

CHAIN HOUSE LANE

APPELLANT'S CLOSING STATEMENT

Introduction

1. The appeal proposal seeks outline planning permission for the construction of up to 100 dwellings with all matters reserved apart from access, on a site of approximately 3.6 ha located on greenfield land to the south of Chain House Lane.
2. The development plan comprises the Central Lancashire Core Strategy ("CS") adopted in 2012 and the South Ribble Local Plan ("LP") adopted in 2015.
3. The site is within an area of safeguarded land subject to policy G3 in the LP. South Ribble's ("SR") case and its reasons for refusal are wholly dependent upon alleged conflict with this policy, but SR was unable to substantiate conflict with this policy. This can be briefly expressed before considering the evidence in any detail.
4. In the light of the answers given in XX by ZH it is clear that the starting point for determining this appeal is that the tilted balance in NPPF applies and that policy G3 is out of date. Following the XX there is considerable common ground between the parties with respect to the issue of whether SR can demonstrate a five year housing supply. Importantly ZH conceded in XX that SR is unable to demonstrate a five year supply if the requirement is calculated in accordance with the development plan. If that is the case it is common ground that G3 is out of date and the tilted balance applies¹. CL sought to argue against these clear concessions but ultimately she conceded the point.

¹ ZH XX and CL XX

5. However, SR's position is no better if one does not apply the CS figure, as ZH further conceded that in such circumstances the DP is out of date because one cannot simply apply the SR standard method figure, it is necessary to re-distribute the standard method figure for the three Central Lancashire authorities between those authorities. After some cavilling the same position was accepted by CL².
6. Whichever approach is taken the result is the same policy G3 is out of date and the tilted balance applies.
7. The matter does not rest there because it was also recognised that in allocating the site within safeguarded land the LP identified the land as suitable for development when needed; the only issue is therefore one of timing. This was ultimately accepted by CL, who eventually stated that the land was safeguarded for development as and when needed, and that it was a "timing" policy³. Her initial reluctance to accept this point was surprising given –
 - i) The LP provides that the reason why the land was not currently required is simply because sufficient land was at that time identified elsewhere⁴, and that the land was safeguarded to meet the borough's longer terms development needs⁵, and
 - ii) Reason for refusal 1 is clear that the alleged breach of G3 is said to arise because it was claimed that there was a 5 year supply (i.e. it was alleged that there was no need for its release at that time) – clearly the reason for refusal accepts that the site is safeguarded to be used when needed.
8. Importantly given the alleged breach of the policy is said to arise because it was claimed that there was a 5 year supply, it follows that there is no breach of the policy if there is no 5 year supply. Again CL ultimately accepted that if there is no 5 year supply there can be no question of a

² ZH XX and CL XX

³ CL XX

⁴ CD 4.2 para 10.33

⁵ CD 4.2 para 10.34

breach of the policy, and that the same held true in circumstances of the policy being out of date because of the redistribution proposed in the draft Memorandum of Understanding (“MoU”).

The 5 year housing requirement

9. The CS covers the three local authorities SR, Preston (“PCC”) and Chorley (“CC”) which reflects the close relationship between the three authorities and importantly that the Housing Market Area encompasses the three authorities.
10. Policy 4 of the CS sets out a minimum requirement for each authority area. The minimum requirement reflected the need over the housing market area distributed appropriately between the three authorities. The requirement for SR was a minimum of 417 dwellings per annum.
11. The CS was adopted in 2012 and is accordingly over 5 years old. However, it is agreed that the net effect of NPPF 73 and footnote 37 is that the CS requirement should still be used for calculating the 5 year housing land supply if the CS has been reviewed and found not to require updating⁶.
12. The question of whether the CS had been reviewed was considered in SR’s latest Housing Land Position Statement (“HLP”)⁷ which considered NPPF 73 and footnote 37⁸, recognised that the CS housing requirement was more than five years old but then explained that in 2017 the three local authorities undertook a Strategic Housing Market Assessment (“SHMA”) and subsequently entered into a MoU endorsing CS policy 4 and agreeing that its requirements should continue to be applied. It explained that this was done (a) to ensure that the three authorities continued to meet their respective Objectively Assessed Needs, (b) to meet the aspirations of the South Ribble, Preston and

⁶ ZH XX

⁷ CD 6.1

⁸ CD 6.1 pp 20 and 21

Lancashire City Deal (“City Deal”), and (c) the government’s aspirations to increase the supply of land⁹.

