

Town & Country Planning Act 1990 (As Amended)

Planning Appeal

Appeal Reference: APP/D2320/W/20/3265785

**Land 120M South West Of 21 Lower Burgh Way
Lower Burgh Way
Chorley**

Statement of the Local Planning Authority

1. INTRODUCTION

1.1 The appeal is made by Taylor Wimpey UK Limited against the refusal of full planning permission for the development of land 120M South West Of 21 Lower Burgh Way, Chorley, for the erection of 201 dwellings, associated access, drainage and the provision of public open space and landscaping.

1.2 There is one reason for refusal concerning the inadequacy of affordable housing (AH). In recent days, the Appellant has produced a revised appraisal and has confirmed the site can deliver 30% affordable housing on a 70/30 affordable rented/shared ownership split with a mix of unit sizes but not the other required s.106 contributions. In the light of that changed viability position, the issue between the parties is whether there is any viability reason why the development cannot deliver full policy compliant AH **and** the other required s.106 contributions. The Council's case is that there is no viability reason why the development cannot provide both.

1.3 The Appellant has contended that there is no 5 year housing land supply. The Council disagrees and the approach it adopts was confirmed to be correct in a decision in Preston dated 9th March 2021. The Council adopts the inspector's reasoning. There is a 5 year land supply.

1.4 In any event, given that there is no viability impediment to delivery of all the housing with policy compliant AH and s.106 contributions there is no policy justification for failure to provide them. In particular, the purpose of the tilted balance is to secure housing delivery not to secure windfall profits for developers by escaping viable s.106 obligations.

2. APPEAL SITE AND SURROUNDINGS

2.1 The appeal site is 10.49 hectares and situated at the end of Lower Burgh Way, Eaves Green at the southern extent of the settlement of Chorley,

though it is within the ward and parish of Coppull as the boundary line is along the northern boundary of the appeal site. The site boundaries form the start of the Green Belt.

2.2 The site is an allocated housing site in the Chorley Local Plan 2012-2026 under Policy HS1.1.

2.3 The site is predominantly semi-improved grassland with scattered scrub. To the north the site is bounded by the existing residential properties on the Birkacre Park development which forms the southern extent of the existing built up residential area around Lower Burgh Way to the south of Myles Standish Way. To the east it is bounded by John Wood through which the River Yarrow flows north to south before sweeping westwards. Beyond John Wood lie open fields and Duxbury Park Golf Club. To the south is open agricultural land and areas of woodland, through which the River Yarrow flows as it makes way back northwards and westwards. The building complex at Lowe's Tenement Farm lies approximately 175m south of the site and Woodside Cottage lies adjacent to the site in the southeast corner both accessed via Burgh Lane South, a track running north-south through the site. To the north (bounding with the most westerly part of the appeal site) Taylor Wimpey are currently constructing 88 homes approved under permission reference 16/00805/FULMAJ issued 18th January 2018 and submitted at the same time as application the subject of this appeal.

2.4 The general landscape surrounding the site is characterised by extensive areas of woodland and hedgerows defining the field boundaries.

2.5 Burgh Lane South, a track runs north to south dissecting the site. This track forks into two in the middle of the site, the main track continuing through the site and out to the south and the other part sweeping round and running along the southern boundary of the site to provide access to Woodside Cottage.

- 2.6 There are significant level differences across the site. The site slopes from north-west down to the south-east with a level change of approximately 8.5m as the land drops down towards the River Yarrow.
- 2.7 Duxbury Woods to the south-east of the site is a designated Biological Heritage Site as are Spring Wood and Burgh Wood which bound with parts of the site to the south and west respectively. All are Ancient Woodland.

