



South Ribble Borough Council / Pickering's Farm Planning Inquiry

Financial Viability in Planning Proof of
Evidence

Planning Ref: 07/2021/00886/ORM &
07/2021/00887/ORM

PINS: APP/F2360/W/22/3295498

July 2022

**Inspiring Built
Environments**

Viability in Planning
Development Management
Regeneration
Planning Consultancy

Contents

1. INTRODUCTION.....	2
1.1 Instruction.....	2
1.2 Details of Authors Background and Expertise	2
2. LOCAL PLAN ASSESSMENT & BACKGROUND CONTEXT.....	4
3. Conclusion	12

1. INTRODUCTION

1.1 Instruction

1.1.1 I have been instructed by South Ribble Borough Council (hereafter “SRBC”) to act as an expert witness and to give my opinion as to the financial viability in planning case pursuant to the outline planning application (ref: 07/2021/00886/ORM & 07/2021/00887/ORM) submitted by Taylor Wimpey and Homes England (hereafter “the Appellants”) at the land at Pickering’s Farm, Penwortham (the “site”).

1.1.2 My role as Viability Expert Witness representing SRBC is to consider the cost of funding the mitigation to elevate the harm caused by the development proposals and whether as a result of funding that mitigation there will be a viability challenge that could challenge the deliverability of the project. The Appellants and SRBC (and statutory consultants) do not agree on the proposed highway solution. There is also the consideration of the wider Pickering’s Farm allocation and the potential financial burden that will sit with the element of the allocation that is not included within in the two applications being considered. Should the burden on the remainder of the allocation be too great, the financial viability of delivering critical infrastructure to mitigate the impact of the delivery of the full allocation will be called into question.

1.2 Details of Authors Background and Expertise

1.2.1 I am Murray Lloyd. My area of expertise is in land and property development and regeneration. I have acted as direct developer and consultant. I was asked by SRBC to act as Expert Witness in this case due to the work I have undertaken for this and other authorities over the past 6 years on matters relating to financial viability in planning. Over a period of 30 years, I have honed my skills and knowledge working in both the public and private sector, on development and regeneration. This has covered mixed-use, town centre, residential and logistics developments from inception to delivery. My CV can be found in **Appendix 1** for further information.

1.2.2 I have recently acted as Expert Witness on behalf of Trafford Metropolitan Borough Council and Chorley Borough Council on three important planning inquiries in the North West of England:

- Warburton Lane (ref: APP/Q4245/W/19/3243720), which has come to be regarded as a test case for matters pertaining to abnormal costs and application of premiums (EUV +) in the interpretation of viability in planning.
- Eaves Green (ref: APP/D2320/W/20/3265785), where the appellant accepted that their case for not complying with adopted planning policy regarding the provision of affordable housing was fundamentally flawed.

- Former B&Q (ref: APP/Q4245/W/20/3258552), where the inspector agreed with my case put forward that the scheme could support 39% affordable housing compared to the appellant's position of 6.3%.

1.2.3 In the past 6 years, myself and Continuum have acted on approximately 210 viability cases. I act primarily for the public sector, and my clients include Trafford Metropolitan Borough Council, Chorley Borough Council, Tameside Metropolitan Borough Council, Bolton Borough Council, Rossendale Borough Council, South Ribble Borough Council, Teignbridge Borough Council, Blackpool Borough Council and Wokingham Borough Council. The table at **Appendix 2** sets out the viability cases that I have advised on within SRBC.

1.2.4 My years of experience in development and regeneration, in addition to a detailed knowledge of Planning Gain / Land Value Capture theory gained through my PhD and involvement in circa 210 viability cases acting for the public sector, demonstrates my suitability to provide an expert assessment of matters relating to viability in planning.

