IN THE HIGH COURT OF JUSTICE **Claim No.CO/**

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT SITTING IN MANCHESTER

THE PLANNING COURT

BETWEEN:

GERALD GORNALL

Claimant

and

PRESTON CITY COUNCIL

Defendant

and

SENTANTII HOLDINGS LIMITED, COMMUNITY GATEWAY ASSOCIATION LIMITED, MR TIM FORREST AND MR JOHN HOLDEN, WAINHOMES (NORTH WEST) LTD, MR MICHAEL WELLS, SEDDON HOMES LIMITED, STORY HOMES LIMITED.

Interested Parties

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CLAIMANT'S SUMMARY STATEMENT OF FACTS AND GROUNDS

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Essential reading

- These Grounds
- The AOS
- The JMOU [Joint Memorandum of Understanding adopted as a result of the Decision challenged]
- The DDR [Director of Development's report to Leader]

Further necessary reading: The Core Bundle.
Reading time : 3 - 4 hours.

The Parties

1. The Claimant seeks permission to bring this claim in his capacity of owner of land at Bushells Farm, Mill Lane, Preston, PR3 2BJ ("the site"). The Claimant, together with

Community Gateway Association[1] was and is an applicant for outline planning permission for up to 140 dwellings on the site with all matters reserved except for access (reference 06/2018/0884) (hereinafter referred to as " the planning application').

2. The Defendant is the Local Planning Authority for the area in which the planning application was made and made the decision which is the subject matter of this claim. This decision is dated **17th April 2020** which has been recorded within the Minute under the heading " Leader Taking Executive Decisions during the Covid-19 Outbreak " which has a further sub-heading "LE1. Central Lancashire Local Plan Memorandum of Understanding and Statement of Co-operation: Relating to the Provision and Distribution of Housing Land"(see Core Bundle tab 6, pages 174-177).

3. The Memorandum of Understanding and Statement of Co-operation (referred to as " JMOU") was appended to the Minute (Core Bundle tab 8, pages 188-197). The decision is referred to as a "key decision"[2] and the Decision taken is recorded in the Defendant's minute as follows:-

" That the Leader of the Council:

(a) Approved the Memorandum of Understand and Statement of Co-operation between the Central Lancashire authorities as set out in Appendix A of the report, to take effect immediately; and

(b) noted the Memorandum of Understanding and Statement of Co-operation will be implemented for Development Management purposes in the determination of planning applications henceforth."

["the Decision"]

[1] Whilst not formally joined the Community Gateway Association fully support the Claim.
[2] Emphasis added

4. The planning application was refused by the Defendant on 6th March 2020 and the decision notice is provided in the Bundle tab 36, pages 483-486. The Planning Officer's report ("POR 2") upon which that March decision was taken is provided in the Bundle tab 35, pages 459-482. It should be noted that a critical element of the March decision was a finding that, with a five year supply of housing land, the policies of the development plan need not be considered out of date and that in the view of the officer that the tilted balance under NPPF para 11d (Core Bundle tab 17, page 339 and Bundle tab 41, page 726) no longer applied (POR 2 §3).

5. This reverses the previous recommendation on the planning application made in the first Planning Officer's report ("POR 1") presented to the Planning Committee of the Defendant on the 10th January 2019 (Bundle tab 34, pages 436-458) which found the absence of a five year land supply applied the titled balance in §3.8 and found that in accordance with §11 of the NPPF (Core Bundle tab 17, page 339 and Bundle tab 41, page 726) the relevant policies should be considered out of date. The planning application was then recommended for approval.

6. After POR 1 and prior to POR 2 the Secretary of State for Housing Communities and Local Government (referred as "the Secretary of State") issued a holding direction under Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 directing the Defendant not to grant permission on the planning application pending consideration of call in (Bundle tab 38, page 521).

7. The decision on the planning application will be appealed by the Claimant under section 78 of the Town and Country Planning Act 1990 and the status of the JMOU will be directly in issue within that appeal. Moreover, the March decision in respect of the

planning application was one of a number of planning applications which had been recommended for approval within the local planning authority area which were subsequently similarly refused by the Defendant. A schedule of those decisions is provided in the Bundle tab 37, pages 487-520 together with the relevant Decision Notices for those decisions. The Applicants for permission subject to those decision notices have an interest in this claim and are joined as interested parties 1 to 7.

The factual background to the claim

8. A more detailed chronology of relevant dates and matters related to the proceedings and grounds has been provided as separate document to these Summary Grounds (see Core Bundle tab 3, pages 39-43) for the purposes of the Summary Grounds this can be abridged.