13. The HLP reference to the aspirations to increase the supply of housing is agreed to be a reference to the then objective in 2012 NPPF 47 which is agreed to have been retained in NPPF 59¹⁰. ZH correctly accepted that this remains an important objective which it is important to keep in mind when seeking to understand what government policy is seeking. She also accepted that the City Deal aspirations have not changed.
14. Significantly the HLP concludes in bold that *“This could be considered to have been a review of the policy in terms of footnote 37 of the NPPF”*.
15. Whilst the HLP then goes on to discuss the Brindle Road decision letter it expresses no view on the merits of this decision letter and at no point does it withdraw from or counter the conclusion that the events in 2017 could be considered to have been a footnote 37 review of the policy.
16. SR’s public position at the time of the HLP accordingly was that the 2017 events could be considered to have been a review of the CS policy. This was consistent with SR’s position in March 2019 which accepted that even after the Brindle Road decision *“the established position in law is that the Council is not able to demonstrate a 5 year housing supply”*¹¹. This public position did not change leading up to the inquiry and there has been no public change by SR as ZH conceded. Despite SR’s public position BP experienced difficulty in obtaining a clear position from ZH in preparing for the inquiry as he explained¹².
17. The conclusion in the HLP that the 2017 events could be considered to amount to a review is clearly correct when one considers what actually happened in 2016/17. As BP explained and ZH ultimately accepted –
 - i) The SHMA was commissioned as a result of a report to the three local authorities on 27th June 2016¹³ which (a)

⁹ CD 6.1 p21

¹⁰ ZH XX

¹¹ CD 2.2 SH letter p 3 quoting from SR committee report 11th March 2019

¹² BP para 7.12 – 7.16

¹³ BP2H

considered the duty to keep plans under review (paragraph 6), (b) referred to the advice that plans were likely to need updating every 5 years (paragraph 7), (c) acknowledged that the CS was reaching the point where it was necessary to review whether the CS needed updating (paragraph 7) and (d) concluded that there was a need to review the CS (paragraph 13). The SHMA was accordingly commissioned for the purpose of reviewing the CS policy. As ZH commented *“the point of the SHMA was to see if the Core Strategy figures remained up to date”*¹⁴.

- ii) The SHMA then considered the up to date evidence with respect to housing requirement and assessed this against the CS figures. The SHMA concluded that there was no need to depart from or update the CS figures.
- iii) The SHMA was then reported back to the three authorities in the 2nd March 2017 report¹⁵. That report concluded the Full Objectively Assessed Need was only marginally below the CS figure, and recommended that the CS figure should be retained rather than proceed to a partial review of the CS¹⁶.
- iv) The three authorities clearly reviewed the CS figures using the up to date evidence and concluded that there was no need to change them and that they should be retained.
- v) This then led to the MoU¹⁷, the purpose of which was to confirm and set out the agreed approach of the three authorities to the CS and the Housing Market Area (paragraph 3.1). The MoU recorded that it was appropriate to retain the CS figures for the reasons given (paragraphs 4.6 and 5.10) and agreed to continue to apply the CS figures

¹⁴ ZH XX

¹⁵ BP2I

¹⁶ BP2I para 20

¹⁷ CD 6.9

(paragraph 6.1(a)) and to continue the existing monitoring arrangements of the CS and individual local plans to confirm that the MoU is delivering as intended (paragraph 6.1(c)).

18. As BP explained the MoU was the outcome of a review which commenced with the 27th June 2016 report, which was then properly evidence based with the SHMA, and which then considered the SHMA in the 2nd March 2017 report. It is the whole process which amounted to the review, it is an error simply to limit consideration to one element of this process. ZH fell into this error when seeking to treat the MoU in isolation as the claimed review¹⁸ as she ultimately acknowledged¹⁹.

19. ZH made a number of unfounded criticism of the process in an attempt to argue that it did not amount to a review –

- i) That the MoU was signed prior to the issue of the new NPPF, the introduction of the standard method and the issue of the new PPGs. Footnote 37 does not limit reviews to those undertaken after these events, it is clear from the wording of footnote 37 that it applies to reviews that preceded the NPPF (and therefore the standard method and the new PPGs). This point is confirmed and emphasised by the guidance in PPG 61-062 which clearly recognises that reviews undertaken prior to the NPPF (and therefore the standard method and the new PPGs) remain operative and effective unless there has been a “*significant change*” as defined in that paragraph of the PPG. For these purposes the PPG defines a *significant change* as arising if the local plan figure is significantly below the standard method figure. That is not the case here and it is clear that the NPPF and PPG is not concerned if the local plan figure is significantly above the standard method figure. All of this was accepted by ZH who further agreed

¹⁸ ZH para 2.9ff

¹⁹ ZH XX

that this was consistent with the overall objective of significantly boosting the supply of housing.