2. LOCAL PLAN ASSESSMENT & BACKGROUND CONTEXT

- 2.1 From studying the policy context behind the allocation of Pickering's Farm, it is clear that the current applications cannot be fully considered without a detailed understanding of why the development area received an allocation as a strategic location. This is relevant to reason for refusal number 11:
- "No viability evidence has been submitted to enable an assessment of whether necessary infrastructure can be provided to support this important housing land allocation. As such the proposals are contrary to Policies A1 and C1 in the South Ribble Local Plan"* (CD8.3; Decision Notice, 2021: pg. 2).
- 2.2 Reason for refusal number 6 also identifies Policy C1 (CD8.3). Policy C1 (Pickering's Farm) (CD5.2) states there is a requirement for a submission for a phasing and infrastructure and delivery schedule and an agreed programme of implementation.
- 2.3 In Policy A1 (and its justification text) (Developer Contributions) (CD5.2) the types of infrastructure that developments may be required to provide contributions for include:
- c) Transport (highway, rail, bus and cycle/footpath/bridleway networks, canal and any associated facilities).
- 2.4 Paragraph 6.11 within the supporting justification text of Policy C1 (Pickering's Farm, Penwortham) (CD5.2) can be summarised in the following way:
- There are existing issues on the highways network in proximity to the site.
 - To deal with these issues the Cross Borough Link Road (CBLR) will 'need' to be delivered as required in Policy A1.
 - This is between the A582 Penwortham Way and the B5254 Leyland Road.
 - This could include a new bridge crossing the West Coast Main Line or improvements to the existing bridge.
 - The upgrading of A582 South Ribble Western Distributor to improve capacity on the existing A582 will support this development.
- 2.5 Following a detailed policy review, I would make the following observations.
- 2.6 The Appellants have been involved with this scheme and approach to associated highway infrastructure from the beginning of the process of allocation (circa. 2007).
- 2.7 The Appellants initially made representation for the site to be allocated in the Local Plan. A key document relied upon by the Appellants in their representations was the Central Lancashire Urban Village – South Ribble (March 2007) report which at appendix 5 provides a technical note on the CBLR (CD10.25) as well as the Draft Development Statement (September 2010) which outlines the CBLR as a key transport issue associated with the site.
- 2.8 The site was initially rejected as an allocated site by SRBC in 2011 and they outlined their analysis underpinning their decision in their Background Topic Paper (CD10.23; March 2011). In this paper, key

infrastructure was identified as an important element of any future allocation, including the two following points:

- Significant development will bring forward the need for the last remaining section of the CBLR, for which developer contributions will be needed; and
- Inclusion as a broad strategic location may help to speed up its delivery and help secure funding for infrastructure, in particular the CBLR.

2.9 One of the key evidence base documents relied upon by SRBC was the Central Lancashire Transport Study (CD10.28; 2008) produced by GVA. In this assessment it argued at paragraph 5.9.1 that the CBLR could help open up sites at Pickering's Farm and Lostock Hall Gasworks and could provide relief to the A582 which they stated was showing increased pressure as a result of developments in the area. GVA also commented that the CBLR would require some costly infrastructure across the West Coast Main Line involving a lengthy planning process. GVA produced a table at paragraph 5.14.1 which summarises the initial scheme suggestions for further consideration and their priority in terms of delivery in the short, medium or long term. The adapted table related to the site and its Highway infrastructure requirements can be found at **Appendix 3** and shows the need for both dualling and possible extension of A582 and CBLR.

2.10 In July 2011 the Planning Inspector issued two letters to the Central Lancashire Authorities inviting comment from the Councils and participants on a number of matters, of which, one was about the suitability of the Pickering's Farm site for allocation as a strategic site in the Core Strategy. Then in September 2011 the Joint Advisory Committee to Central Lancashire Local Development Framework at a meeting in September 2011 formally stated that it:

"Accepts the need to consider additional strategic sites or locations of land for housing, but to direct the Inspector towards selecting those sites which relate best to the existing pattern of development, including the phased and managed release of land at North West Preston and Pickering's Farm"
(CD10.27; pg 5).

2.11 In September 2011 HOW Planning on behalf of Taylor Wimpey (in relation to Pickering's Farm) provided a written response to the Inspectors matters raised (CD10.27), arguing why the site should be included in the Core Strategy as an allocated site. The letter at this time acknowledges that the site possesses key attributes relating to the CBLR.

