



# Appeal Decision

Site visit made on 10 June 2022

**by K Savage BA(Hons) MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 August 2022**

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**Appeal Ref: APP/T2350/W/20/3253310**

**Land at the junction of Chatburn Road and Pimlico Link Road, Clitheroe, Lancashire BB7 4JX**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Mr Mark Wilkinson (Oakmere Homes (NW) Ltd) against Ribble Valley Borough Council.
  - The application Ref 3/2019/0877, is dated 18 September 2019.
  - The development proposed is the erection of 39 dwellings with landscaping and associated works, and access from adjacent development site.
  - This decision supersedes that issued on 10 November 2020. That decision on the appeal was quashed by order of the High Court.
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## Decision

1. The appeal is dismissed and planning permission is refused.

## Procedural Matters

2. The appeal was made against the Council's failure to determine the application for planning permission within the prescribed period. The Council's single putative reason for refusal is set out in its statement of case.
3. This appeal is a redetermination following the quashing of the previous appeal decision by the High Court, on the basis of an error in law in the interpretation of Policy DMG2 of the development plan. I have had regard to the previous appeal letter, in so far as it forms a material consideration, but have determined the appeal afresh on its planning merits. In doing so, I have taken into account further submissions from the main parties made at the redetermination stage.
4. The original decision was accompanied by a costs decision which was not quashed by the court and is therefore still extant. No further applications for an award of costs have been made by either party, and therefore I have not taken any further action in this respect.
5. A signed and dated unilateral undertaking (UU) made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted. The UU includes undertakings in respect of various matters, including provision of affordable and over-55s housing and financial contributions towards off-site leisure, primary and secondary education and healthcare. I address these matters within my reasoning to follow.

## Main Issue

6. The main issue is whether the proposal would constitute a suitable location for residential development, having regard to local and national planning policies.

## Reasons

7. The appeal site is an undeveloped field to the edge of Clitheroe, alongside the A671 Chatburn Road. Adjacent to the site is an ongoing housing development on land within the control of the appellant. Access to the proposed development would be gained through this adjacent site. The proposal is for a development of 39 dwellings, which would include affordable housing and housing for those aged 55 and over.
8. The site lies adjacent to, but outside of, the settlement boundary of Clitheroe, and is therefore regarded as being in the countryside for the purposes of assessing the proposal against the provisions of the development plan, which includes the Ribble Valley Core Strategy 2008-2028 (Adopted December 2014) (the CS) and the Housing and Economic Development – Development Plan Document (Adopted October 2019) (the HED DPD).
9. Key Statement DS1 of the CS sets out the Council’s overarching settlement strategy, with the majority of new housing to be concentrated within an identified strategic site to the south of Clitheroe and the principal settlements of Clitheroe, Longridge and Whalley. The policy adds that development will also be focused towards ‘Tier 1’ settlements sitting below the principal settlements in the hierarchy, with any development in smaller ‘Tier 2’ settlements needing to demonstrate a proven local need or regeneration benefit.
10. Policy DMG2 – ‘Strategic Considerations’ sets out that development should be in accordance with the CS development strategy and support the spatial vision. The first part of the policy specifies that *‘development proposals in the principal settlements of Clitheroe, Longridge and Whalley and the Tier 1 villages should consolidate, expand or round-off development, so that it is closely related to the main built up areas, ensuring this is appropriate to the scale of, and in keeping with, the existing settlement.’*
11. In quashing the original appeal decision, the High Court held that ‘in’ the principal settlements means proposals falling *within* the settlement boundary, and that this requirement should first be met before considering whether the proposal would consolidate, expand or round-off development. The main parties to the appeal now agree with this interpretation of the policy. Therefore, whilst I have had regard to previous appeals where a more permissive interpretation of the policy has been taken, such as at Henthorn Road<sup>1</sup> and Chatburn Old Road<sup>2</sup>, and where the glossary definitions of ‘consolidation’, ‘expansion’ and ‘rounding off’ have been debated, it is clear following the judgement of the court that as the site falls outside of the settlement boundary of Clitheroe, this first part of Policy DMG2 is not applicable to the proposal.
12. The policy goes on to state that in Tier 2 villages and *outside the defined settlement areas*, development must meet at least one of six considerations; it should be essential to the local economy or social well-being of the area;

