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## Appeal Decision

Inquiry held between 9 and 12 February 2021

Site visit made on 15 February 2021

**by Mark Dakeyne BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 9<sup>th</sup> March 2021**

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**Appeal Ref: APP/N2345/W/20/3258889**

**Land at Cardwell Farm, Garstang Road, Barton, Preston PR3 5DR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Wainhomes (North West) Limited against the decision of Preston City Council.
  - The application Ref 06/2019/0752, dated 31 May 2019, was refused by notice dated 6 March 2020.
  - The development proposed is described as 'outline application for up to 151 dwellings with associated works.'
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### Decision

1. The appeal is allowed and outline planning permission is granted for up to 151 no dwellings and community building with associated works (access applied for only) at land at Cardwell Farm, Garstang Road, Barton, Preston PR3 5DR in accordance with the terms of the application, Ref 06/2019/0752, dated 31 May 2019, subject to the conditions set out in the attached schedule.

### Procedural matters

2. A revised description of development was agreed between the main parties after the submission of the planning application<sup>1</sup>. I have determined the appeal on the basis of this amended description which is set out in the formal decision above.
3. As the amended description indicates, the application is in outline with all matters except for means of access reserved for subsequent approval. Other than the location plan, the only drawing which forms part of the application is Drawing No SCP/18205/SK05 Rev A contained within the Transport Assessment. This drawing shows that the access would be off the A6, Garstang Road, via a priority-controlled junction. I have treated the layout and landscaping plans as an indication of how the site could be developed but they do not form part of the application.
4. An agreement under Section 106 of the Town and Country Planning Act 1990 (S106) dated 4 February 2021 would secure affordable housing; education, sustainable transport, and travel plan contributions; the laying out and management of public open space within the development; and the provision of the community building. I will return to the S106 later in my decision.

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<sup>1</sup> Inquiry Document R13

## **Main issues**

5. The main issues are:
  - a. Whether the proposal would accord with the development plan strategy for the area;
  - b. The effect on the character and appearance of the area;
  - c. Whether the Council can demonstrate a five-year supply of deliverable housing sites, having particular regard to the housing need or requirement for Preston; and,
  - d. Whether paragraph 11. d) ii. of the National Planning Policy Framework February 2019 (the Framework) is engaged either by reason of a lack of a five-year supply of deliverable housing sites or because the most important policies for determining the appeal are out-of-date.

## **Reasons**

### *Development plan strategy*

6. The development plan for the area, so far as it is relevant to this appeal, comprises the Central Lancashire Core Strategy (CLCS) adopted in July 2012 and the Preston Local Plan 2012-2026 (PLP) adopted in July 2015. Policy 1 of the CLCS (Locating Growth) seeks to concentrate growth in the Preston/South Ribble Urban Area, Key Service Centres, strategic sites and Urban and Rural Local Service Centres. In other places, including small villages, development is to be typically small scale and limited to appropriate infilling, conversion of buildings and proposals to meet local need.
7. The PLP confirms that Barton is one of several villages not identified in the CLCS as a Rural Local Service Centre, in other words it is a small village. Policy AD1 (b) of the PLP indicates that small scale development will be allowed within existing villages provided criteria relating to matters such as design and living conditions are met. Therefore, no significant growth aspirations exist for the village within the development plan.
8. The development, apart from a small portion of the frontage adjacent to the A6, would lie outside the settlement boundary of Barton and in open countryside as defined by the Policies Map. The proposal would not be small scale and would not be within the existing village.
9. Policy EN1 of the PLP indicates that development in the open countryside will be limited to rural exception sites for affordable housing, rural workers' dwellings, agricultural and forestry uses, the re-use of buildings and infilling within groups of buildings in smaller rural settlements. The development does not fall within any of these categories.
10. Barton straddles Preston and Wyre local authority boundaries. One site at the northern end of the village (Forest Grove) was allocated for housing in the PLP and three housing sites to the west of the A6 have been allocated in the Wyre Local Plan. The allocation at Forest Grove followed on from an allowed appeal in 2013 for up to 65 dwellings<sup>2</sup>. Housing developments have been permitted on two of the Wyre allocations and some sites beyond the settlement boundary within Preston's part of the village in recent years. These include an outline permission for 55 dwellings on that part of the appeal site between Cardwell Farm and Woodlands Way granted in September 2018.

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<sup>2</sup> Inquiry document R7

11. The Forest Grove development has been completed and a number of sites to the west of the A6 are under construction. However, these developments have not changed the development plan status of Barton as a small village.
12. In conclusion, the development would not accord with the development plan strategy for the area and would be contrary to Policy 1 of the CLCS and Policies AD1 (b) and EN1 of the PLP for the reasons given above.