9. The individual Central Lancashire local authorities (referred to as "CLA") comprise Chorley Council, South Ribble Borough Council and the Defendant.

10. In July 2012 each of the three Council's individually adopted the Central Lancashire Adopted Core Strategy (referred to as the "CLACS). The CLACS "sets out the Central Lancashire authorities' spatial planning proposals for the combined area of Preston, South Ribble and Chorley" (CLACS p/9) (Core Bundle tab 16, pages 330-338) and established the overall housing requirement for that area and how that requirement was apportioned between the individual authorities. Subsequently the individual authorities adopted the individual local plans under that strategic framework in 2015 by making specific land use allocations and promulgating other development management policies for each local planning authority area.

11. Prior to adoption these policies had met all of the relevant legal tests of soundness had been subject to strategic environmental assessment and had been subject to the scrutiny of an examination by an independent inspector. In other words as required by law the policies of the development plan met the relevant legal requirements of a development plan document.

12. CLACS Policy 4 "Housing Delivery" provides and manages the delivery of new housing by setting and applying minimum requirements as follows with percentages added (Core Bundle tab 16, page 338 / [CLACS p71]):-

- Preston Council 507 dwellings per annum (37%);
- South Ribble Council 417 dwellings per annum (31%); and
- Chorley Council 417 dwellings per annum (31%).

13. Policy 4 sets a minimum requirement and apportions that requirement between the three local planning authority areas. In both respects upon adoption this policy was implemented and used for development management purposes by the Defendant.

14. In respect of the local planning authority area of the Defendant the development plan comprises the CLACS, the Preston Local Plan 2012-26 (Site Allocations and Development Management Policies (DPD) [2015] and the City Centre Area Action Plan [adopted 2016].

15. The National Planning Policy Framework (NPPF) has gone through 3 essential iterations (27 3 2012, 24 7 2018 and the current NPPF 19 2 2019 [referred to as NPPF

]. NPPF §73 as worded from February 2019 (Core Bundle tab 17 page 341 and Bundle tab 41, page 740) states that :-

" Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against their housing requirement set out in adopted strategic policies[3], or against their local housing need where the strategic policies are more than five years old[fn37]."

16. Footnote 37 to NPF §73 provides:-

Unless these strategic policies have been reviewed and found not to require updating. Where local housing need is used as the basis for assessing whether a five year supply of specific deliverable sites exists, it should be calculated using the standard method set out in national planning guidance

17. NPPG as updated on 22nd July 2019 makes clear that a 5 year supply of deliverable sites is against a housing requirement set out in adopted strategic policies or using the standard method (NPPG ID 68-002) (Core Bundle tab 18, page 347) and that where strategic policies are more than 5 years old, or have been reviewed and found in need of updating, local housing need calculated using the standard method should be used in place of the housing requirement (NPPG ID 68-003) (Core Bundle tab 18, page 347).

18. The "tilted balance" is a well understood phrase applicable to the NPPF. As relevant in the NPPF reference is made to NPPF§11(d) (Core Bundle tab 17 page 339 and Bundle tab 41, page 726) as follows:-

" 11 Plans and decisions should apply a presumption in favour of sustainable development.
……..
For **decision-taking** this means:

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date[fn7] granting permission unless:

[3] Footnote 36 can be agreed to irrelevant.

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed [fn6] ; or
ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

19. Footnote 7 provides:-

"This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. Transitional arrangements for the Housing Delivery Test are set out in Annex 1. "

20. Two appeal decisions arrived at by Inspectors appointed by the Secretary of State within the local planning authority of South Ribble Borough Council bear upon the issue of the housing requirement and distribution in the CLA area:-

20.1 APP/F2360/W/18/3198822 concerning land off Brindle Road, Bamber Bridge, Preston, BR5 8YP ("Brindle Road AD") a decision dated 31st August 2018 in which the Inspector provided reasons at §40-47 for finding that the titled balance applied - albeit against the NPPF 2018 (Core Bundle comprising all of AD at tab 20) which did not contain the same advice in respect of NPPF §73 identified above. At §43 the Inspector states " *It is not for an Inspector on a Section 78 appeal to seek to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure, as it is an elaborate process involving many parties who are not present at or involved in the Section 78 appeal "[fn1]*