- ii) In ReX of ZH a misguided attempt was made to resurrect this argument by suggesting that the NPPF and/or the standard method and/or the new PPG were new material considerations arising after the review with the implication that they could render the review out of date. This is merely the same argument abandoned by ZH expressed differently and is wrong for the same reasons. PPG 61-062 is a complete answer to this point.
- iii) Surprisingly ZH had referred to PPG 61-062 as one of the PPGs which post-dated the review and which were in some unspecified manner supposed to call into question the review. This is completely unsustainable – the paragraph clearly provides to the contrary. Again ZH accepted this.
- iv) ZH also referred to PPG 61-069 and suggested that the process in 2016/17 could not be a review because it had not followed the procedure in this paragraph. This is again misconceived for a number of reasons. First there is no proscribed procedure for a review either in NPPF or in the PPGs. All that is said (in PPG 61-062) is that reviews should be proportionate to the issues in hand. In this case where the authorities have commissioned an independent SHMA which has provided the necessary evidence to consider the matter and which concludes that there is no evidence to suggest that the CS figures need updating and this is considered and accepted by the authorities it would be disproportionate to do any more. Second the procedure in PPG 61-069 is dealing with the situation where a plan is updated by production of a new revised plan. That is not the same as a review. An update involves submitting new policies to the Secretary of State for examination which would ultimately be adopted and replace the previous policies. That would

result in a new local plan. In such circumstances there would be no question of the plan being over 5 year old – it is a completely different situation to that under consideration where the plan is over 5 years old but a review has concluded it does not require updating. All of this was ultimately accepted by ZH.

- v) Having accepted all of the above points ZH then sought to argue that the process in 2016/17 was not a review because it had not been out to consultation. There was again no substance in this point given that there is no specified process and no requirement for consultation. In a situation where the authorities have an up to date evidence base which leads to the conclusion that there is no need to alter the plan there is no need for consultation – no change is proposed – it would be disproportionate to indulge in consultation. It is furthermore important to keep in mind that there is no suggestion that the CS figure should have been increased. Ultimately ZH accepted all these points.

20. ZH drew attention to the Brindle Road decision and sought support from it. The decision letter did not assist ZH. The Inspector concluded that the CS should continue to be applied rather than using the standard method because he was not satisfied that the standard method figure represented a true reflection of the borough's needs (paragraph 40). SR agrees with this assessment (considered below). The Inspector gave four reasons why he came to that conclusion –

- i) He relied upon the MoU even though he observed that he was not convinced that it amounted to a review. Importantly the Inspector did not rely upon the MoU being a review but still considered it an important reason for retaining the CS figure. This must remain the case accordingly even if ZH had been right in arguing that the MoU was not a review.

- ii) He concluded that using the standard method would not reflect the objective of boosting significantly housing supply (NPPF 59) or the City Deal. Again this remains the case.
- iii) He concluded that if the CS figures were not to be used there would need to be agreement between the three authorities which would need to apply the relevant buffer and address the backlog. Again that remains the case.
- iv) Finally he observed that the guidance on the standard method was not complete at that time. It is only this factor which would no longer apply.

ZH accepted all of these points with the qualification that she did not agree there was a need to address the backlog. Importantly she had to accept that there would be no reason to come to a different conclusion now on the basis of those points.

21. ZH had sought to rely upon the Brindle Road decision because the Inspector had observed that he was not convinced that the MoU was a review. This did not provide any support for her claim that there had not been a review for the following reasons (which were accepted by ZH) –

- i) The comment is in fact equivocal – the Inspector merely states he is not “convinced” without giving any reason and importantly he does not state that it is not a review.
- ii) The comment considers the MoU alone – it is not suggested that the MoU alone was the review – it was in fact the outcome of the review. The comment does not address the process which amounted to the review.
- iii) The comment pre-dated PPG 61-062 which made it clear that there is no fixed procedure for a review and that it merely has to be proportionate.
- iv) Brindle Road preceded the HLP but did not lead SR to conclude that there had been no review.

- v) Subsequent to the Brindle Road appeal SR applied the CS figure and accepted that it had no 5 year supply.

22. ZH also sought to rely upon the Carrington Road appeal – but again it did not assist her for reasons accepted by her –

- i) This was a written representation appeal which did not involve any detailed evidence or argument with respect to 5 year supply.
- ii) It was in fact recorded that there was no dispute with respect to the 5 year supply (paragraph 15).
- iii) In those circumstances the decision does not take the matter further.
- iv) In fact far from the decision supporting the conclusion that the standard method should be applied it did the opposite.
- v) It was in fact the CS figure which was used for calculating 5 year supply. Had the standard method been applied CC would not have a 5 year supply.

When properly analysed and understood the Carrington Road decision confirms that it is the CS figure which should be used – which can only be a confirmation that the CS has been reviewed.

