. In the absence of a 5 year supply, it is submitted that significant weight should attach to the need for more market housing.

149. Even if there is a 5YHLS, NPPF (2018) sets a minimum housing requirement for CBC of 537 d/pa, which is a significant increase on the out of date 417 d/pa (RS/JCS). LHN is (in any event) a material consideration of significant weight, when neither PCC nor SRBC are planning on the basis of Policy 4 housing requirements.

150. On either basis, **significant weight** must attach to the need for housing, when the LPA has a forward supply of only 1377-1504 units and an up to date LHN of 537 d/pa.

Affordability and the Need for Affordable Housing

151. The proposal will deliver up to 37 new affordable homes. The SHMA (2009) identified an estimated annual shortfall of 723 AH/pa in Chorley (2009-2014). This was the last SHMA which has been tested at EiP and it formed the basis of the JCS (and policy 7). The CLCS demonstrates an annual shortfall of 132 AH for rent. Applying the development plan, this would require 186 AH p.a. in total. The delivery of market homes is the only mechanism by which a significant amount of AH will be delivered. 620 d/pa would be required to deliver the identified need for AH.

152. Further, there has recently been exponential growth in the need for AH in the last 2 years. There are more than 2000 households on the CBC housing register, of which 44% have a "very acute" need (NT Table 5.1). NT characterises the position as "very severe". A requirement of 104 d/pa is woefully inadequate (a maximum of 30 d/pa) and will (quite deliberately) fail to deliver an adequate level of AH. AH delivery is declining at the same time as newly arising needs are continuing to grow. Yet those in acute need (whether in CBC or Coppull) are being told to wait (without reason).

153. Further, at approximately 6 times lower quartile earnings, lower quartile house prices in Chorley are now practically unaffordable for a large section of society. This can only meaningfully be addressed by providing more housing in Chorley, something which the JCS housing requirement and the restrictions of SL have been constraining.

154. It follows that the development derives **very significant weight** from need to address affordability and the need for more affordable housing, to which very significant weight should attach.

Sustainable Location

155. Coppull is a sustainable settlement (see SoCG and MS App 7). It is agreed that the proposal complies with policy 1 JCS. Further, given the site's designation as SL, it is considered to be acceptable to accommodate future development needs.

156. The Appellant therefore submits that:

(i) Coppull is a sustainable settlement for future growth in the Plan Period and beyond; and

(ii) **The Appeal site is an accessible site adjacent to this sustainable settlement**.

Highway Impact

157. There is **no highway impact which is arguably severe**. The proposal complies with the JCS and NPPF 109.

158. The proposal therefore derives **significant support from the social role** of sustainable development.

ECONOMIC ROLE

159. The application demonstrated the socio-economic benefits of the proposals. The economic benefits of the development can be summarised as:

- £15.4m construction spend supporting 35 FTE jobs construction per annum for 3 years;

- Direct, indirect and catalytic economic benefits as a result of such investment and employment – comprising £17m GVA, supporting an additional 62 indirect jobs.

160. These economic benefits are an important material consideration in support of the proposal. They may be benefits of any housing development but they are nonetheless benefits of this housing development (applying s.38(6)). They should be afforded moderate weight individually and cumulatively (applying NPPF 81). Further, such economic benefits will be lost if the LPA continues to apply an annual housing requirement of 104 d/pa.

161. It follows that the proposal derives **significant support from the social and economic roles of sustainable development**.

ENVIRONMENTAL ROLE

162. The RFR do not raise any issue regarding heritage, design, residential amenity, ecology, flooding, landscape and visual impact or pollution. This is agreed in the SoCG at 4.6.

163. There are environmental improvements:

(i) There will be significant on-site open space provision in excess of policy requirements, which will accessible to existing and proposed residents – significant positive weight (MS(P) at 7.29 *et seq*);

(ii) There will be a biodiversity net gain – moderate positive weight (SoCG(E) section 4 and MS(P) at 7.40).

164. It is accepted that there will be an adverse landscape and visual impact but it is no more than the inevitable impact of any greenfield development. There is no alleged impact with policy and no suggestion that it is in any

way unacceptable. On the contrary, this is a site to which the LPA have directed development to meet needs.

165. Accordingly, **the sole impact derives from policy conflict with Policy BNE 3.6, as the site is currently Safeguarded Land. For the reasons given above, the SL policy must be given limited weight. Further, there is no tangible land use planning harm which flows from the breach of policy. BNE 3 is a timing provision and there is no adverse impact as a result of consent being granted on a draft allocation in a Plan set to be adopted in 2 years' time. There is no prematurity point and no arguable prejudice to the Plan-making process**.

166. The Appellant therefore submits that:

(i) On the application of the tilted balance, there are no adverse impacts which significantly and demonstrably outweigh the benefits. On the contrary, the benefits significantly and demonstrably outweigh any conflict with policy BNE 3.6; and/or

(ii) Material considerations significantly outweigh the conflict with the development plan.

EDUCATION CONTRIBUTION

167. There is a dispute with the LEA over whether the requested secondary school contribution complies with Reg 123 CIL Regs and the NPPF. Regardless of the resolution of this issue (to be addressed in the Round Table Session), it does not impact on the decision to grant consent. A s.106 is provided. It is subject to a trigger clause, requiring the Inspector to consider whether such a contribution is necessary. If (contrary to the evidence of John Powell (Alfredson York)) it is necessary, it will be provided by the s.106 planning obligation.

168. Reg 123 CIL Regs and NPPF 57 place a legal and evidential burden on this LPA to demonstrate that the secondary school contribution is necessary and directly related to this development. The legal/policy test is not passed because there is provision for a subsequent clawback. The LPA has not provided any material evidence to the Inquiry. It is agreed that LCC (as LEA) has a statutory duty to school Lancashire pupils. But that is not a forensic "get out of jail free" card. The Appellant (based on specialist independent expert education consultancy advice) has raised the issue of Wigan pupils in Southlands School (the nearest school in Lancashire). The essence of the point is that development pupils will displace Wigan pupils and the LEA will discharge its statutory duty. The detail is not repeated.

169. The LEA accept there are Wigan pupils in LCC schools and account for them in their future projections. There is no doubt that Wigan pupils are projected to attend LCC schools. However, LCC have failed (whether for good reason or not[18]) to provide: (i) the current numbers; (ii) the projected numbers; (iii) the basis on which such pupils have passed the admissibility criteria. The Appellant contends that Wigan pupils will be displaced from Southlands HS by the preferred Lancashire pupils at the development (consistent with the Malpas decision). Further, there is a total absence of evidence from WMBC, who have failed (without explanation) to provide any evidence on current and projected pupil numbers or future capacity. The Appellant (not an LEA) has done the best it can with partial and incomplete evidence which LCC/WMBC could or should have. In that context, LCC have (skilfully) reversed the legal/policy/evidential burden onto the Appellant. The Appellant does not have to prove *anything*. This LPA must demonstrate a contribution is necessary (etc). In the absence of

[18] The Appellant can think of no reason for the failure to disclose

robust/complete/proportionate evidence, they have failed to discharge the legal/policy requirements.

CONCLUSION

170. It is, therefore, the Appellant's case that planning permission should be granted subject to conditions and a s.106 obligation.

GILES CANNOCK QC

Kings Chambers

14th October 2021