3. THE APPLICATION AND BACKGROUND

- 3.1 The application is for :
Full application for the erection of 201 dwellings, associated access, drainage and the provision of public open space and landscaping.
- 3.2 The application has had a somewhat unusual and protracted progression up to this point of appeal.
- 3.3 Chorley Borough Council validated the planning application that is the subject of the appeal on the 28th August 2016.
- 3.4 The application was originally submitted on the basis that no affordable housing could be provided and only £3,015 (for allotments) could be paid out of the full policy compliant commuted sum of £436,371 towards open space and playing pitches. There was no request for an education contribution at this stage because that was then covered by the CIL List and s.106 contributions could not therefore be sought under the CIL regulations then in force.
- 3.5 Following negotiations Taylor Wimpey then changed their position so that the application provided 35 social rented affordable units on the site which equated to 17.4% provision and agreed to pay £111,957 towards natural and semi-natural green space along with the allotments payment of £3,015. Taylor Wimpey also agreed to an overage/clawback agreement in

a Section 106 agreement, that if more profit was made than envisaged by the viability appraisal submitted with the application then the Council would receive a share of the difference to go towards affordable housing and/or public open space, up to the limit of what should have been paid by the developer if the AH and s.106 obligations had been fully policy compliant at the outset. On the basis of the information at the time, this package was accepted by the Council.

- 3.6 On 20th June 2017 it was resolved that full planning permission be granted, subject to conditions and a Section 106 legal agreement, with the details of overage/clawback arrangements to be determined under delegated powers.
- 3.7 Work then commenced on the Section 106 agreement. Negotiations on the claw back provisions took place and were agreed in March 2019. The Council fully expected the legal agreement to be completed and signed allowing a full planning permission decision notice to be issued at that time on the basis of the then available viability information.
- 3.8 However, in August 2019 Taylor Wimpey advised Chorley Council that they would be seeking to re-open the discussions around viability of the proposed scheme and in September 2019 they submitted a new revised viability appraisal (dated September 2019) stating that the scheme was no longer able to fund any affordable housing. The Council did not accept that position.
- 3.9 Discussions took place over the following months. An update was produced to the September 2019 viability appraisal in February 2020 following the Council's request for further information. Taylor Wimpey maintained the position that the scheme was unable to fund any affordable housing.
- 3.10 Following further negotiations, in April 2020 Taylor Wimpey then made a revised offer with the AH as previously agreed but with revised overage provisions. The Council rejected this approach – and informed Taylor

Wimpey that any change to the previously agreed package would lead to refusal.

- 3.11 A report to committee was prepared recommending refusal, TW made comments on it and those were rebutted by the Council's viability consultant. The application was refused by the committee on 25th June 2020 for the following reason:

The application proposes a level of affordable housing that is below that required by policy 7 of the Central Lancashire Core Strategy. The financial viability case put forward by the applicant does not adequately justify the lower level of affordable housing provision and does not meet the requirements of the National Planning Policy Framework and National Planning Practice Guidance. The proposal conflicts with policy 7 of the Central Lancashire Core Strategy.

- 3.12 Taylor Wimpey appealed asserting that policy compliant AH was not viable based on the 2019 FVA and offered 5% affordable rented or 10% intermediate housing .

- 3.13 Following its appeal, Taylor Wimpey fundamentally changed its position on viability again. Based on a new appraisal which reflected increases in sales values as a result of house price inflation since 2017 – 19 but which also included very substantial increases (well above inflation) in base build costs and abnormals from those in previous FVAs, it made a revised offer dated 2nd March 2021 (just before this statement of case was due) in which it offered 30% AH with the policy compliant 70/30 split and a mix of sizes. The appropriateness of this mix is being examined. Taylor Wimpey however maintained its position that it could not afford the s.106 contributions which by this time included education contributions (based on changes to the CIL legislation and the Council's approach to such contributions in the light of need).

3.14 Taylor Wimpey has still not provided much of the basic information repeatedly requested including the justification for the change in base build costs and externals and justification for substantial new elements and changes in costs of abnormals. It has not even provided the option agreement which it is obliged to provide on request.

4. PLANNING HISTORY AND BACKGROUND

4.1 There is no relevant planning history on the site. No extant permissions exist on the site.

4.2 It is relevant to note that the application the subject of the appeal was one of three applications submitted on the wider allocated housing site at the same time in 2016. All three were reported to and approved by the Planning Committee subject to a Section 106 agreement on 20th June 2017. The other two application were as follows:

16/00805/FULMAJ – Approved 18.01.2018

Applicant – Taylor Wimpey

Full application for the erection of 88 dwellings, associated access, drainage and the provision of public open space and landscaping.