2.12 SRBC then allocated the site as a strategic location through a modification in 2011 arguing that the location is of strategic significance due to its ability to contribute to SRBC infrastructure and housing requirements. SRBC state that the site had the following infrastructure requirements in their Strategic Sites and Locations Assessment (CD10.29; November 2011):

"Infrastructure Requirements: Any significant development of the Strategic Location is dependent upon the delivery of the Cross Borough Link Road, the western end of which is intended to link the A582 (Penwortham Way) with the B5254 (Leyland Road). The link road was first proposed as part of the Central Lancashire New

Town, and the section which could dissect the Strategic Location would form the last major remaining part. A new road bridge crossing over the West Coast Main Line Railway would need to be constructed; and this would require substantial funding. Developer contributions for transport infrastructure will be essential. There are other highway improvements planned for the surrounding area which aim to increase capacity and reduce congestion levels. There are proposals to improve links and junctions on the A582 which runs along the western boundary of the Strategic Location, and also proposals to turn parts of it into a dual carriageway. A priority bus route has been identified which connects Preston, Tardy Gate and Moss Side and this is a priority for receiving funding to improve sustainable travel options in the area. A park and ride facility could be included within the Strategic Location.” (para. 4.9) (my emphasis).

2.13 The Inspector in his Report on the Examination into the Central Lancashire Publication Core Strategy Local Development Framework Development Plan Document (CD5.4; June 2012) outlines the proposed location of growth (strategic locations and sites) at paragraph 16 to 25. In relation to the site, the Inspector states:

- *“The PHRCs provide for 2 additional Strategic Locations at North West Preston (including Higher Bartle & Broughton/Land at Eastway) and at South of Penwortham & North of Farington.” (para. 19).*
- *“It is clear from the Hearings that these 2 additional Strategic Locations are broadly supported by the majority of the represented house builders, and this bodes well for deliverability. There is no reason to doubt the attractiveness of the homes to be built to prospective purchasers. The Councils’ evidence that infrastructure requirements have been thoroughly assessed is not seriously challenged. This has involved close liaison with key providers and transport modelling work. The County Council and the Highways Agency have been working closely together and advise that, in North Preston, the road network is reaching a critical point in the level of additional traffic that could be accommodated and there is a very real risk that the economic benefits of supporting development are lost. There must come a point where additional traffic can no longer be accommodated without unacceptable impacts or the need for much wider strategic infrastructure improvements to support further development.” (para. 20).*
- *“It is significant that there is no objection in principle from the Highways Agency and that the County Council as Highways Authority continues to support the Local Plan’s proposals, with the important proviso that delivery of the scale and distribution of development now proposed will necessitate major additions to existing transport infrastructure to serve these 2 Strategic Locations.” (para. 22).*

2.14 The Appellants in February 2013 submitted an updated joint Development Statement (Taylor Wimpey and HCA now Homes England) for the site to the Local Authority as part of the Local Plan process (CD10.26). This Development Statement included detailed commentary on highway matters produced by Arup. In the Development Statement, the Appellants state:

“The Local Plan contains a policy which seeks to protect land which is required for the completion of the Penwortham bypass (Policy T1). The Highways and Transportation Committee of the LCC have previously

determined to adopt this route and it is therefore preserved for this purpose in the Local Plan. TWUK and the HCA are committed to working with the Local Authority and LCC to explore options for the delivery of road infrastructure in the vicinity of Pickerings Farm in order to ensure that the development can be adequately accessed whilst limiting impacts on the wider road network.” (pg. 16).

2.15 At page 13 of this document, the Appellants outline that a preliminary transport assessment has been undertaken by Arup in which they considered access points to the site, highway capacity and sustainable transportation measures.

2.16 The summary of Arup’s assessment in the Development Statement is as follows:

- *“there is unlikely to be adequate capacity in the highway network as it currently stands today, to accommodate the full level of traffic that will result from the proposed development. Leyland Road and Penwortham Way experience high volumes of traffic at peak hours and infrastructure improvements will be required as part of the development to minimise it’s impact and, where possible improve the current situation.”*
- *“The existing highway network in the northern part of the Borough is over capacity. Other schemes that could also come forward for development will also impact on varying scales on this wider network. Pickerings Farm will likely have a greater impact on the wider network surrounding the site because of its size, but importantly, also provides the opportunity to make greater improvements to the network.”*
- *“With a well thought out and phased package of measures to encourage the use of sustainable transport, along with a programme of local highway improvements that can be undertaken within the highway boundary, the development will mitigate and minimise its impact. TWUK and the HCA, along with Arup are continuing consultations with LCC and the Highways Agency (HA), regarding the links beyond the site boundaries and possible contributions to the improvement of the wider highway network, particularly connections to the motorway.”*
- *“A key transport issue historically associated with the site has been the possible extension of the South Ribble Relief Road from Leyland Road crossing the West Coast Main Line to join the Penwortham Way. The potential exists as part of the Pickering’s Farm development to create part of this transport “link” between Leyland Road and Penwortham Way. The exact detail and specification of the new road link is being explored with SRBC and LCC Highways.”*