23. A particularly surprising aspect of ZH’s evidence was her reliance upon the MHCLG use of the standard method in the Housing Delivery Test (“HDT”) as supporting its use for the purpose of calculating five year supply under NPPF 73 suggesting that this established that MHCLG considered that this was the appropriate method to use and that it would be inconsistent to apply the CS in the NPPF 73 calculation. This argument is patently misconceived given the very clear guidance in the HDT Rule Book which explains that even where the local plan is less than five years old the figure to be used for the purposes of the HDT is the **lower** of the local plan figure or the standard method (paragraph 12). Given that NPPF 73 and footnote 37 require use of the local plan figure in those circumstances it is plain that the HDT provides that a different

method may be used for HDT purposes to that which is to be used for NPPF 73 purposes. This reflects the fact that the two exercises are quite separate and look at different issues. There is accordingly no inconsistency in using one method for HDT and another for NPPF 73, but even if there were it is something expressly provided for in the NPPF and HDT Rule Book. This was a very clear error on ZH's part and her reluctance to acknowledge it merely served to undermine her evidence.

24. Importantly both P and C consider that the CS was reviewed and remains the up to date basis upon which five year housing requirement should be calculated. The use of the CS figures has very important consequences for both PCC and CC. This was all accepted by ZH.
25. PCC's latest HLP explains that the CS figure remains up to date despite being seven years old because there was a review in 2017²⁰. In PCC's case the standard method would provide for an annual requirement of only 234 pa and on its supply figures it would be able to demonstrate a five year housing supply. However, the use of the CS figures results in an annual requirement of 507 and consequently it is accepted by PCC that it cannot demonstrate a five year supply²¹. PCC's acceptance that it should use the CS requirement has very significant consequences for it, it is not a decision it would be expected to make lightly, and importantly it is one informed by legal advice²².
26. CC likewise uses the CS figure²³ and again it is on the basis that the CS was reviewed and found to be up to date. In CC's case it explains that the CS was reviewed twice, first in the LP process for CC and secondly in 2017²⁴. In CC's case it is able to demonstrate a 5 year supply on the basis of the CS figures whereas it would be unable to demonstrate a 5 year supply if it were to use the standard method.
27. The position is therefore very clear (a) all three local authorities have consistently considered there to have been a review in 2017 and they

²⁰ See BP 2-D para 1.9

²¹ See BP 7.29

²² BP 7.30 and BP2j

²³ See C HLP – BP2F para 4

²⁴ See BP2G para 40, Emery Statement on Revised MoU para 1.9 and Pear Tree Lane committee report.

have consistently applied the CS figures for the purposes of calculating 5 year requirement and supply, (b) the appeal decisions have all used the CS figures despite the introduction of the standard method. ZH agreed that if the standard method were to be used at this inquiry that would not accord with previous appeal decisions and it would be the first time that an inspector had proceeded on the basis of use of the standard method in Central Lancashire.

28. Faced with all of this evidence and despite the case she sought to present ZH eventually had to agree that there had been a review of the CS in 2017. She sought, however, to argue that it was simply a review of the housing figures and CS policy 4(a). As a matter of fact she was clearly wrong on this point as SH pointed out. The MoU²⁵ paragraph 6 sets out what is agreed as a result of the review. Paragraph 6.1(a) records that it is agreed that the CS figures will continue to be applied, but paragraph 6.1(c) goes on to provide that the authorities will “*continue the existing monitoring arrangements for the Central Lancashire Core Strategy and individual local plans to confirm that the MOU is delivering as intended.*” As SH explained the reference to the CS monitoring arrangements is a reference to Policy 4(b) of the CS. It is accordingly a further error on ZH’s part to suggest that only Policy 4(a) had been reviewed.
29. The remaining parts of Policy 4 concern maintaining a five year supply (Policy 4(c)) and a requirement to identify sites in a Sites Allocation Document (Policy 4(d)). These are standard requirements of national policy and there could be no suggestion that they were out of date.
30. Irrespective of whether the whole of Policy 4 was reviewed or whether the review was limited to the figures as ZH incorrectly maintained, the important point is that for the purposes of NPPF 73 and footnote 37 the issue is simply the housing requirement figures. ZH accepts that they were reviewed. That is all that is required by footnote 37.