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<sup>1</sup> APP/T2350/W/19/3221189, allowed 19 June 2019

<sup>2</sup> APP/T2350/W/19/3223816, allowed 23 January 2020

- needed for the purposes of forestry or agriculture; for local needs housing which meets an identified need; small scale tourism or recreational developments; for small scale uses appropriate to a rural area where a local need or benefit can be demonstrated; or development compatible with the enterprise zone designation. The appellant does not argue that the proposal would fall under any of these categories.
13. Policy DMG2 further sets out that within the open countryside, development will be required to be in keeping with the character of the landscape, and acknowledge the special qualities of the area by virtue of its size, design, use of materials, landscape and siting. The Council does not oppose the proposal in terms of its landscape impact or overall design. However, the proposal would still conflict with Policy DMG2 in terms of the location of the development outside of the settlement boundary of Clitheroe.
  14. Policy DMH3 further relates to areas defined as open countryside. Residential development in these areas is supported in a limited set of circumstances, none of which are advanced as being applicable to the appeal scheme. The proposal would therefore conflict with the spatial strategy by developing housing outside of the settlement boundary of Clitheroe without justification as provided for under either Policy DMG2 or DMH3.
  15. The appellant acknowledges that the proposal would conflict with Policies DMG2 and DMH3, but describes the harm arising from the proposal as very limited, as the proposal would not harm the countryside and would be in an accessible location relative to the built-up area of Clitheroe. The appellant adds that the benefits of the appeal scheme would outweigh the 'limited' conflict with the spatial strategy, a position reached on the basis that the proposal would align with the overall aims of Key Statement DS1 in directing the majority of new housing to the principal settlements, in this case Clitheroe.
  16. However, it is well-established that development plans should be read as a whole, as policies may pull in different directions or, in this case, several interrelated policies together form an overall spatial strategy. It is clear, following the direction of the court, that Policies DMG2 and DMG3 set out clear approaches to development within and outside the settlement boundaries, and form the basis for implementing the overall spatial strategy of Key Statement DS1, which directs the majority of new housing *within* the strategic site and the principal settlements. The subsequent restrictive approaches of Policies DMG2 and DMH3 to development outside of the defined settlements in the hierarchy are consistent with the approach of Key Statement DS1. Indeed, it is made clear in the text following Policy DMG2 that the policy assists in the interpretation of the development strategy and underpins the settlement hierarchy for the purposes of delivering sustainable development, and that in establishing broad constraints to development the Council will secure the overall vision of the CS.
  17. I also note the appellant's reference to the HED DPD examination, and to suggestions that the Examining Inspector considered that these policies needed to be applied flexibly to ensure sufficient delivery of housing within the plan period. However, on my reading, the Inspector did not set out that the CS policies were to be applied in any different manner, but rather he agreed with the Council that the housing requirement of the CS would be met by the flexible policies in the CS and the reserve of allocation sites in the HED DPD.