FN 1 Court of Appeal judgment in *Hunston v SSCLG* [2013] EWCA Civ. 1610 (extract Core Bundle tab 31, pages 424-425 and full authority Bundle tab 46, pages 933-943)*;*

and

20.2 APP/F2360/W/19/3234070 concerning land to the South of Chain House Lane, Whitesnake, Preston ("Chain House Lane AD") (Core Bundle tab 19, pages 350-368) a decision dated 13th December 2019 in which a different Inspector found the CLACS Policy figure for South Ribble "out-of-date" on several counts (§37) – that the standard method of calculating local housing need should be used for the purposes of the appeal (§39), that the reasoning and approach of the Defendant to use of the CLACS Policy 4 requirements was specific to the Defendant (and Chorley) Councils and does not necessarily directly apply to the South Ribble situation (§25), considers the emergence of the JMOU in stead of the previous 2017 MOU including the use of the standard method as to be redistributed by the CLA authorities (§28-39) but having found the policy out-of-date (including in §37) also finds that the titled balance does not apply (§49) having used the higher "redistributed local housing need (2019 MOU)" as the top end of a range (§47), having earlier stated " I do not attempt to establish what the final yearly requirement figure for South Ribble should be (216 or 334 or some other figure)…" (§39)

[emphasis added]

21. The Chain House Lane AD has been challenged under section 288 of the Town and Country Planning Act 1990 and whilst the Secretary of State has submitted to the quashing of that Decision (see Core Bundle tab 13, pages 306-307 for the Order of Mr Justice Kerr) South Ribble Borough Council presently maintain a defence to that challenge.

22. The three CLA authorities had entered into a previous Joint Memorandum of Understanding and Statement of Co-operation relating to the Provision of Housing Land (referred to as "previous 2017 MOU") (Core Bundle tab 9, pages 198-205) on 3rd October 2017 in which subject to review (§7) – at §5.10 the following is recorded:-

" The Councils agree for the following reasons both (a) that is appropriate for the proper planning of Central Lancashire as a whole that an apportionment of the full Objectively Assessed Need is made across the Housing Market Area and (b) that the current Joint Core Strategy requirement figures – which exceed the Objectively Assessed Need on a Housing Market Area footprint – should continue to be applied prior to or pending adoption of a replacement local plan."

23. Notwithstanding the process leading to the previous JMU the outcome was the continued application of CLACS policy 4 in terms of both the identical housing requirement and the distribution of housing for each of the three local planning authority areas.

24. In 2019 the CLA commissioned consultant's Iceni to prepare a housing study (Bundle tab 39, pages 522-615 and Core Bundle excerpts of study at tab 11, pages 242-272) in the context of early work in preparation of the Review of the Central Lancashire Local Plan (§1.1) with one of the things to be done being to :-

- "Advise on the scale of housing need and interim distribution of housing across Central Lancashire to inform a revised Memorandum of Understanding; "

25. The final report dated October 2019 (referred to as "the October 19 Iceni report") makes reference to following the guidance in PPG for Local Plans which cover more than one area within ID 2a-004 (§2.13) in that it will be "for the relevant strategic policy-making authority to distribute the total housing requirement which is then arrived at across the plan area".

26. The statement is not found in ID2a-004 but appears to be taken from ID 2a-013 (Core Bundle tab 18, pages 343-346) which applies to the production of joint strategic policies for plans and making of relevant strategic policy-making. The guidance in full states:-

"How should local housing need be calculated where plans cover more than one area?

Local housing need assessments may cover more than one area, in particular where strategic policies are being produced jointly, or where spatial development strategies are prepared by elected Mayors, or combined authorities with strategic policy-making powers.

In such cases the housing need for the defined area should at least be the sum of the local housing need for each local planning authority within the area. It will be for the relevant strategic policy-making authority to distribute the total housing requirement which is then arrived at across the plan area.

Where a spatial development strategy has been published, local planning authorities should use the local housing need figure in the spatial development strategy and should not seek to re-visit their local housing need figure when preparing new strategic or non-strategic policies.