*Character and appearance*

13. The application was not accompanied by a landscape and visual assessment. I assessed the landscape and visual impacts of the development by walking the footpaths to the north and south of the site, the bridleway to the east and the pavements along the A6.
14. The appeal site is an irregular shaped area of predominantly agricultural grazing land to the east of the A6. Most of the site is on a fairly level plateau between the A6 and the valley of Barton Brook to the east. The fields within the site are divided by hedgerows and the occasional fence. Some of the field boundaries include mature trees, although tree cover is generally sparse. However, there are a few ponds surrounded by vegetation within and on the edge of the site. Moreover, at its south-eastern end, behind Woodlands Crescent, the site is partly wooded and slopes steeply down to the brook.
15. Most of the site is typical of the undulating lowland farmland landscape character type, pleasant but unremarkable. The site does not lie within a valued landscape. That said, the south-eastern edge, forms part, and contributes to the character, of the river valley.
16. The majority of the site is not readily visible from the A6 as it lies behind frontage development and the Cardwell Farm complex. However, the undeveloped section between the farm and No 630 Garstang Road allows views of the appeal's sites fields from the A6 through the roadside hedge and trees.
17. The south-eastern valley slopes and the plateau edge form part of the rural views from the footpath which heads eastwards from Woodlands Way towards the M6, both from within the river valley and on rising land to the east. Longer distance views of the south-eastern site edge can be obtained from a short, elevated section of the bridleway which runs to the east of Barton Brook. However, once it enters the valley, topography and vegetation prevent views of the site from the bridleway. However, the site becomes visible again from the footpath near Forest Grove, albeit in the distance across intervening fields.
18. The site is clearly visible from the rear of properties along the A6 and from the homes in Woodlands Way and Woodlands Crescent that back onto the land.
19. Development of the relatively narrow undeveloped frontage would lead to the loss of views of the countryside from the A6. However, the development of the frontage would not be out of character with the linear form of the village. Planting of trees and hedges behind the visibility splay could maintain a soft road frontage.
20. The development would extend some way back behind the predominantly ribbon form of the village but the development around Forest Grove to the north provides a comparable width to the settlement. Other recent housing will also extend back beyond much of the established linear development on the

- A6. Although the proposal would be of significant scale and depth, its form would not be without precedent in the village. The few attractive landscape features on the plateau could be maintained as part of the layout. Development on the majority of the site would not be readily visible from nearby public viewpoints.
21. Recreational users of the footpaths and bridleway to the south, south-east and north of the site would be sensitive to changes in the landscape. However, only a small part of the site encroaches onto the valley slopes. A sympathetic layout could avoid the valley slopes and retain the wooded features. Indeed, the indicative layouts show limited built development on this part of the site. Whilst the edge of the development on higher ground would be likely to be visible from the rights of way, the distances involved and intervening screening would reduce the visual impact.
22. The adjacent residents would see a significant change in their aspect with open fields being replaced with a housing estate. However, some of the properties in Woodlands Way and Woodlands Crescent and the homes near the access point onto Garstang Road already face the prospect of housing behind them due to the extant permission. The properties on Woodlands Crescent that face east could potentially have open areas to their rear. Visual impacts for all adjoining residents could be mitigated by the use of appropriate separation distances.
23. All in all, and subject to the layout avoiding built development on the more sensitive south-eastern parts of the site, the landscape and visual impacts would not be significantly adverse. The development would be reasonably well integrated with the existing settlement pattern of Barton and appropriate to the landscape character type. As such there would be compliance with Policy 21 of the CLCS.

#### *Five-year housing supply*

24. Paragraph 73 of the Framework requires that local planning authorities (LPA) should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies, or against their local housing need (LHN) where the strategic policies are more than five years old. Footnote 37 of the Framework indicates that where strategic policies have been reviewed and found not to require updating they should still be used as a basis for the housing requirement even if they are more than five years old.
25. Planning Practice Guidance<sup>3</sup> (PPG) contains similar wording to Footnote 37 but also notes that the housing requirement figures identified in adopted strategic housing policies should be used for calculating the five-year housing land supply figure where the strategic housing policies have been reviewed within the last five years and found not to need updating. This wording in the PPG was introduced in July 2019. It followed on from wording contained in the 2018 version of the PPG which reflected the July 2018 Framework and the introduction of the standard method for calculating LHN.
26. Footnote 37 and the related PPG were introduced without any transitional arrangements. Therefore, the effect of national policy and guidance is that any

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<sup>3</sup> Paragraph 005 Reference ID: 68-005-20190722