16/00806/OUTMAJ – Withdrawn 28.01.2020

Applicant – Homes and Communities Agency (HCA)

Outline application for up to 100 dwellings with associated landscaping and public open space. Permission was sought for means of access as part of this application.

4.3 These two applications both related to the same site adjoining the appeal site and also part of the same housing allocation. At the time of the applications the land was owned by the Homes and Communities Agency (now Homes England).

4.4 A plan showing the location of the above site in relation to the appeal site can be found at Appendix 1.

4.5 These applications will be referred to in the Proofs of Evidence.

5. RELEVANT PLANNING POLICIES

National Planning Policy Framework (NPPF) (February 2019)

NATIONAL POLICY AND GUIDANCE

5.1 The Statement of Common Ground addresses the key relevant policies.

5.2 The Planning Practice Guidance covers viability in decision taking which has been relied on by the Council's viability and costs consultants.

Development Plan

5.3 The development plan comprises the Central Lancashire Core Strategy and the Chorley Borough Local Plan 2012-2026.

CORE STRATEGY POLICY

5.4 The Central Lancashire Core Strategy was adopted on 17th July 2012. The relevant policies are set out in the Statement of Common Ground. It contains the following relevant policies:

5.5 Policy 4: Housing Delivery (sets out the housing requirement, for Chorley this is 417 dwellings per annum) -this level of provision was reviewed and confirmed as appropriate in the light of the 2014 housing projections and an updated SHMAA in 2017.

CHORLEY LOCAL PLAN

5.6 The Chorley Local Plan 2012-2026 was adopted 21st July 2015. It contains the following relevant policies:

5.7 V2: Settlement Policy - Main Settlements.

5.8 ST1: Provision or Improvement of Footpaths, Cycleways, Bridleways and their Associated Facilities in Existing Networks and New Development.

5.9 ST3: Road Schemes and Development Access

5.10 ST4: Parking Standards

5.11 HS1: Housing Site Allocations

5.12 HS2: Phasing of Housing Development

5.13 HS4A: Open Space Requirements in New Housing Developments

5.14 HS4B: Playing Pitch Requirements in New Housing Developments

5.15 BNE1: Design Criteria for New Development

5.16 BNE9: Biodiversity and Nature Conservation

5.17 BNE10: Trees

5.18 BNE11: Species Protection

CENTRAL LANCASHIRE LOCAL PLAN (EMERGING)

5.19 The Central Lancashire Authorities of Preston City, South Ribble and Chorley are undertaking a review of the development plan(s) for the area and are working towards the preparation of a Joint Local Plan for Central Lancashire. This will be a single planning document containing the Council's vision and objectives. It will set strategic and local development management policies and site allocations for future development across the three authorities. Once adopted, the Local Plan will guide the future growth and development in the Central Lancashire area and replace the

Central Lancashire Core Strategy (adopted in 2012) and the Local Plans/Site Allocations and Development Management Policies of the three Central Lancashire Authorities (all adopted 2015).

5.20 The Councils carried out a consultation on the Issues and Options between 18th November 2019 and 14th February 2020.

OTHER LOCAL PLANNING GUIDANCE AND REPORTS

Central Lancashire Open Space and Playing Pitch Supplementary Planning Document (August 2013) including financial contributions for new provision and improvements

5.21 This Supplementary Planning Document provides advice on how the Council's open space and playing pitch policies, as set out in Local Plan policies HS4A (Open Space Requirements in New Housing Developments) and HS4B (Playing Pitch Requirements in New Housing Developments) are to be implemented. This includes guidance on provision standards and how they will be applied, along with the accessibility and qualitative assessments, to determine the amount of new open space and playing pitch provision or appropriate financial contributions required from new residential developments. There is also an associated Financial Contributions document.

Central Lancashire Affordable Housing Supplementary Planning Document (October 2012)

5.22 This Supplementary Planning Document provides advice on how the Council's affordable housing policy as set out in Core Strategy Policy 7 (Affordable Housing) is to be implemented. It includes guidance on the range of approaches, standards and mechanisms required to deliver a range of affordable housing to meet local needs.