Paragraph: 013 Reference ID: 2a-013-20190220 "

Revision date: 20 02 2019"

27. The October 19 Iceni report sets out **the local housing need figure under the standard methodology** at pp 8-9 (Core Bundle tab 11, pages 243-245 and Bundle tab 39, pages 531-533) namely 1026 as apportioned pursuant to the standard methodology as follows:-

- "Preston 241
- South Ribble 206
- Chorley 579 "

28. The October 19 Iceni report in chapter 4 (Core Bundle tab 11, pages 249-261 and Bundle tab 39, pages 537-549) considers a range of factors for applying or disapplying the standard methodology to the 1026 in terms of the distribution of that figure-all of those matters are plainly matters informing policy including the potential release of land from the Green Belt. The report properly acknowledges that there are a number of ways that the issue of distribution between the three authorities could be approached (Core Bundle tab 11, page 259 and Bundle tab 39, page 547) [p23 of report §4.44] prior to making a recommendation for distribution of 40% for Preston, 32.5 % for Chorley and 32.5% for South Ribble resulting in a redistribution at §4.50 (Core Bundle tab 11, page 260 and Bundle tab 39, page 548) [p25 of the report] leading to the relevant recommendation at §4.52 to 4.53 :-

> " 4.52 It is anticipated that an updated Memorandum of Understanding will be progressed and signed between the three authorities which draws on the conclusions set out on the distribution of identified development needs in line with the PPG[fn 8] These conclusions can also feed into a Statement of Common Ground to be maintained (and as appropriate updated) throughout the plan-making process.
>
> 4.53 The housing distribution within the HMA may need to be reviewed in due course in bringing together a range of evidence through the plan-making process, including any changes to the housing need, evidence on land availability, infrastructure and the findings of options testing through Sustainability Appraisal; as well as taking into account of consultation on the emerging plan."

At §10.6 of the October 19 Iceni report it is stated that the resulting updated JMU is "intended to provide an interim basis for agreeing how the HMA's housing needs might be distributed" (Core Bundle tab 11, page 263 and Bundle tab 39, page 607)

29. Planning Practice Guidance for Plan- Making no longer refers to entering Memoranda of Understanding with other local authorities but now refers to entering a Statement of Common Ground subject to providing the scope of information indicated in the guidance at ID 61-010 to 012 (Core Bundle tab 18, pages 347-349) including: -

"a. the capacity within the strategic policy-making authority area(s) covered by the statement to meet their own identified needs;

b. the extent of any unmet need within the strategic policy-making authority area(s); and

c. agreements (or disagreements) between strategic policy-making authorities about the extent to which these unmet needs are capable of being redistributed within the wider area covered by the statement.

30. Following initially consulting on the JMOU for a period of 14 days a further period of consultation was conducted, including over Christmas and New Year 2020. Following the consultation period a further Final report from Iceni dated March 2020 (referred to as "the March 20 Iceni report ") (The March 20 Iceni report is provided in the Bundle at tab 40, pages 616-718 and the Core Bundle provides the relevant extracts at tab 12, pages 273-305) was produced. This was annexed to the report of the Director of Development in relation to the Decision now challenged. The March 20 Iceni report now draws a distinction between the requirement for the making of the plan and that used for the calculation of five year land supply in advance of adoption (§2.18 pp4-5 Core Bundle tab 12, pages 278-279 and Bundle tab 40, pages 623-624). Reference is made to the PPG at §2.19 [see ID 2a-013] which applies to the making of a plan and policy. The March 20 Iceni report also draws support from the Chain House Lane AD (Core Bundle tab 12, page 279 and Bundle tab 40, page 624 §2.20). At §3.11 (Core Bundle tab 12, page 283 and Bundle tab 40, page 629) the March Iceni report emphasises in bold that "National policy and guidance directs this figure of 1,026 dpa is the appropriate figure against which to calculate the five year land supply". Having set out reasons why the CLA's may need to consider a higher figure than this in section 3 (Core Bundle tab 12, pages 281-290 and Bundle tab 40, pages 627-636) the report

concludes that this is a matter "for the new Local Plan to consider " [§3.40] (Core Bundle tab 12, page 290 and Bundle tab 40, page 636).

30.1 Within §4.2 it is made clear that the section dealing with distribution of housing need – rather than "providing a basis for producing and maintaining a Statement of Common Ground throughout the plan-making process regarding the distribution of development " (October Iceni report §4.1 Core Bundle tab 11, page 249 and Bundle tab 39, page 537) it now "provides a basis for producing and maintaining a Memorandum of understanding regarding the distribution of development on an interim basis" (March 20 Iceni report §4.2 Core Bundle tab 12, page 291 and Bundle tab 40, page 637). Whilst there are some supplementary paragraphs in the March 20 report the critical findings and distributional assessment remains the same as in the October Iceni report. (§4.57-8) (Core Bundle tab 12, pages 305 and Bundle tab 40, page 651).

31. Following the outbreak of Covid 19 a web site page has been placed on the Defendant's web site under the heading "Councillors and meetings" and records a basis upon which the Leader of the Council will determine all Executive Decisions (Core Bundle tab 15, pages 328-329).