- review of the strategic housing requirement undertaken from July 2014 onwards which found the requirement not to require updating would amount to a 'Footnote 37 Review'. Whilst PPG is not policy, it does not depart from the Framework on this subject but seeks to assist with the time period whereby a review has currency.
27. The development plan minimum housing requirement for Preston of 507 dwellings per annum (dpa) is set out in Policy 4 of the CLCS. This is out of a total requirement for Central Lancashire of 1,341 dpa<sup>4</sup>. This requirement was set by adopted strategic policies which are more than five years old.
  28. However, in October 2017, some five years after the adoption of the CLCS, the Central Lancashire authorities of Preston, Chorley and South Ribble entered into a Joint Memorandum of Understanding and Statement of Co-operation relating to the provision of Housing Land (MOU1). MOU1 agreed that the housing requirement in the CLCS should be applied until the adoption of a replacement plan.
  29. MOU1 was informed by a Strategic Housing Market Assessment (SHMA) which indicated that, if each LPA were to meet its own Objectively Assessed Need, the total requirement for Central Lancashire would only exceed the Policy 4 requirement by some 20 dpa, albeit that different distributions would result depending on whether demographic or economic growth figures were used. The SHMA used the 2014-based household projections as the starting point for assessing housing need.
  30. MOU1 noted that continuing to apply the CLCS housing requirement would, amongst other things, reflect the spatial pattern of development set out in Policy 1 of the CLCS, including directing housing growth to priority areas such as Cottam and North West Preston where land had been allocated to deliver significant new housing in accordance with the Preston, South Ribble and Lancashire City Deal; that site allocations had been determined to meet the spatial pattern of development in the CLCS; that the CLCS requirement reflects the high levels of containment for both travel to work and housing market areas (HMA); and that the Policy 1 apportionment would help to address net out-migration from Preston to other parts of the HMA. That the Policy 4 figures were based on the defunct North West Regional Spatial Strategy and had a baseline date of 2003 were not factors that were referred to in MOU1 and, therefore, on the face of it were not given much weight.
  31. Although it was entered into before the publication of the 2018 Framework, the Council and the appellant agree that MOU1, supported by evidence in the SHMA, was a 'Footnote 37 review'<sup>5</sup>. Based on the information before me, I see no reason to take a different view.
  32. However, the Council considers that matters have moved on from MOU1. MOU1 included a clause whereby the document was to be reviewed no less than every three years but would also be reviewed when new evidence that renders the MOU out of date emerges. It is more than three years since MOU1 was entered into. The Council points to the introduction of the standard method for assessing LHN as being a significant change in circumstances. If the LHN figure is used, Preston would be required to deliver 250 dpa.

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<sup>4</sup> For both Chorley and South Ribble the requirement is 417 dpa

<sup>5</sup> Paragraph 2.4 of the Housing Supply Statement of Common Ground (Document B4)

33. Footnote 37 and PPG do not indicate whether, once reviewed and found not to require updating, the development plan housing requirement can be reviewed again outside the formal local plan process. However, the implications of paragraphs 31-33 of the Framework is that it is anticipated that relevant strategic policies will need updating through a new local plan or partial review of a local plan rather than through a 'review of a review'. That said, 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. However, the decision to depart from the findings of a review undertaken in the last five years would need to be supported by a robust process.
34. In this respect the Central Lancashire LPAs entered into a second Memorandum of Understanding in April 2020<sup>6</sup>. This was augmented by a Statement of Common Ground in May 2020 reflecting a slight change in LHN housing numbers for April 2020. However, for the purposes of this decision the changes are not significant and I will refer to these documents collectively as MOU2.
35. MOU2 took into account the Central Lancashire Housing Study (CLHS), published in March 2020. The CLHS was commissioned to inform the review of the CLCS. However, the CLHS did not assess housing need in the way the SHMA did. It focused on LHN as a basis for the housing requirement, not on whether to plan for a higher level of need. In addition to findings in relation to affordable and other specific housing needs, it recommended that, pending the adoption of a new local plan, LHN should be used as a basis for assessing five-year housing supply but that the LHN should be redistributed such that Preston's requirement would be 404 dpa. However, the recommendations did not appear to consider that a Footnote 37 review had already been carried out<sup>7</sup>, and started with the assumption that the LHN should be used as the basis for the housing requirement.
36. As a result, MOU2 sought not to use solus LHN figures or retain the CLCS requirement but redistribute the LHN figures across the Central Lancashire LPAs. The veracity of MOU2 was tested at an inquiry in the summer of 2020 relating to a development of up to 180 dwellings at Pear Tree Lane, Euxton, Chorley. The Inspector in his decision<sup>8</sup> gave limited weight to the figure for Chorley derived from MOU2 because it was outside the local plan process. He noted that PPG allows the housing requirement for a joint plan making authority to be distributed across the plan area but this should be done through the plan making process, not through decision-making. I agree with this analysis and that Footnote 37 effectively provides two principal options for an LPA housing figure, either the adopted strategic policy requirement or the LHN.
37. The Inspector agreed that the LHN figure should be used for Chorley. However, it appears that the option of using the CLCS requirement was not put to him. The only reference to MOU1 in his decision is in relation to a previous appeal for the Pear Tree Lane site in 2017. In other words, it was not argued that MOU1 still had currency as a Footnote 37 review.