2.17 A Statement of Common Ground had been produced between SRBC and Lancashire County Council in March 2013 in relation to a number of representations that were made during the Local Plan process (CD10.30). In terms of Representation no. 250 about Pickering’s Farm the following was stated:

“The County felt that they could not support this development unless strategic infrastructure was brought forward in the area and there were appropriate funding mechanisms in place to deliver the required infrastructure. The Central Lancashire Transport and Highways Masterplan proposes the South Ribble

Western Distributor to provide the highway infrastructure needed to support the Pickering's Farm allocation and other allocations to the west of Leyland, such as land between Heatherleigh and Moss Lane, Farington and Moss Side Test Track, Leyland. This proposal includes capacity Improvements to the A582 and completion of the Penwortham Bypass. The Masterplan indicates that the South Ribble Western Distributor will be completed in 2023/24 and funded from Developer Contributions and LCC's own funds. The completion of the Penwortham Bypass is indicated to be 2022/23 and funded through Major Transport Schemes funding and LCC funds." (pg. 2).

2.18 The Inspectors Report on the Examination into Site Allocations and Development Management Policies Development Plan Document (CD5.5; June 2015) at paragraph 64 to 67 summarised the site's allocation and explains that the approach taken to this site is justified by the evidence provided. At paragraph 65 the Inspector states:

"The Plan indicates that significant infrastructure improvements will be required to support the development of the site. This would include the Cross Borough Link Road, other traffic management measures, improvement to the Tardy Gate District Centre, community facilities including nursery and primary education provision, a local centre and health care provision and green infrastructure. Consideration will also be need to be given to foul and surface water treatment. These will be delivered through a combination of CIL and S106 Agreements and will be included in the agreed masterplan, phasing and infrastructure delivery schedules and agreed programmes of implementation. Landowners, including the Homes and Communities Agency (HCA) as a major landowner, and developers have come together to form a consortium to take forward the development of the site and a development statement has been prepared. The evidence demonstrates that the development would be viable having regard to the infrastructure requirements and that there are no fundamental obstacles to the site's delivery."

2.19 From my review of the evidence base that underpinned the allocation of the site as a strategic location, the allocation was dependent on the provision of key infrastructure including the CBLR (including an enhanced crossing over the West Coast Mainland Railway) and dualling of the A582. This was supported by SRBC, Lancashire County Council, the Inspector, the Appellants and the Appellants' transport consultant Arup.

2.20 The allocation of the site, as set out in Policy C1 and its justification paragraphs as well as following a full assessment of the context of the allocation, is clear that the delivery of the highways infrastructure was the primary factor, and this was required to be funded primarily through developer contributions (Policy A1 and justification text).

2.21 In the Appellants' applications (07/2021/00886/ORM and 07/2021/00887/ORM) there is no reference to developer contributions (Policy A1) for the delivery of major highway infrastructure improvements other than a reference to CIL relief (which is not quantified) regarding the delivery of the Spine Road through the development (in the Supporting Planning Statement, August 2021 and Infrastructure Delivery Schedule, August 2021; CD1.18). Following detailed discussions with County Highways, it is understood that the

highway proposals from the Appellants do not require the delivery of the remaining section of the CBLR. Indeed, their solution for all but 40 dwellings of the 1,100 dwellings to be delivered, is an estate road that provides no strategic function. It is unclear how this is compatible with the allocation or the suggestion that CIL relief should be forthcoming for a strategic road that they argue is not required for their development. This position is made clear in the Infrastructure Delivery Schedule (CD1.18) which states:

“The Developers will construct a new Spine Road on land within the Application Sites as part of the development proposals. Full details of this can be secured by planning condition and subsequent Reserved Matters applications. The Spine Road would form an initial length of the CBLR if the full CBLR scheme is progressed by the Highway Authority.” (pg. 8).