32. Under the heading "Leader Taking Executive Decisions during the Covid-19 Outbreak -Friday, 17th April 2020 2.00 pm (Core Bundle tab 15, pages 328-329) four attachments are provided

32.1 Attendance details (Core Bundle tab 6, pages 174-177);

32.2 Agenda frontsheet (Core Bundle tab 6, pages 174-177);

32.3 Agenda reports pack (Core Bundle tabs 7-10, pages 178-241) and

32.4 Printed draft minutes (Core Bundle tab 6, pages 174-177).

33. The Report of the Director of Development in relation to the meeting giving rise to the Decision of 17th April 2020 within the Agenda reports pack comprises the report ("DDR") and 3 appendices – Appendix A which is the JMOU, Appendix B which is the previous 2017 JMOU and Appendix C which is a Consultation Outcomes Report (Core Bundle tabs 8-10, pages 188-241) .

34. The DDR (Core Bundle tab 7, pages 178-187) makes clear;-

34.1 the concern of the CLA authorities that the accumulated backlog on housing supply has continued to be counted such that the Defendant has been unable to show a five year supply of housing land (§3.7-9) (Core Bundle tab 7, page 180);

34.2 the introduction of the standard methdology must be used (§3.12 ditto);

34.3 regard should be had to the Chain House Lane AD notwithstanding it is under challenge ; (§3.15-317)(Core Bundle tab 7, page 181) ;

34.4 the Inspector within the Chain House Lane AD suggested that the CLA ought to review the previous 2017 MOU by September 2020 (§3.18) [ditto] ;

34.5 to regain control over development not in accordance with the development plan a three stage approach to a JMOU is supported by NPPF and PPG prior to adopting a new local plan the third of which is "distributing that across and between Local Authorities " (§3.18-19) [ditto] ;

34.6 A new CLA local plan was not likely to be in place before the end of 2023 (§3.20) [ditto] ;

34.7 a summary of consultations upon the JMOU is provided including the points made by the Claimant that such a policy tool would be an "unlawful promulgation of policy (which ought to be within a DPD) through an unrecognised, non-statutory mechanism" not following PPG in relation to use of SCG as now required and not MOU, and unlawful departure from the standard method. In particular using a "policy on " figure when the NPPF properly applied required use of a "policy off' figure. (§3.33) (Core Bundle tab 7, pages 183-184) .

34.8 all three CLA were to use the figures and distribution to calculate the five year land supply with immediate effect (§3.36) (Core Bundle tab 7, page 185).

34.9 the approach is consistent with national planning policy and guidance and will protect each authority's housing land supply position in future applications and appeals (§3.37) (Core Bundle tab 7, page 185) .

35. Based on this the decision was taken by the Leader.

36. Also available on the Defendant's web site is a copy of the Constitution of the Council (Extracts only provided namely Articles 4 and 13, Core Bundle tab 14, pages 308-327) pursuant to Article 4 of which approving or adopting the policy framework is a function reserved to full council and accordingly is not an Executive function (Core Bundle tab 14, pages 308-309). Moreover, under Article 13 a key decision (which this is stated to be) is also a matter for full council and not an Executive function. The Decision taken was not taken by the Full Council but by the Leader (Core Bundle tab 7, page 179) .

The Legal Principles

37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (" the 2004 Act ") indicates that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Interpretation of policy

38. A classic statement of law relied upon is that of Mr Justice Lindblom (as he then was) in the case of *Bloor Homes East Midlands Ltd v SSCLG* [2014] EWHC 754 (Admin) at paragraph 19. (Full case report Bundle tab 42, pages 795-846, Core Bundle extract §19 only tab 27, pages 405-407) **.** In this challenge reliance is particularly placed upon principle 4 which applies to both national policy and development plan policy in terms of objective interpretation of policy being a matter for the court in accordance with the language used and in its proper context. A failure to understand and apply relevant policy will constitute failure to have regard to a material consideration and amount to an error of law.

39. In approaching guidance in the NPPG it is recognised that generally guidance needs to be approach with caution as described by Lieven J in the case of *Solo Retail v Torridge DC* [2019] EWHC 489 (Admin) at §90 (Full case report Bundle tab 43, pages 847-860, Core Bundle extract § 90 only tab 28, pages 408-411). However, unlike the position in *Solo Retail* the NPPG relevant to this challenge (see paragraph 16 above) is explicitly referred to in the footnote to the NPPF itself.