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<sup>6</sup> Joint Memorandum of Understanding & Statement of Co-operation Relating to the Provision and Distribution of Housing Land (Document A12)

<sup>7</sup> See paragraph 2.14 (Document A11)

<sup>8</sup> Appeal decision ref: APP/D2320/W/20/3247136 dated 11 August 2020 (Document F1)

38. Up to December 2019 Preston continued to use the CLCS requirement for the purposes of assessing its five-year housing land supply. This was in the knowledge of the longevity of the CLCS requirement and the fact that it was based on calculating need in accordance with the 2012 Framework. However, following an appeal decision relating to Chain House Lane, South Ribble<sup>9</sup>, where the Inspector concluded that MOU1 did not constitute a Footnote 37 review and that LHN should be used, the Council decided to use the LHN figure. However, the Chain House Lane decision was quashed in the High Court<sup>10</sup>. The judge found that the Inspector's reasoning for concluding that MOU1 was not a review was inadequate.
39. Subsequently, following the Pear Tree Lane decision, the Council withdrew from MOU2 because the Inspector 'has attributed limited weight to the MOU in determining the appeal.'<sup>11</sup> The Council's decision does not indicate on what basis the housing requirement or the five-year supply will be derived as an alternative to MOU2, albeit it is noted that the Central Lancashire LPAs are in the process of reviewing the Local Plan which will consider the matter of distribution of housing.
40. Pulling this chain of events together, to my mind the review of the CLCS housing requirement through MOU1 is the only Footnote 37 review that has been undertaken. The decision to revert to the LHN figure after withdrawal from MOU2 did not constitute such a review as it has not followed a robust process. The factors set out in paragraph 30 above are still relevant today. In addition, the higher housing requirement derived from the CLCS would deliver more affordable housing. Therefore, Policy 4 of the CLCS should be used for the purposes of assessing whether there is a minimum of five years' worth of housing against the housing requirement.
41. These findings result in potential inconsistencies in considering housing supply across the Central Lancashire local plan area having regard to the conclusions of the Pear Tree Lane Inspector who went with the LHN figure. But as explained earlier he was considering different arguments which did not include whether a Footnote 37 review had been undertaken. His decision precedes the Chain House Lane judgement. If it had been put to him that a Footnote 37 review had been undertaken and that the CLCS housing requirement should be used, he may have come to a different decision.
42. The Council and appellant agree that there is a deliverable five-year housing land supply of 3,581 dwellings at 1 October 2020<sup>12</sup>. Based on the CLCS requirement of 507 dpa and factoring in past under-supply<sup>13</sup> and a 5% buffer, there would be a 4.95 years supply of housing land.
43. For the above reasons, the Council cannot demonstrate a five-year supply of deliverable housing sites, having particular regard to the housing requirement for Preston.

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<sup>9</sup> Appeal decision ref: APP/F2360/W/19/3234070 dated 13 December 2019 (Document F2)

<sup>10</sup> Wainhomes (North West) Limited v South Ribble BC [2020] EWHC 2294 (Admin) (Document G1)

<sup>11</sup> Minutes of Preston City Council Cabinet meeting 4 November 2020 (Document P3)

<sup>12</sup> Paragraph 2.10 of the Housing Supply Statement of Common Ground (Document B4)

<sup>13</sup> Using the Sedgefield method – the past shortfall being addressed in the next five years

*Tilted balance*

44. Because of my conclusions on five-year supply, and as the proposal involves the provision of housing, Footnote 7 of the Framework indicates the most important policies for determining the appeal are deemed to be out of date. The application of policies in the Framework that protect areas or assets of particular importance does not provide a clear reason for refusing the development. Therefore, paragraph 11. d) ii. of the Framework (the tilted balance) is engaged by reason of a lack of a five-year supply of deliverable housing sites.
45. Having regard to the above, there is no need for me to go onto consider whether the most important policies for determining the appeal are out of date for reasons other than housing land supply. I will consider the consequences of applying paragraph 11. d) ii. in my planning balance set out later in this decision.

*Other matters*

46. The emerging Central Lancashire Local Plan is at an early stage. An Issues and Options Document was subject to consultation in late 2019 and early 2020 but no draft policies have been published. Barton has been designated as a neighbourhood plan area and an initial draft plan was published for consultation in Autumn 2020. However, little weight can be given to these emerging plans at this stage.
47. The access onto the A6 would have acceptable visibility. The configuration of the access with the provision of a right turn lane would provide a safe and suitable access. The development would not lead to severe residual cumulative impacts on the road network.
48. Subject to the imposition of suitable conditions, the development would not harm archaeological interests or impact adversely on ecology. The loss of trees and a section of hedgerow along the site frontage could be compensated for by replacement planting. The extant permission has established that the loss of frontage vegetation is acceptable. The site is likely to be predominantly Grade 3b agricultural land which is not the best and most versatile farming land.
49. The site lies within Flood Zone 1, where there is a low probability of flooding. Although standing water has been observed on the site after heavy rainfall, this is likely to be the result of topography, soil infiltration characteristics and a blocked culvert. The provision of a sustainable surface water drainage system with greenfield run off rates should ensure that surface water would be suitably managed. No concerns have been raised by United Utilities about the capacity of the foul drainage system.
50. As an outline proposal, the design of the scheme is not before me. An acceptable design could be developed at reserved matters stage ensuring that the factors that I consider earlier in this decision are taken into account and that adjoining residents are not unacceptably affected by reason of undue overlooking or visual impact. The provision of the access direct off Garstang Road would be beneficial for residents of Thorntrees Avenue and Woodlands Way compared to the fall-back permission.