18. In other words, the Inspector was satisfied that the policies of the CS already provided flexibility to enable sufficient development to come forward. To my mind, the 'flexibility' of the policies lies in the support for development at different scales through the hierarchy, and in allowing for proposals which consolidate, expand or round-off development within the main settlement boundaries, along with specified exceptions beyond the boundaries. The HED DPD adds additional flexibility through the allocation of further development sites in that document, but it does not set out a different wording or interpretation of the CS policies.
19. In any event, it is common ground that the Council can demonstrate a five year supply of deliverable housing sites. In such circumstances, there is no need to countenance any 'flexible' application of the CS policies to address a shortfall in housing land supply. To do so would be to set aside the settlement strategy as the principal method of directing development within the Borough, and would potentially lead to similar arguments being made for other sites close to but outside the settlement boundaries that would diminish the relevance of the settlement strategy and would be the antithesis of sustainable development.
20. For these reasons, I do not read the CS policies as being permissive of market residential development within the open countryside outside of the principal settlements, or that, despite conflict with Policies DMG2 and DMH3, the proposal would nevertheless meet with the general aims of Key Statement DS1. In my view, the identified conflicts with Policies DMG2 and DMH3 mean that, overall, the proposal is not in conformity with the spatial strategy and so does not achieve the overall aims of the development plan in achieving sustainable development. The appellant's approach effectively downplays the importance of the spatial strategy in favour of other considerations, in particular proximity to the settlement and a lack of visual harm to the countryside. However, to downgrade the weight to be afforded to the development plan conflict when it has not been shown to be out-of-date due to inconsistency with the Framework or because of a failure to meet its overall housing delivery aims would undermine the primacy of the plan-led system.
21. Given the importance of the spatial strategy to the overall aims of the development plan, the identified policy conflicts mean that there would be conflict with the development plan read as a whole. It is common ground between the main parties, and I agree, that the aforementioned policies are consistent with the Framework and should be afforded full weight in the assessment of the proposal.
22. I address various benefits of the scheme below which are to be weighed in the planning balance, but on this main issue, I conclude that the proposal is in conflict with the requirements of Key Statement DS1 and Policies DMG2 and DMH3 of the CS, and given these policies are considered to be up-to-date, I afford very significant weight to this conflict.

### **Other Material Considerations**

23. The completed UU provides for the mechanisms necessary to deliver affordable housing and over-55s housing on site, along with financial contributions towards primary and secondary education, off-site leisure facilities and NHS services. The Council has previously confirmed that it was not pursuing the NHS contribution, and no evidence has been advanced subsequently to change this position. Accordingly, I have not taken this contribution into account.

24. It was also put to the previous Inspector that the education contribution had been revised downwards by Lancashire County Council (LCC) as the local education authority. LCC has confirmed its latest position is a primary education contribution of £150,749.64 and a secondary education contribution of £92,247.00. This represents a combined reduction of £30,299.94 against the original requirement, reflecting a reduction in the number of primary places generated by the proposal from 11 to 9, and indexation changes in the cost of each place. As a result, the UU provides for contributions in excess of that now sought by the Council, and I have taken them into account only to the point they cover the revised figures sought by LCC as set out above.
25. Therefore, with the exception of the NHS contribution and the surplus of £30,299.94 offered for education, I am satisfied that the provisions of the UU are in accordance with the tests for planning obligations set out at Paragraph 57 of the Framework. Therefore, I have taken the completed UU into account.
26. In terms of housing land supply, the Council was considered to have a five year supply of deliverable housing sites at the time of the original appeal decision. Since then, the Council has produced its Housing Land Availability Statement as at 31 March 2021 (published May 2021), which indicates a supply of either 6.65 years (using the CS figures) or 14.2 years (using the standard methodology). I have no firm evidence to the contrary to reach a different conclusion in respect of the housing land supply position. Moreover, the 2021 Housing Delivery Test results (published January 2022) show the Council has delivered 369% against its targets over the preceding three years, at an average of 471 dwellings per annum, well above the most recent housing needs evidence pointed to by the appellant, the Ribble Valley Strategic Housing and Economic Needs Assessment (April 2020), which suggests a maximum need of 280 dwellings per annum. Consequently, there is no demonstrable need for housing arising as a result of the Council's housing land supply position, and the presumption in favour of sustainable development of Paragraph 11 of the Framework is not triggered on this basis.
27. This aside, I accept that the delivery of 39 dwellings of different size and type would add to the Borough's housing stock and accord with the Framework's aim of significantly boosting the supply of housing nationally, and the inclusion of policy compliant affordable housing and older persons' housing would be further benefits of the proposal that would address the Framework aim that the needs of groups with specific housing requirements should be addressed. While I accept that five year housing land supply is not a maximum, the delivery of housing beyond the settlement boundary of Clitheroe is not at this time essential to the Council meeting its housing targets in light of its housing land supply position and recent level of housing delivery. Moreover, the delivery of affordable and over-55s housing is no more than required by policy. Therefore, whilst these are certainly benefits of the proposal, they are benefits that would be expected to accrue from any housing development, which moderates the degree of positive weight I afford them.
28. There would also be economic benefits from the construction of the development, but such benefits would be short-lived. As such, I afford them limited weight in the planning balance. The proposal would also result in some economic benefits in terms of residents' support of local facilities and services. However, such benefits would not be very significant from 39 dwellings and, in any event, there is no evidence to indicate that such benefits would not be

capable of being realised on a site or sites within identified settlements. Therefore, this is not a matter to which I afford any material weight in decision making terms.