Character of document which in reality is a DPD

40. There is a considerable body of case law which establishes that where a document contains policy which ought to be within a development plan document ("DPD") then it is not lawful for it to be in an SPD or informal guidance. Subsidiary points of relevance can be easily agreed:-

40.1 to lawfully promulgate a supplementary planning document such a document must be supplemental to adopted policy but cannot effect a change to that policy;

40.2 the rationale for that is that to effect a change should be subject to the same procedural requirements including sustainability appraisal and independent examination as the adopted policy which it changes.

41. As Wilkie J made clear in the case of *R (on the application of Wakil (t/a Orya Textiles) v London Borough of Hammersmith and Fulham and Orion Shepherd's Bush* [2013] 1 P& CR at 13 (Full report in the Bundle tab 44, pages 861-903, Core Bundle extracts only tab 29, pages 412-419 to comprising §80-95) the character of a document is an application of fact to the legal requirements and such is a matter of law (see §81) (Core Bundle tab 29, page 412). Where so determined by the Court then the requirements for such a document including examination and SEA follow (see §91) Core Bundle tab 29, page 416). In relation to the circumstances in *Wakil* a consideration was whether the document purported to set a framework for future development consents. (see §93) (Core Bundle tab 29, page 417) .

42. The rationale is to ensure that the provisions of the SEA Directive that reasonable alternatives to the plan being considered are properly identified and evaluated and not circumvented.

43. In *R (on the application of Skipton Properties Ltd v Craven DC* [2017] EWHC 534 (Admin) (the Full report is in the Bundle at tab 45, pages 904-932 to and an extract comprising §13 and 84-92 is in the Core Bundle tab 30, pages 420-423) the LPA purported to adopt a document entitled "Negotiating Affordable Housing Contributions August 2016" which changed the LPA's approach to affordable housing commuted sums owing to significant changes to national planning policy (§13) (Core Bundle tab 30, page 420). In drawing together the reasoning in the case Jay J stated at §92 (Core Bundle tab 30, page 423) :-

> "92. In my judgment, the correct analysis is that the NAHC 2016 contains statements in the nature of policies which pertain to the development and use of land which the Defendant wishes to encourage, pending its adoption of a new local plan which will include an affordable housing policy. The development and use of land is either "residential development including affordable housing" or "affordable housing". It is an interim policy in the nature of a DPD. It should have been consulted on; an SEA should have been carried out; it should have been submitted to the Secretary of State for independent examination. "

44. Pursuant to regulation 6 of the Town and Country Planning Regulations 2012/767 (the extract comprising regulations 5 & 6 are in the Core Bundle tab 24, page 396) :-

> " Any document of the description referred to in regelation 5(1)(a)(i), (ii) or (iv) or 5(2)(a) or (b) is a local plan."

45. Pursuant to regulation 5 of those regulations:-

"5.— Local development documents

(1) For the purposes of section 17(7)(za)[1] of the Act the documents which are to be prepared as local development documents are—

(a) any document prepared by a local planning authority individually or in cooperation with one or more other local planning authorities, which contains statements regarding one or more of the following—

(i) the development and use of land which the local planning authority wish to encourage during any specified period;

(ii) the allocation of sites for a particular type of development or use; and

….

(iv) development management and site allocation policies, which are intended to guide the determination of applications for planning permission;

(2) For the purposes of section 17(7)(za) of the Act the documents which, if prepared, are to be prepared as local development documents are—

(a) any document which—

(i) relates only to part of the area of the local planning authority;

(ii) identifies that area as an area of significant change or special conservation; and

(iii) contains the local planning authority's policies in relation to the area; and

(b) any other document which includes a site allocation policy. "

Policy Off

46. The case of *Hunston v SSCLG* [2013] EWCA Civ. 1610 (Full report in Bundle tab 46, pages 933-943, Core Bundle extract only § 25-26 tab31, pages 424-425) in the context of NPPF 2012 addressed the meaning of "full objectively assessed needs" within the phraseology " to ensure that their Local Plan meets the full, objectively assessed needs for market and affordable housing in the housing market area, as far as consistent with the policies set out in this Framework" [§25 per Keene LJ] . Keene LJ states:-

" That qualification contained in the last clause is not qualifying housing needs. It is qualifying the extent to which the Local Plan should go to meet those needs. The needs assessment, objectively arrived at, is not affected in advance of the production of the Local Plan, which will then set the requirement figure".

47. Keene LJ expressly disavows an approach whereby an inspector on a section 78 appeal to seek to carry out some sort of local plan process so as to arrive at a constrained housing figure. [§26] as this could not be a rounded assessment similar to the local plan process.