51. The appeal site is not within a location where there are concerns about air quality. Suitable site-specific mitigation measures can be implemented during the construction phase to prevent localised issues with air quality.

*Planning obligations*

52. The S106 would secure 35% affordable housing through the provision of 53 dwellings on-site. The affordable housing provision would accord with Policy 7 of the CLCS. The tenure split would follow the guidance in the Central Lancashire Affordable Housing Supplementary Planning Document.

53. The education contributions would be required to ensure that primary school places are available within the catchment, in accordance with Policies 2 and 14 of the CLCS. Sustainable transport and travel plan contributions would support the provision of, and encouragement to use, modes of travel other than the private vehicle in accordance with CLCS Policies 2 and 3 and PLP Policy ST2. In this respect I note that there is scope to provide off-road cycleways in the village itself and linking Barton with existing provision near Broughton.

54. The provision and management of open space within the development, including play provision, would be secured in accordance with Policy 24 of the CLCS and Policy HS3 of the PLP.

55. The community building forms part of the proposal. There is already a village hall within the settlement, albeit at the northern end, some distance from the appeal site. The Parish Council has concerns that a further similar building may not be needed and would be difficult to fund and manage. However, the future use of the building is not defined. It could provide a hub at the southern end of the village, serving existing residents and those who would occupy the appeal scheme and the several other housing developments nearby which are coming on stream, and be connected to new open space and recreational facilities within the development. Its provision and future operation, management and maintenance should be secured as part of the S106.

56. The above obligations are needed to address development plan policy requirements; make the development acceptable in planning terms; are directly related to the development; and are fairly and reasonably related in scale and kind to the development. Therefore, I have taken them into account in my decision.

**Planning balance, conditions, and conclusion**

*Planning balance*

57. Paragraph 11. d) ii. of the Framework indicates that, where the most important development plan policies for determining the application are out-of-date, planning permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

58. The adverse impacts of the development relate primarily to its conflict with the development plan strategy for the area. Barton is not a settlement earmarked for significant development. The Framework indicates that the planning system should be genuinely plan-led. There would also be some limited harm to the character and appearance of the area, noting that the Framework recognises the intrinsic character and beauty of the countryside.

59. In terms of benefits, the provision of new housing would bring construction and supply chain jobs, places for the economically active to live, increased local spend and greater choice in the local market. These benefits have not been quantified and would apply to any housing development of this scale but are still considerable.
60. A number of affordable homes are to be provided in Barton through existing permissions. The assessments of affordable housing need through the SHMA and CLHS have not been tested. However, it is likely that Preston's overall affordable needs are substantial<sup>14</sup> and the evidence indicates that delivery is not keeping up with the need. The new affordable dwellings would provide homes for real people in real need.
61. The proposal would boost the supply of housing in a situation where there is no five-year supply and an under-provision of affordable housing and, as a result, I attach moderate weight to the economic benefits and significant weight to the social benefits. In attributing weight to these benefits, I recognise that the Council's performance against the housing delivery test between 2017 and 2020 has been excellent, reflecting the upward curve in housebuilding in the City in recent years. However, supply still falls below five years, albeit marginally.
62. Despite the misgivings of the Parish Council, the community building has the potential to bring some social benefits in terms of community cohesion, health, and well-being. Whilst the precise end use is unclear, I attach moderate weight to these benefits.
63. The provision of open space and its ongoing management and maintenance and the contributions to school places, sustainable transport and the travel plan are neutral considerations because they are needed to make the development acceptable. I also consider that the impact on living conditions is a neutral factor taking into account the matters set out in paragraph 50.
64. The site is predominantly improved grassland but has some biodiversity value due to the existing ponds, stream, ditches, tree cover, scrub, and hedgerows that lie within, or on the edge of, the site. There would be scope to retain some of these features and introduce additional planting and other ecological gains. But existing wildlife would be disturbed. Biodiversity matters weigh neutrally in the planning balance.
65. Although Barton has limited facilities reflecting its lowly position in the settlement hierarchy, there are two primary schools and a few eating and drinking establishments in the village, a regular bus service along the A6 linking Barton to Preston, Garstang and Broughton, and a secondary school and convenience stores in the latter some 2 km to the south. The private vehicle would be used for most journeys but alternatives exist and journeys to access services would not be long. Despite its development plan status as a small village, there have been a number of housing allocations and permissions in recent years. The locational and accessibility policies set out in the Framework are a neutral consideration in this case.
66. There is conflict with Policy 1 of the CLCS and Policies AD1 (b) and EN1 of the PLP and the development plan overall. However, because there is a need to