²⁵ CD 6.9

31. Given ZH's acceptance that the CS housing figures were reviewed, and given the consistent approach of the three authorities and previous inspectors the only proper conclusion in this case must be that the CS figures were reviewed in 2017 for the purposes of footnote 37 and that they remain the correct figures to be used for the purpose of calculating five year requirement.
32. SR introduced new documents very late in the day which relate to a claimed review of the review – the Icen report, the Cabinet report, and the draft MoU. The late introduction of these documents when they were available at an earlier date was unacceptable, but in fact they merely reinforce the case for use of the CS figures.
33. Paragraph 13 of the 13th November 2019 Cabinet Report records that all three local authorities are concerned that the standard method does not truly reflect their housing needs. ZH explained that this was SR's position and her professional opinion. The report demonstrates the point by comparing the standard method figure for SR with the long term delivery in SR since 2003 – the standard method would provide for delivery at less than 60% of the rate over that period as ZH agreed. It is explained in the report that the standard method is unduly influenced by under delivery in recent years. As ZH agreed SR considers the standard method would provide for significantly less than what is required and SR accepts that there has been under delivery in SR.
34. The report goes on to explain that because of these concerns Icen were instructed to look at the figures. Icen has produced a draft report. In addition to the report only being a draft it is also incomplete as ZH accepted because although the Icen report recognises that the standard method figures are minimum figures it limits consideration to redistributing the figures within the Central Lancashire authorities – it fails to consider whether there is a need to provide for more than the standard method. This would be a significant omission in any report of this nature, but it is a particularly important omission in this case where the authority already recognises that the standard method under provides and has been affected by under delivery. ZH conceded that the Icen

report appeared to be an incomplete piece of work because there was no assessment of whether the CS figures were out of date and no assessment of whether more than the standard method figure was required.

35. The report accepts in paragraph 17 that in SR there is under delivery of 1110 dwellings (this is also found in the HLP). Revealingly the report explains that the proposed approach would wipe out this deficit and appears to see that as an advantage of the proposed approach. Whilst one can question whether that is a proper approach to take the important point is that report is recognising that there is currently a deficit (if there were not there could not be a deficit to wipe out). That deficit only arises if the Core Strategy figures still apply and therefore the report is accepting that at present the CS figure applies as ZH recognised. The continued application of the CS figures is further recognised in –

- i) Paragraph 18 which explains that the draft MoU would provide for 334 homes per annum in SR *“as opposed to the current 417 homes per annum”*.
- ii) Paragraph 21 which explains that the only alternative is *“to continue with the current Local Plan figure of 417 homes per annum”*. There is no suggestion that application of the standard method figure for SR is an alternative.

36. ZH agreed that it was very clear from the Cabinet Report that SR does not consider that it is practical or realistic to proceed on the basis of the standard method.

37. The Cabinet Report introduces the draft MoU and explains that it is to be subject to a *“short period”* of consultation. The period is remarkably short (only 2 weeks) and importantly the consultation is only partial – for example the appellant was not consulted even though the contact list suggests that it was and despite this inquiry.

38. ZH agreed that the consultation period was exceptionally short and was unable to provide any explanation as to why such a short period should be adopted. The approach being taken is all the more unreasonable when

one considers that the Issues and Options²⁶ for the new local plan to replace the CS is just now going out to consultation until the middle of February. It is significant that this document explains that the standard method is just the starting point for consideration of requirement (paragraph 3.6). The document explains that the authorities are still looking at how many houses are needed and how they should be distributed and that there will be more information when the next local plan consultation is undertaken. Given this position ZH had to accept that it was premature to adopt the position proposed in the Cabinet Report and draft MoU. She further accepted that given the Issues and Options reference to the standard method being the minimum, the ongoing investigation of what was needed could only mean that it was considered that more may be required.

39. The reason why SR and possibly the other two authorities are considering going forward with a patently unreasonable procedure with the draft MoU is embarrassingly clear from the Cabinet Report which makes it clear in a number of paragraphs that if SR were to remain with the CS figures it would not be able to defend section 78 appeals such as the current appeal (see paragraphs 21, 23, 28 and 30). This is clearly why it is seeking to press ahead in advance of the Issues and Options consultation, with a wholly inadequate consultation period, on the basis of an incomplete and draft report and in a manner which effectively prejudices the local plan process. ZH was unable or unwilling to answer questions on these points – her silence was eloquent.
40. If one considers the practical position the draft MoU appears to be driven by cynical political considerations. If the CS figures continue to be used neither SR nor PCC can demonstrate a five year supply whereas if the standard method is used CC is unable to demonstrate a five year supply. It is only if the overall standard method figure for the three authorities is aggregated and then distributed in the manner proposed that the three authorities could try to claim they each have a five year supply. This is

²⁶ CD 5.1

plainly not a proper approach to be taking. Again ZH was either unable or unwilling to address this issue.