Chorley Council Community Infrastructure Levy (CIL)

5.23 The Chorley CIL Infrastructure Charging Schedule provides a specific amount for development. The CIL Charging Schedule was adopted on 16th July 2013 and charging commenced on 1st September 2013. The proposed development will be a chargeable development and the charge is subject to indexation in accordance with the Council's Charging Schedule.

Chorley Interim Infrastructure Funding Statement (Dec 2019)

5.24 The Interim Infrastructure Funding Statement 2019/20 (December 2019) replaces the Regulation 123 List and identifies the infrastructure projects or types of infrastructure which Chorley Council intends will be, or may be, wholly or partly funded by the Community Infrastructure Levy - whilst indicating other sources of funding that can be pooled from different routes e.g. planning obligations.

6. THE CASE FOR THE LOCAL PLANNING AUTHORITY

6.1 The Council refused the appeal application for one reason:

"The application proposes a level of affordable housing that is below that required by policy 7 of the Central Lancashire Core Strategy. The financial viability case put forward by the applicant does not adequately justify the lower level of affordable housing provision and does not meet the requirements of the National Planning Policy Framework and National Planning Practice Guidance. The proposal conflicts with policy 7 of the Central Lancashire Core Strategy."

6.2 This Statement of Case addresses the up to date position contained in the offer of 2nd March 2021.

6.3 The % AH and the split between affordable rented and intermediate is policy compliant and subject to appropriate drafting is agreed. The mix of units and unit sizes is being assessed.

6.4 It is anticipated that any outstanding issues on AH will be resolved through discussions.

- 6.5 However, the Appellant relies on its new appraisal to argue that it cannot provide the s.106 contributions which are focused on open space, sports pitches and education contributions. They total around £900,000. The central issue in this inquiry is therefore whether there is a viability case for non-provision.
- 6.6 The viability case presented relies on an approach to benchmark land value which is flawed and does not reflect the recent decision of an Inspector in the *Warburton Lane* case in Trafford in which the approach adopted there by the Appellant's viability expert here was rejected.
- 6.7 The latest information is being examined and tested.
- 6.8 The information on base build costs, external costs and abnormals is unlikely to be accepted. In the short time available to check it so far it appears to adopt the same overly conservative approach adopted by the same costs expert as criticized in *Warburton Lane*; appears inconsistent with Taylor Wimpey's own assessment of its own costs here in previous FVAs and appears to contain significant double counting.
- 6.9 The Council will call evidence to address viability and costs if agreement on those matters cannot be agreed. On the advice it has received so far the Council considers that it is highly likely that this development is amply and easily able to provide fully compliant AH and fully compliant s.106 contributions, that there is no viability case for allowing any lesser provision and that unless full provision is made permission should be refused because the appeal proposal is contrary to the Development Plan as it fails to provide the required social infrastructure through s.106 contributions as required by policies HS4A and HS4B of the Local Plan and Policy 14 (Education) of the Central Lancashire Core Strategy and Lancashire County Council's School Place Provision Strategy.
- 6.10 There are no other material considerations that outweigh the significant departure from Development Plan policy reinforced by the NPPF that result in the application being acceptable.

6.11 Any necessary planning evidence will be given by Officers of the Council.

6.12 The Council will present evidence that there are no other material considerations that would outweigh the failure to provide the required s.106 contributions **and** fully compliant AH.

7.0 **OTHER MATTERS**

7.1 All technical issues in relation to the application site are considered acceptable or can be secured by condition and/or a legal agreement.

8. **CONCLUSION**

8.1 The proposal fails to comply with the Development Plan and NPPF, and it is not considered that there are other material considerations that would outweigh this and justify permitting the application.

8.2 Therefore, the inspector is respectfully requested to dismiss the appeal.

8.3 If the Inspector is minded to allow the appeal the Council will request that consideration is given to applying planning conditions that will be agreed with the appellant prior to the inquiry.