Not an Executive function but one for "Full Council'

48. It is accepted that as a matter of law the effect of section 9D of the Local Government Act 2000 (Extract only Core Bundle tab 25, pages 397-398) was to place decision making in the hands of the Executive or Cabinet, unless a specific provision made them decisions for the full Council. Whether this is so requires as assessment of the facts of the decision against the wording of the Council's constitution. (see Ousely J in *Gordon Peters v London Borough of Haringey v Landlease Europe Holdings Ltd* [2018] EWHC 192 (Admin) at §202-203)(the Full report is provided at Bundle tab 47, pages 944-1,002, Core Bundle Extract only tab 32, page 426) .

Summary Grounds

Ground 1

In arriving at the decision to adopt the JMOU the Defendant has misinterpreted and misunderstood national planning policy in relation to the use of the "standard method" for the calculation of five year land supply of specific deliverable sites

pursuant to paragraph 73 of the NPPF together with footnote 37 and in reference to national planning guidance by:-

(a) erroneously having regard to as a material consideration redistribution of the housing requirement within the individual local authority areas of Central Lancashire other than as provided for under the standard methodology;

(b) failed to approach distribution on one of two permissible bases either as (i) an application of Policy 4 CLACS [and §11d NPPF triggers the tilted balance] or use of the standard methodology;

49. There is no dispute that under CLACS Policy 4 the distribution is:-

- Preston City Council 507 dwellings per annum (37%);
- South Ribble Council 417 dwellings per annum (31%) and
- Chorley Council 417 dwellings per annum (31%).

50 There is no dispute that under the standard methodology the distribution is :-

- Preston City Council 241 dwellings per annum (23%);
- South Ribble Council 206 dwellings per annum (20%); and
- Chorley Council 579 (57%).

51. The DDR misinterprets and misunderstands the NPPF and NPPG as neither of them (in the current context) support any other distribution than that provided by the development plan or the standard methodology. There is no support for the redistribution of the aggregated number of houses arrived at by the standard method being adopted as a policy tool outside

the plan making process. The advice in the NPPF including in §27 and 212 is that this is a matter for the plan making process.

52. The NPPG deployed to seek to justify this approach (ID 2a-013) (see paragraph 34 above) clearly applies to the process of development plan making not to the creation of a non-statutory stop gap or interim policy outside the plan making process. To interpret the position otherwise is to misinterpret policy and guidance , misunderstand it and to seriously mislead the leader of the Defendant.

53. The Claimant also relies on the matters set out under Grounds 2 and 3 under this Ground.

Ground 2

In reaching the decision to redistribute the aggregated figure for the three authorities under the standard method the Defendant had regard to an immaterial consideration namely erroneous advice in the March Iceni report which incorrectly claims consistency with national guidance.

54. In the March Iceni report at Table 4.15 on page 33 (Bundle tab 40, page 651 and Core Bundle tab 12, page 305) shows in tabular form precisely how the standard method has not been applied in arriving at the JMOU upon their recommendation. Under the standard method 241 is distributed to the Defendant or 23% whereas under the "Iceni Analysis" the figure is 410 or 40%, under the standard method; 206 is distributed to South Ribble or 20% whereas under the "Iceni Analysis the figure is 334 or 32.5%; and in respect of Chorley the standard methodology figures 579 or 57% as contrasted with 282 or 27.5% under the "Iceni Analysis".

55. Plainly as set out the standard method is not silent on how it is to be applied and the outcome is clear. The policy provenance for not using the standard method is not found in the NPPF §73. In the March Iceni report the only reference to the NPPF in support is one to NPPF §27 (§2.19) (Bundle tab 40, page 624 and Core Bundle tab 17, page 279) which encourages the preparation and maintenance of statements of common ground to be produced using the approach set out in national planning guidance, and be made publicly available **throughout the plan-making process**…". However:-

55.1 The JMOU is not a Statement of Common Ground produced using the approach in NPPG and in particular does not contain the information identified in ID 61-010-012 (see paragraph 29 above) including an assessment of the capacity of each authority to meet its own needs; and

55.2 The JMOU is an interim decision made prior to the plan-making process which ought to be made "policy off " – it is not a decision made in the plan-making process (see ground 3) ;

55.3 The relevant advice in NPPF is to be found in §212-3 [4]– as §212 states :-

" Plans may also need to be revised to reflect policy changes which this replacement Framework has made. This should be progressed as quickly as possible, either through a partial revision or by preparing a new plan."