41. ZH did, however, agree that the approach advocated in the draft MoU is neither consistent with the aim of boosting significantly the supply of housing or the City Deal. This is easily demonstrated. The long term delivery trend 2003-19 is 347 units per annum (and it is important to note that this is influenced by under delivery)²⁷. The draft MoU would provide for 334 – a figure below the long term trend. As ZH agreed if the draft MoU figures for SR and PCC were aggregated it is clear that the City Deal figures would not even be provided within 20 years.
42. Ultimately ZH said that no weight should be given to the draft MoU but that its only value was in demonstrating that the CS figures are now out of date. ZH is correct in recognising that no weight can be given to the draft MoU, but far from the documents demonstrating that the CS figures are out of date they merely reinforce (a) that the CS figures were subject to review and remain the current figures, and (b) that there is no good reason for departing from them.
43. The appellant has never argued that the City Deal should be used as a housing requirement – ZH sets up a straw man to knock down. However, the City Deal is an important material consideration when considering this issue. This is clear given the various reference to it in the LP (see for example the Forward), the MoU, and the Brindle Road decision. It reinforces along with the objective of boosting significantly the supply of housing why there is no reason for departing from the CS figures given that they were subject to review in 2017 (as ZH accepted).
44. Ultimately ZH's position appeared to be that she wished to use the standard method for calculating housing requirement even though –
 - i) the CS was reviewed in 2017,
 - ii) that the three authorities recognised that the CS had been reviewed and that CS figures continued to apply,

²⁷ Cabinet Report para 13

- iii) that Inspectors have consistently applied the CS figures, and
- iv) her professional opinion and that of SR is that the standard method does not represent a true reflection of SR's housing requirements.

This is not a reasonable or even tenable position. One is driven to the conclusion that it is only adopted because SR recognises that it is unable to demonstrate a five year supply if the CS figures are used.

45. If the CS figure is used there is agreement that the five year requirement is 3,355 as calculated in the HLP²⁸ and BP's evidence²⁹.

Five year housing supply

46. In the light of ZH's answers in XX the question of five year housing supply can be taken briefly given it was accepted by the end of her XX that SR is unable to demonstrate a five year supply set against the CS requirement.

47. Before considering the figures it is worth remembering a number of points –

- i) SR has a record of woefully over-estimating delivery of houses as ZH conceded³⁰ and BP demonstrated³¹.
- ii) This reflects a heavy reliance upon sites without full planning permission that have not come forward as expected, and a readiness to accept assurances from owners/developers about projected delivery without proper examination³².
- iii) NPPF has made a significant change to the way that deliverability is to be considered. The onus is now upon the

²⁸ CD 6.1 page 22

²⁹ BP Table 10.1 p 35 and ZH XX

³⁰ ZH XX

³¹ BP Tables 3.2 – 3.4

³² BP 3.3

local authority to provide robust evidence of deliverability on major sites which do not have full planning permission.

- iv) The guidance and the various decisions reveal that the requirement for robust evidence is being seriously applied.
- v) The clear evidence to establish deliverability of a site must be available at the time of the HLP.
- vi) To justify a windfall allowance compelling evidence is required.
- vii) Past trends are not sufficient to justify a windfall allowance.

48. BP's Table 11.3 considers 10 sites which BP explained should be removed from the five year supply on the basis that they do not meet the definition of deliverable for the reasons he explained in this proof and BP Appendix 1. During XX ZH conceded that 9 of the 10 should be removed both on the ground that the evidence was not available at the time of the HLP and importantly that even if one considered all of the evidence (including evidence after the HLP) the evidence was insufficient to demonstrate that the sites were deliverable. Removing those sites alone would result in a reduction in supply of 621 from the HLP position producing a supply figure of 3377. It can be noted that this is only 20 above the CS requirement figure of 3355.

49. Given ZH's concessions on those 9 sites I do not address them further. The one site on which ZH expressed some reservation was site EE Pickering's Farm. ZH said that it "*should possibly be deleted*" and later conceded that it did not satisfy the test for deliverability. The concession that it should *possibly* be deleted is equivocal – it demonstrates doubt on ZH's part. The concession that it did not meet the test for deliverability means that it should be deleted. If one considers the evidence on the site it is clear that it does not meet the test for deliverability and should be deleted.

50. The only evidence adduced for site EE was that set out in ZH's Appendix 2 which is simply an email from the 6th March 2019. The email simply sets out numbers expected without any details to justify the

numbers and states that the site is now at an advanced stage of masterplanning (without any details or timescale). This is a very large site allocation for 1350 units³³. Development of the site will require very significant infrastructure improvements³⁴. There is no information on the resolution of the various issues arising with respect to the site. There is a considerable history of slippage on this site:-

- i) the LP envisaged 150 units by 2016 and 600 between 2016 and 2021, but the site does not yet even have planning permission.
- ii) As recently as the beginning of this year it was claimed that the Masterplan would be provided and a planning application made by May³⁵, but neither had happened.
- iii) It was subsequently suggested that this would be done by September³⁶, and more recently by 4th November³⁷, but these dates have also come and gone³⁸.
- iv) Delivery of the site has progressively been moved back in each HLP³⁹.