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<sup>14</sup> Assessed in the SHMA as around 240 dpa and in the CLHS as upwards of 250 dpa

breach the settlement boundaries to provide enough housing land, Policies AD1 (b) and EN1 are out-of-date and should be afforded moderate not full weight. In terms of Policy 1, the overall strategy is consistent with the Framework in concentrating development in the most sustainable locations. However, because of the link between Part (f) of the policy and Policies AD1 (b) and EN1, I attribute significant but not full weight to the policy. There is no breach of Policy 4 of the CLCS in that the development will assist in meeting the housing requirement and has the potential to contribute to five-year supply.

67. Policy MP of the CLCS and Policy V1 of the PLP were also raised in evidence and discussed at the inquiry. However, these policies are not consistent with paragraph 11 of the Framework as they reflect the wording of the 2012 version. They are not amongst the most important policies for determining the appeal. Indeed, PPG now advises that there is no need for a local plan to directly replicate the presumption in favour of sustainable development in policy. Moreover, these policies would make no difference to the outcome of this appeal.
68. The adverse impacts of the proposed development relating to the conflict with the development strategy and effects on character and appearance would not significantly and demonstrably outweigh the considerable economic and significant social benefits.
69. Material considerations, including the reduced weight that I give to the most important policies for deciding the appeal, indicate that the proposal should be determined other than in accordance with the development plan. I note, in coming to this conclusion, that it reflects the Council's position in circumstances where it is considered that a five-year supply cannot be demonstrated.

#### *Conditions*

70. I have considered the conditions put forward by the main parties against the advice within the Framework and PPG. I have amended the wording of some conditions as necessary so that they meet the relevant tests.
71. A condition requiring the submission of reserved matters is necessary to ensure that the layout, scale, and design are acceptable. I have imposed a condition relating to the approved plans and limiting the development to no more than 151 dwellings for certainty and because the proposal has been assessed on the basis of the stated numbers. Further details of the access are also required together with a programme of implementation but I have combined those put forward by the parties for clarity.
72. Alongside the reserved matters, ground levels, tree retention and protection, landscape and habitat management, and updated protected species surveys should be submitted so that the development takes into account these matters. The community building may accommodate some noisy uses so it should be designed to incorporate mitigation measures which should be secured by condition.
73. Pre-commencement conditions, other than those related to the reserved matters, are needed for the protection of amphibians and badgers, energy efficiency, site investigation, archaeological work, sustainable drainage, construction management and employment skills, to ensure a sustainable development which complies with relevant development plan policies and

supporting guidance. These conditions need to be discharged pre-construction as they are matters that require investigation or need to be in place before works commence; or are details that will affect the layout and design.

74. A condition requiring maintenance of streets pending adoption is needed to ensure an orderly development. However, the details do not need to be agreed pre-commencement, rather before the streets come into use. Conditions requiring details of lighting, electric charging points and a Travel Plan are required to protect the environment and promote sustainable transport modes. Nesting birds should be protected by condition for biodiversity reasons.

*Conclusion*

75. For the above reasons the appeal is allowed, subject to conditions.

*Mark Dakeyne*

INSPECTOR

**Attached**

Annex A - Schedule of Conditions

Annex B - Appearances

Annex C - Inquiry Documents

## **ANNEX A - SCHEDULE OF CONDITIONS**

### *Reserved Matters, Time Limits and Plans*

- 1) Details of the access, (based on, but not restricted to Drawing No: SCP/18205/SK05 Rev A), appearance, landscaping, layout and scale, (hereinafter called "the reserved matters") shall be submitted to, and approved in writing by, the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be limited to no more than 151 dwellings and shall be carried out in accordance with the following approved plans:  
16-154 LP01 – Location Plan  
SCP/18205/SK05 Rev A – Site access proposed ghost island arrangement

### *Details to accompany reserved matters*

- 5) The details of the new site access junction to Garstang Road required under condition 1 shall include the provision of a pedestrian refuge north of the junction, the upgrade of the northbound bus stop in the vicinity of no. 709 Garstang Road to full mobility standard with shelter, and a programme for implementation of the new access, pedestrian refuge, upgraded bus stop and an initial section of the estate road within the development (constructed to at least base course level). The development shall be carried out in accordance with the approved details and programme.
- 6) Any application for approval of reserved matters for layout, scale and/or design shall be accompanied by full details of existing and proposed ground levels and proposed building finish floor levels (all relative to ground levels adjoining the site). The development shall only be carried out in accordance with the approved details.
- 7) Any application for approval of reserved matters for layout, scale and/or design for the community building hereby approved shall incorporate noise mitigation measures derived from a noise assessment which shall consider the relationship of the community building with nearby residential uses. The development shall be carried out in accordance with the approved noise mitigation measures.
- 8) Any application for approval of reserved matters for layout shall include an Arboricultural Impact Assessment and Tree Constraints Plan detailing existing trees and hedges to be retained and those to be removed. The Assessment and Plan shall also detail protection measures for trees, shrubs and hedges identified as being retained. The development shall be carried out in accordance with the approved details.