- 2.22 It is also important to mention that the Appellants are seeking CIL relief for allocating land for the purposes of school use. The amount of relief sought is not quantified.
- 2.23 I have been provided with a commentary in relation to SRBC’s position on CIL relief, see **Appendix 4**.
- 2.24 SRBC have sought clarification from the Appellants in the run up to the Inquiry about why they think they are able to ask for CIL relief and if CIL relief was granted, whether the scheme would be viable. The Appellants have confirmed by email (**Appendix 5**) that even if they are compelled to make a full CIL payment and agree to a full suite of policy compliant S106 obligations, the scheme would still be viable. The Appellants are therefore stating that irrespective of CIL relief they can viably support a fully policy compliant scheme.
- 2.25 From researching all of the historical documentation surrounding the Pickering’s Farm site, it is clear that its allocation is intrinsically linked to the delivery of CBLR (including the connection over the West Coast Mainline) and the improvements to Penwortham Way (including dualling). It is understood that the Appellants are arguing that there is no requirement for the above strategic infrastructure to allow 1,100 dwellings, which is 81.5% of the total allocation (1,350 dwellings), to be brought forward. Their scheme will be dependent on a single major spine road which will serve most of the traffic created by the development from a single point of entry and exit which is a new junction onto the A582 Penwortham Way. Traffic measures will be in place to prevent vehicles utilising the Bee Lane bridge and existing minor roads. Details regarding how this will be enforced are unclear.
- 2.26 Should the proposed schemes come forward utilising the highways strategies proposed by the Appellants, then as stated by them, the CBLR will not be completed nor is there a need for it to be completed (according to the Appellants). This is counter to that of SRBC who state that the site should not be coming forward without this key infrastructure being delivered and funded. If the appeals are allowed, then the cost associated with completing the CBLR will be a burden on the remaining development parcels in the allocation which represents only 18.5% of the total dwellings. This would clearly create a major viability challenge for the remaining parcels of development land and call into question the delivery of the CBLR and the required upgrade to Bee Lane bridge across the West Coast Main Line.

- 2.27 The Appellants, in their 2020 planning application for the same site, provided a breakdown of what they believed the estimated costs would be for a contribution to the delivery of the CBLR and improvement works to A582 Penwortham Way (see **Appendix 6**). The combined costs according to the Appellants was circa. £4.2m in July 2020. This does not include a contribution to improvements to the Bee Lane bridge over the West Coast Main Line.
- 2.28 Following a detailed study by WSP (**Appendix 7**), we now have an estimated cost analysis for different available options for where the CBLR will cross the West Coast Main Line. The optimal solution is for a new bridge to be constructed for road, cycle and pedestrian traffic consistent with the requirements of the CBLR. The estimated cost for the new bridge is between £7.5m to £12.m (depending on carriageway cross-section). This does not include demolition of the existing bridge, land purchase, service diversions, highway alignment and S278 works, adverse ground conditions or contaminated land and Network Rail access costs.
- 2.29 Based on consultation with County Highways and the Council and following a detailed review of the policy context for the site, for the Appellants to not be contributing to the solution for how the CBLR will cross the West Coast Main Line is one of the key reasons for why policies A1 and C1 were identified in reason for refusal number 11, especially when reading the justification to the policy sections in the Local Plan.
- 2.30 As stated above, the Appellants are/will be seeking CIL relief in relation to a perceived delivery of key road infrastructure within the Appellants redline. This key infrastructure is a section of the CBLR (and improvements to the A582). At the same time, it is being argued that the development proposal brought forward do not require a CBLR as all but 40 of the 1,100 dwellings on site will operate off what in essence will be a 'super cul-de-sac' (see 4.8.9 of Mr Steven's Proof: CD10.9). The highways solution presented by the Appellants is to create a spine road from A582 into their development. From discussions with County Highways, the Spine Road would be considered a standard estate road. This is a road infrastructure requirement for any major housing development and the costs associated with its delivery would be part of the standard assessment of external costs.
- 2.31 It has been made clear by County Highways that without major changes to the bridge infrastructure over the West Coast Main Line there is a major impediment to delivery of the CBLR. The Appellants are not contributing to the improvement in bridge infrastructure which means it is highly unlikely that the bridge works can be funded through developer contributions (Policy A1), thus calling into question the future delivery of the CBLR. At the same time, the Appellants are seeking CIL relief for contributing to the delivery of the CBLR.
- 2.32 The Appellants applications represent 81.5% of the allocation in relation to unit numbers. Policy A1 and C1 and their supporting justification in the Local Plan are clear that developer/landowner contributions should fund the CBLR (including bridge works) and improvements to the A582. The approach being taken by the Appellants is that they are making no direct contributions to any of these elements. This would leave the remaining development areas in the allocation (18.5%; 250 dwellings) to fund the required infrastructure.