29. The proposal would deliver a net biodiversity gain, with the appellant offering to deliver additional planting of new trees and hedgerows within the development to accord with the aims of the Framework. This is a tangible benefit which, given the size of the site, garners moderate weight.
30. I also recognise that the appeal site, notwithstanding the policy conflict set out above, is located near to the many local services and facilities within Clitheroe, which would be accessible to future residents by walking, cycling and public transport. While I acknowledge that the appeal site is not isolated from local services and facilities and use of the private car would unlikely be required for all journeys, this has to be weighed against the Council's strategy of providing housing *within* identified settlements and where more sustainable transport movements are likely. Furthermore, the housing land supply position is such that there is not a need to deviate from the Council's spatial strategy relating to the location of housing development. I therefore afford the site's accessibility credentials only limited weight in the overall planning balance.
31. I further acknowledge that the appeal site is well-contained within the landscape, being surrounded on its two 'outer' sides, i.e. those contiguous with the wider countryside, by a substantial stretch of woodland. The adjacent residential development stands on a third side, with the A671 being the fourth, on the opposite side of which is a further residential development and Clitheroe Community Hospital. The Council accepts that the proposal would not lead to harm to the character and appearance of the area, and given the site's immediate surroundings, I agree that residential development of the site, while clearly changing the existing agrarian character, would not have a tangible adverse effect on the character or appearance of the wider countryside surrounding Clitheroe. However, neither is the site harmful in its existing state, and therefore I regard this as a neutral factor overall.
32. No harm has been identified in respect of other matters including highway safety or neighbours' living conditions. I have no firm evidence to lead me to different conclusions in these matters. An absence of harm in these respects means that these are further neutral factors in the overall planning balance.
33. In reaching a view, I have had regard to various appeal decisions referred to me by the main parties. Of note is a decision by the Secretary of State on a development in Cheshire East<sup>3</sup>, where permission was granted for housing despite conflict with the spatial strategy and the Council demonstrating a five year housing land supply, on the basis that the benefits of the proposal outweighed the identified harms and that the proposal would not 'distort the spatial vision' of the development plan. I appreciate there are some parallels with the appeal before me; however, the apportionment of weight to the various material considerations is ultimately a matter of planning judgement for the decision maker, and I am not bound to reach the same conclusion as reached on another appeal in a different local authority area with different development plan policies and material considerations. For the reasons set out above, I find that the proposal would conflict with the overall spatial strategy

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<sup>3</sup> APP/R0660/A/13/2197532, allowed 15 July 2020

and undermine its application, a conclusion I have reached based on the specific material considerations in this case.

34. Other appeals have been referred to me, some of which endorse the interpretation of Policy DMG2 taken by the court and generally align with the conclusions I have reached. Others, include those referenced above, align more with the interpretation of the previous Inspector, which now must attract very limited weight in light of the judgement of the court which forms a significant new material consideration. Ultimately, I have formed my own view on the proposal, but aside from this, there are evident differences in these other cases in terms of the site circumstances and material considerations which mean that they are not wholly comparable to the present appeal, and therefore, they do not alter my overall conclusion below.

### **Planning Balance and Conclusion**

35. The starting point for decision-making is the development plan. The Framework makes it clear that where a planning application conflicts with an up-to-date development plan, permission should not usually be granted. For the reasons set out above, I have found there would be conflict with the development plan taken as a whole. I afford very significant weight to this conflict.
36. There would be several benefits of the proposal, as set out above, ranging from limited to moderate weight. In this case, I do not find that the benefits as a whole are of sufficient weight to outweigh the very significant development plan conflict that I have identified. I conclude that the development would not be in a suitable location for housing having regard to the housing strategy for the area. This is a matter of overriding concern and, therefore, I conclude that the appeal should be dismissed.

*K Savage*

INSPECTOR