- 9) Any application for approval of reserved matters for landscaping shall include details of a Landscape/Habitat Management Plan to include long-term design objectives, timings of works, habitat creation and enhancement, and management responsibilities and maintenance schedules for all landscaped areas (other than privately-owned domestic gardens). The requirements of the Landscape/Habitat Management Plan shall be informed by the submitted Extended Phase 1 Habitat Survey Rev. A dated 2018 and the recommended measures shall be carried out in accordance with the approved Plan.
- 10) Any application for approval of reserved matters for landscaping shall include an updated survey to demonstrate that all trees have been re-surveyed for the presence of bats/bat roosts. Any mitigation measures identified as being necessary during the survey work shall be implemented in accordance with a scheme that has first been submitted to, and approved in writing by, the local planning authority.

*Pre-commencement conditions*

- 11) Prior to commencement of the development hereby approved a method statement outlining preventative measures (Reasonable Avoidance Measures) to ensure protection of amphibians shall have been submitted to, and approved in writing by, the local planning authority. The approved method statement shall then be adhered to throughout the construction phase.
- 12) Prior to the commencement of the development hereby approved, a scheme shall be submitted to, and approved in writing by, the local planning authority to demonstrate that all dwellings shall achieve not less than a 19% improvement in the Dwelling Emission Rate over the Target Emission Rate as defined in Part L1A of the 2013 Building Regulations. The development shall thereafter be carried out in accordance with the approved scheme.
- 13) Further to the recommendations of the Phase 1 Geo-Environmental Desk Study Report Ref: 18079/GEDS dated May 2018, an intrusive Phase II Site Investigation shall be undertaken and submitted to the local planning authority for verification prior to the commencement of any development on site. In the event that remediation is required, a Method Statement and Remediation Strategy shall be submitted to, and approved in writing by, the local planning authority prior to the commencement of any development. Thereafter the development shall be carried out in accordance with the approved details.
- 14) Prior to commencement of the development hereby approved (including clearance of site vegetation), an updated survey for the presence of badgers (together with proposals for mitigation/compensation, if required) shall be undertaken, submitted to, and approved in writing by, the local planning authority. Any necessary and approved measures for the protection of badgers shall thereafter be implemented.
- 15) No development shall take place until a programme of archaeological work and a Written Scheme of Investigation (WSI) has been submitted to, and approved in writing by, the local planning authority. The WSI shall include a mitigation strategy detailing the excavation/preservation strategy where appropriate and a timetable for the carrying out of this

work. The development shall be carried out in accordance with the approved scheme.

- 16) No development shall commence until details of the design and means of implementation of a sustainable surface water drainage scheme have been submitted to, and approved in writing by, the local planning authority. Those details shall include:
- a) A sustainable drainage layout plan appropriately labelled to include all pipe/structure references, dimensions, design levels, finished floor levels in AOD with adjacent ground levels;
  - b) Proposed ground levels along the boundaries with nos. 620-630, 654-666 Garstang Road, nos. 18, 20 & 22 Woodlands Crescent, and nos. 22 and 23 Woodlands Way;
  - c) The drainage scheme shall be in accordance with the principles of the Betts Hydro Flood Risk Assessment & Drainage Management Strategy Ref: HYD345\_CARDWELL.FARM\_FRA&DMS Revision 1.0 dated 17 June 2019 and demonstrate that the surface water run-off shall not exceed the pre-development greenfield runoff rate. No surface water shall be permitted to drain directly or indirectly into the public sewer. Any variation to the discharge of foul water shall be agreed in writing by the local planning authority prior to the commencement of the development. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed;
  - d) Sustainable drainage flow calculations (1 in 1, 1 in 2, 1 in 30 and 1 in 100 + climate change);
  - e) A plan identifying areas contributing to the drainage network;
  - f) Measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses;
  - g) A plan to show overland flow routes and flood water exceedance routes and flood extents;
  - h) Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates;
  - i) Breakdown of attenuation volume in pipes, manholes and attenuation ponds; and,
  - j) Details of an appropriate management and maintenance plan for the sustainable drainage system for the lifetime of the development. This shall include arrangements for adoption by an appropriate public body or statutory undertaker or management and maintenance by a Management Company and any means of access for maintenance and easements, where applicable.
- The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the approved dwellings. Thereafter the drainage system shall be retained, managed, and maintained in accordance with the approved details.
- 17) Prior to commencement of the development hereby approved a construction and environmental management plan (CEMP) shall be submitted to, and approved in writing by, the local planning authority. The CEMP shall provide for:
- (i) the means of highway access and parking for construction vehicles, plant and construction workers' vehicles and sustainable travel methods for construction workers;
  - (ii) loading and unloading of plant and materials;
  - (iii) storage of plant and materials used in constructing the development;

(iv) storage, disposal and removal of spoil and waste arising out of the construction works;  
(v) hours of working and access;  
(vi) site security arrangements, including hoardings and other means of enclosure;  
(vii) piling methods, if used;  
(viii) wheel cleaning facilities;  
(ix) measures to control the emission of dust and dirt during construction;  
(x) measures to control the emission of noise; and,  
(xi) appointment of a Construction Liaison Officer with contact details. The approved CEMP shall be adhered to throughout the construction period.