51. Importantly in addition to the history of delay the whole principle of what to do with this site is being reconsidered at a political level⁴⁰. Furthermore the site is in multiple ownership and there is no evidence that this has been addressed⁴¹.

52. If site EE is removed a further reduction of 330 would reduce the supply to 3047 – significantly below a five supply.

53. In addition to the sites which BP considered should be wholly discounted from the five year supply there were three sites where he considered the potential contribution in the five year supply had been

³³ BP1 Para 2.2 – ZH XX

³⁴ BP1 para 2.3 – ZH XX

³⁵ BP1 para 2.4 – ZH XX

³⁶ BP1 para 2.7 – ZH XX

³⁷ ZH in chief

³⁸ ZH chief and XX

³⁹ BP1 para 2.12 and ZH XX

⁴⁰ BP1 para 2.18

⁴¹ BP1 para 2.20.

over-estimated. Those sites are set out in his Table 11.4. In respect of two sites ZH's proof of evidence accepted that the HLP had over-estimated the number of units which might be deliverable within the five year supply⁴². Her proof suggested that the over-estimate amounted to 233 units (Site FF 203 units + Site S 30 units).

54. Even if matters were left there the figure of 3377 conceded by ZH would be further reduced to 3144. This would amount to a 4.69 year supply set against the CS requirement.
55. The matter did not remain there, however, because in XX ZH concluded that site FF should be excluded in its entirety (in this she went further than BP) and that BP's estimate with respect to site H was probably more realistic.
56. Removal of site FF would reduce the supply to 2947⁴³ which equates to a 4.4 year supply.
57. Removal of site FF and acceptance of BP's figures for site H results in a figure of 2857⁴⁴ or a 4.26 year supply.
58. In fact the true figure is even lower for the reasons given by BP. In particular the windfall allowance is too high. It has increased from 177 in previous HLPs to 600 without any evidence to support it. BP explains that there are multiple errors in the calculation⁴⁵. For the reasons given by BP I would ask you to prefer his evidence and find that SR's five year supply is of the order of 3.24 years⁴⁶, but even if this figure were not fully accepted it is clear from ZH's own evidence that SR is unable to argue for a figure greater than 4.26 years. However the matter is considered the evidence is clear that SR does not have a five year supply set against the CS figure.

⁴² ZH Tables after paras 5.19 and 5.21

⁴³ 3377 – 400 (Site FF) – 30 (Site S) = 2947

⁴⁴ 2947 – 90 (BP reduction on site H – See Table 11.4) = 2857

⁴⁵ See BP 11.37 – 11.43

⁴⁶ See BP Table 12.1

First Main issue – whether a 5 year housing land supply

59. The answer with respect to this issue is clear. The housing requirement falls to be calculated on the basis of the CS requirement which is agreed to be 671 per annum or 3355 over the 5 year period. It is further agreed that SR cannot demonstrate a 5 year supply set against that figure. At best on ZH's evidence it is of the order of 4.2 years – on the basis of BP's evidence it is some 3.2 years. Even if the higher figure were taken this is substantially below a 5 year requirement.

Second Main issue – whether development would prejudice the ability to manage development comprehensively on the safeguarded land within which the site is located.

60. The remainder of the safeguarded land within which the site is located is owned by Homes England (“HE”) who are satisfied that the proposal will not prejudice their ability to develop that land. Given who HE are and their experience in development in the area this is a conclusion to which significant weight attaches. The weight is all the greater given that HE initially raised concerns with respect to the impact upon their land. HE clearly gave the matter careful thought and were satisfied with the adjustments made to address their concerns.
61. The masterplan produced with SH's evidence demonstrates that development of this site would not prejudice the comprehensive development of the wider land.
62. SR has produced no evidence which raises any real issue on this point, still less any evidence to demonstrate a real potential problem. Having received the masterplan the only points raised by SR relate to potential issues which might arise if the wider land were developed (access to the A582 and the impact on the rail level crossing). Neither of these are issues raised by this proposal – there is no objection from Network Rail or the highway authority. Furthermore SR forgets the reason why the masterplan was produced, as SH explained. The masterplan was produced to address SR's second reason for refusal and show that

development of this site would not prejudice the development of the remainder of the land. The masterplan clearly establishes that, as no point is taken by SR. The masterplan was not produced to plan in detail for development of the remainder of the land – there is no suggestion that development of this site causes any problems with respect to the A562 or the level crossing nor that it would create any problem for the remainder of the land.