This is clearly an unreasonable and inappropriate burden to place on an area that is less than 20% (in unit terms) of the allocation. This is very likely going to result in the infrastructure not being brought forward on the grounds of viability for future applications within the allocation.

- 2.33 The viability at the site is well understood by the Appellants. In relation to the first application on the site (1,100 units) the Appellants appointed a viability consultant to produce a Financial Viability Assessment (FVA) (**Appendix 8**) that argued if the application was overburdened with costs of infrastructure, it would find it difficult to deliver a policy compliant scheme. It was argued there would be a major impact on the provisions of affordable housing. Indeed, the viability consultant went as far to say the following:

“Based on the scenarios tested it is clear that the development proposed is not viable or deliverable when it is faced with the combined costs of delivering the CBLR contributions, meeting CIL in full and providing policy compliant affordable housing.” (pages 13 to 14).

- 2.34 The allocation was based on the requirement to deliver key infrastructure. The Appellants agreed through the allocation process that the site required the delivery of this key infrastructure and that they would be a contributor to covering the cost of delivery. By 2019, when the first application(s) on 81.5% of the allocated units was submitted, the Appellants position had changed, where they argued that should the burden of cost associated with the required infrastructure be imposed, there was a strong possibility that the scheme would be neither viable nor deliverable. The change in the viability position between applications (2019 to 2021) relates to the Appellants now being clear that a viable scheme (full policy compliance) can be delivered with or without CIL relief (**Appendix 5**). As the viability position appears to have dramatically improved, then the Appellants ability to fund contribution to allow for completion of the CBLR (incl. the bridge requirement works) appears to not be in question.

3. Conclusion

3.1 Reason for refusal number 11 states that:

“No viability evidence has been submitted to enable an assessment of whether necessary infrastructure can be provided to support this important housing land allocation. As such the proposals are contrary to Policies A1 and C1 in the South Ribble Local Plan” (CD8.3; Decision Notice, 2021: pg. 2).

From a detailed review of all the case information, I can conclude that the justification behind reasons for refusal 11 are as follows:

- The allocation of the subject site was based on the requirement to deliver key infrastructure as seen in Policy C1’s justification text and evidence base behind the policy during examination.
- The approach being taken by the Appellants, is that the financial burden for delivering all of the infrastructure requirements for the allocation, including that of the CBLR and enhancement of the bridge over the West Coast Main Line would be left to the remaining parcels (18.5% of dwellings) and the Council to fund.
- If for example, the full contribution towards the CBLR bridge enhancements were to be sought on the remaining 18.5% of dwellings not in the applications, this is very likely going to result in a viability issue for these parcels of land and call into question the deliverability of both the CBLR and remaining residential dwellings not in the applications (18.5% units). This scenario could mean the allocation does not deliver its anticipated full amount of dwellings.
- The Appellants are seeking CIL relief for the provision of land for the school and for the developments of the Spine Road which they argue will form part of the CBLR. It is SRBC’s position that the scheme will not be subject CIL relief and that it is entirely a choice for them (as Charging Authority) as to whether they should make a legal agreement with the Appellants under Regulation 73 of the regulation or not.
- The Appellants have stated that there is not a viability challenge with the delivery of the site (including full policy contribution) with or without CIL relief. If, for example, should SRBC impose on the Appellants the requirements to fund contributions towards the CBLR (incl. bridge enhancements), a scheme with a Gross Development Value I estimate at circa. £300,000,000, would be more than capable of viably funding all infrastructure needs.