- 18) Prior to the commencement of the development hereby approved, an Employment and Skills Plan that is tailored to the development and that sets out the employment and skills training opportunities for the construction phase of the development, shall be submitted to, and approved in writing by, the local planning authority. Thereafter the development shall be carried out in accordance with the approved Employment and Skills Plan.

*Pre-occupation and construction stage conditions*

- 19) Prior to first occupation of any part of the development hereby permitted, details of a programme for the provision of streets within the development and arrangements for their management and maintenance shall be submitted to, and approved in writing by, the local planning authority. The streets shall thereafter be provided, managed, and maintained in accordance with the approved details until such time as an agreement has been entered into under Section 38 of the Highways Act 1980 or a private management and maintenance company has been established.
- 20) Prior to first occupation of any part of the development hereby approved, an external lighting scheme for public areas shall be submitted to, and agreed in writing by, the local planning authority. The scheme shall include luminance levels and shall demonstrate how any proposed external lighting has been designed and located to avoid excessive light spill/pollution in relation to important wildlife habitats. External lighting in public areas shall only be installed in accordance with the approved scheme and shall thereafter be retained as approved. No additional external lighting outside the curtilage of dwellings shall be installed without prior written consent from the local planning authority.
- 21) Prior to its occupation, each dwelling shall be provided with an electric vehicle charging point in accordance with details that have been submitted to, and approved in writing by, the local planning authority. The electric vehicle charging points shall be retained for that purpose thereafter.
- 22) No more than 50 dwellings shall be occupied until a Travel Plan has been submitted to, and approved in writing by, the local planning authority. The provisions of the Travel Plan shall be implemented and operated in accordance with the timetable contained therein.

- 23) There shall be no tree felling, vegetation clearance works, or other works that may affect nesting birds between March and August inclusive, unless the absence of nesting birds has been confirmed by further surveys or inspections that have first been submitted to, and approved in writing by, the local planning authority. Anti-bird netting shall not be placed over trees, hedgerows, or other vegetation within the site at any time.

## **ANNEX B - APPEARANCES**

### FOR THE LOCAL PLANNING AUTHORITY:

Martin Carter of Counsel	Instructed by Karen Parminter, Assistant Director, City Solicitor and Monitoring Officer
He called	
Chris Blackburn BSc MSc MRTPI	Planning Policy Team Leader
Robert Major BSc MSc MRTPI	Principal Planning Officer

### FOR THE APPELLANT:

Vincent Fraser of Queens Counsel	Instructed by Stephen Harris, Emery Planning
He called	
Ben Pycroft BA (Hons) Dip TP MRTPI	Director, Emery Planning
Stephen Harris BSc (Hons) MRTPI	Director, Emery Planning

### INTERESTED PERSONS:

John Parker	Barton Parish Councillor
Susan Fox	

## **ANNEX C - INQUIRY DOCUMENTS**

The Council's dedicated web page sets out the Core Documents and other documents submitted before the inquiry, numbered A1 to Q3:

<https://www.preston.gov.uk/cardwellinquiry>

In addition, the following documents were submitted at the inquiry. These are also available on the above web page:

- R1 Appellant's opening statement
- R2 Council's opening statement
- R3 Solo Retail v Torridge District Council [2019] EWHC 489 (Admin) submitted by the Council
- R4 Gladmans Developments Limited v SoS for HCLG [2021] EWCA Civ 104 submitted by the Council
- R5 Statement from John Parker, representing Barton Parish Council
- R6 Statement from Susan Fox
- R7 Appeal decision ref: APP/N2345/A/13/2192362 dated 13 August 2013 relating to land off Forest Grove, Barton submitted by the Council
- R8 Preston Local Plan 2012-2026 Policies Map Key submitted by the Council
- R9 E-mail from Barton Parish Council to the appellant dated 12 April 2018 submitted by the appellant
- R10 E-mail from Barton Parish Council to the appellant dated 20 June 2018 submitted by the appellant
- R11 E-mail from Barton Parish Council to the appellant dated 21 June 2018 submitted by the appellant
- R12 Central Lancashire Employment Skills Supplementary Planning Document (September 2017) submitted by the Council
- R13 E-mails between the Council and appellant agreeing to a change in the description of development submitted by the Council
- R14 Council's closing statement
- R15 Appellant's closing statement