63. Much of CL's evidence was concerned with the merits of masterplanning in principle. Whatever those merits there is no requirement for a masterplan for this site and no policy support (whether nationally or locally) for delaying development of this site for further masterplanning
64. There is no suggestion that this site is required for any other use. SH addressed the question of whether there might be any need for this land for employment purposes and demonstrated that there is not. SR produced no evidence on this point. CL introduced for the first time the idea that the site might form part of a "green lung". This appeared to be something dreamt up on the spot, there is nothing to support it, but interestingly the idea of a green lung confirms that the site must be well located to the urban area or it could not function as a green lung.
65. Reference was made to the Coote Lane decision, but that was taken in a very different context and provides no steer for this appeal. The decision is almost 6 years old, and was made at a time (a) when there was a 6 year housing land supply, and (b) the local plan inspector had just reported and addressed the development needs in the area.
66. SH produces good evidence to show that the development of the site will not compromise the ability to develop the remainder of the land comprehensively. His conclusions are importantly supported by HE. There is no good evidence to the contrary. The only conclusion to this issue can be that the development of this site will not prejudice comprehensive development of the wider safeguarded land.

Development plan

67. Policy G3 provides that the land is safeguarded and not designated for any purpose within the Plan period. The policy goes on to provide existing uses are for the most part to remain undisturbed during the Plan period or until the Plan is reviewed and that planning permission will not be granted for development which would prejudice potential longer term comprehensive development of the land.
68. The introduction to this policy explains that the safeguarded land is not required for development within the plan period as sufficient land is identified elsewhere to meet the borough's needs (paragraph 10.33) and that it is necessary to safeguard the land to meet the borough's longer term development needs (paragraph 10.34).
69. The LP makes it clear that the land has been identified as suitable for development and that the only question is when it should be developed not if it should be developed. This was helpfully stated by CL in ReX to mean that the land is there to provide for development as and when development needs arise.
70. CL's answer in ReX accords with SR's position in the first reason for refusal and the evidence given by ZH. As she conceded the first reason for refusal provides that the reason why there was claimed to be conflict with G3 is that it was then claimed that there was a five year supply – the reason states the proposal “*would be contrary to Policy G3...as the Council can demonstrate a 5 Year Housing Supply*”. It must follow that if there is no 5 year supply there is no conflict with G3 and ZH agreed this.
71. It was further conceded that G3 is in any event out of date either because there is no 5 year supply, or because if the standard method were used the need for radical redistribution of housing requirements would render the policies out of date. In either situation the tilted balance in NPPF 11 would apply.

72. Given that the evidence establishes that there is no five year supply there can be no breach of policy G3 as contended in reason for refusal 1 which must drop away.
73. The second element of the policy is that it prohibits development which would prejudice potential longer term comprehensive development of the land. This is addressed above and there is no conflict with this element of the policy. The second reason for refusal falls away.
74. In the light of the evidence there is no conflict with policy G3.
75. Even if there were conflict with G3 it would remain necessary to consider the remainder of the development plan. In this regard the Performance Monitoring provisions in both the CS and the LP are important. Irrespective of the interesting interpretation point raised by AE with respect to the first Performance Indicator in the LP (LP p144), it was agreed by SR's witnesses that all three Indicators were triggered in this case for the reasons given by SH. The CS and LP require action to be taken in those circumstances. For the reasons set out in SH's evidence the only sensible action that can be taken is the release of land suitable for development – i.e. this site.
76. Even if there were conflict with G3, when the development plan is read as a whole there is no conflict with the plan.
77. Even if there were considered to be conflict with the development plan as a whole it remains necessary to undertake a balancing exercise considering the many benefits provided by this proposal which are summarised by SH⁴⁷.
78. Set against those benefits at the highest there would be the claimed conflict with the development plan. Whilst third parties have raised other issues, they have all been satisfactorily addressed and there is no support for the local residents in either SR's evidence or the responses of the statutory consultees.

⁴⁷ SH para 1.19

79. In this case for the reasons given the tilted balance would apply. There can be no suggestion that any adverse impacts demonstrably outweigh the benefits when assessed against the NPPF policies as whole. Even if the tilted balance did not apply the benefits of the proposal, particularly given the need for additional residential development, would clearly outweigh any harm caused by the proposal.

Conclusion

80. SR is unable to substantiate either reason for refusal. SR does not have a five year supply of residential land and there is a considerable need for further residential development. The proposal accords with the development plan. The tilted balance applies in this case, but even if it does not it is clear that the benefits of this proposal outweigh any harm that might be identified.

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