8.4 The Council will seek its costs of this Appeal. The appeal was made on the basis of a well out of date FVA when it must have been obvious that values had increased significantly since. The FVA which was the basis of the appeal was then dropped and a whole new appraisal submitted which accepted that the site could deliver fully compliant AH – that could and should have been conceded well before the decision to refuse thus making the appeal unnecessary. As to the s.106 contributions, the appraisal relied on appears to be seriously flawed in multiple respects, to repeat the errors of the same experts in *Warburton Lane* and to be a significant and unjustified departure on costs from those previously agreed by Taylor Wimpey and contained in its own FVAs. It is

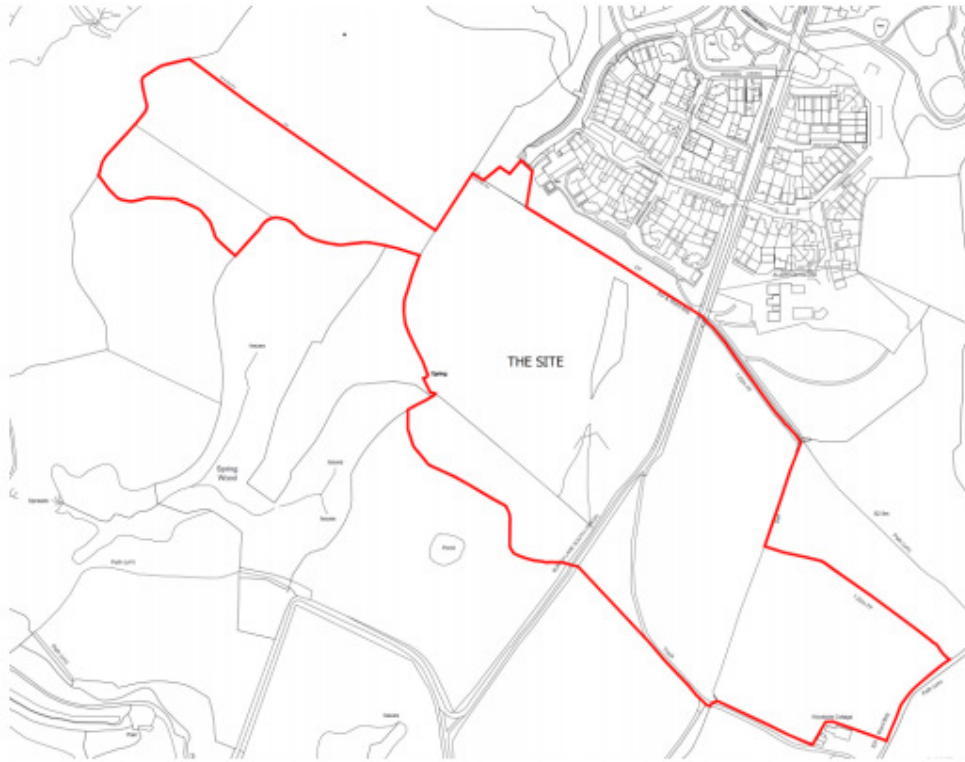
unreasonable conduct to put forward such an appraisal in the context of an appeal rather than in negotiations prior to the determination of the appeal.

LIST OF DOCUMENTS TO BE REFERRED TO:

- Document 1 National Planning Policy Framework
- Document 2 Central Lancashire Adopted Core Strategy (2012)
- Document 3 Chorley Local Plan 2012-2026 (2015)
- Document 4 Central Lancashire Open Space and Playing Pitch Supplementary Planning Document (August 2013) and associated Financial Contributions document.
- Document 5 Central Lancashire Playing Pitch Strategy 2018
- Document 6 Lancashire County Council's School Place Provision Strategy
- Document 7 Central Lancashire Affordable Housing Supplementary Planning Document (October 2012)
- Document 8 Chorley Council Community Infrastructure Levy (CIL)
- Document 9 Central Lancashire Strategic Housing Market Assessment (SHMA) September 2017
- Document 10 Joint Memorandum of Understanding and Statement of Co-operation relating to the Provision of Housing Land. September 2017 (MOU1)
- Document 11 The Deregulation Act 2015 (in relation to Policy 27 of the Core Strategy)

Appendix 1

Appeal site location plan



Application refs: 16/00805/FULMAJ and 16/0806/OUTMAJ location plan