56. The Claimant expressly repeats paragraph 51 under this ground. NPPG 2a-013 applies to plan and policy making.

[4] Including 213 on the correct approach to 'out of date' policies as understood in the Wavenden case.

57. Moreover, the DDR relies on the March Iceni report in erroneously claiming consistency with national planning policy and PPG and the DDR and in doing so seriously misleads the leader - when it is clear that the standard methodology has not been used - what has been used is the "Iceni analysis".

58. Under this ground the Claimant also relies on the matters under Ground 1 and Ground 3.

Ground 3

The Defendant has adopted the JMOU which is a document the true characterisation of which is a development plan document (local development document and local plan within regulation 5(1)(a) (i) and/or (iv) and 6 of the Town and Country Planning Regulations 2012/767). In resolving the distribution of housing development between the authorities should be other than under Policy 4 CLACS or under standard methodology for the purposes of decision taking the Defendant has unlawfully by-passed the legal requirements of the creation of development plan policy in a development plan document - including (a) sustainability appraisal under the Strategic Environmental Directive (EU Directive 2001/42/EC) and (b) examination by an independent inspector.

60. The JMOU contains statements plainly intending to guide or regulate development management (in other words policies) in terms of housing distribution, the calculation of the five year land supply and the application of the tilted balance. The JMOU explains the policy at §6.11 and in section 7 and adopts a new policy distribution as policy within section 8 - expressly as a replacement for Policy 4 of CLACS.

61. There can simply be no doubt that the JMOU contains statements in the nature of policies which pertain to the development and use of land which the Defendant wishes to encourage, pending the adoption by the Defendant and each of the other CLA of a joint strategic plan late in 2023 (see *Craven*). It is an interim policy in the nature of a DPD.

62. Article 5 of the SEA Directive (extract only provided Core Bundle tab 22, page 394) requires the preparation of an environmental report which requires an assessment of such policy and reasonable alternatives to it. No such report has been prepared. The SEA Directive in this respect is given effect to by regulation 12(2) and (3) of the Environmental Assessment of Plans and Programmes Regulations 2004 (extract only provided Core Bundle tab 23, page 395).

63. It can be common ground that there is a requirement by law that a document the true character of which is found by the Court to be a local plan or development plan document is subject to a process leading to submission by the local planning authority, examination by an inspector and formal adoption none of which has happened in relation to the JMOU.

64. The decision of 17th April is fundamentally unlawful.

Ground 4

In reaching the decision the Defendant has had regard to the Chain House Lane AD which has itself been reached unlawfully as accepted by the Secretary of State and is either not a material consideration or contains illogical reasoning which means that as a matter of law it ought to have been disregarded by the Defendant.

65. The DDR at makes reference to three bullet points derived from the Chain House Lane AD at §3.16 (Core Bundle tab 7, page 181). Those three matters [5]themselves are uncontroversial and if that were all that were taken from the decision then this ground can be withdrawn.

66. However, the DDR draws more than that from the Chain Lane AD. In particular §3.15 of the DDR (Core Bundle tab 7, page 181) appears to draw upon the comprehensive analysis of the housing land position in South Ribble as having implications and consequences for the Defendant.

67. The Chain House Lane AD does not contain the statement that the Central Lancashire authorities ought to review the 2017 JMOU by 2020 it simply reports upon the process without either encouraging or discouraging it and notes that the 2017 MOU in its itself requires such a review. Expressly in relation to the JMOU she states at §35 (Core Bundle tab 19, page 356) that it was for the plan making process to consider the distribution of new homes in the area.

- [5] the strategic policies are over five years old;
- No formal review of those policies have taken place'
- The introduction of the standard method formula is a "significant change'

68. However, the Chain Lane AD is legally unsound in analysis of the five year land supply, conclusions on whether the most important policies are out of date and application of the titled balance.

68.In having found the most important policies out of date for a variety of reasons the Inspector nonetheless did not apply the tilted balance;

68.2 Whilst the presence of a five year land supply under the standard methodology may mean that a five year land supply exists it does not render out of date policies up to date or mean that the titled balance is inapplicable – this will require an evaluation of the most important basket of policies against the NPPF as a whole [6];

68.3 having acknowledged that an alternative figure above the figure derived from the standard methodology or indeed above the JMOU was not for her (§39) (Core Bundle tab 19, page 357) the Inspector nonetheless provides an analysis limited to the range between the standard methodology figure and the then draft JMOU figure and not a figure above - in other words she begins to take a "policy on" approach (§47-48) (Core Bundle tab 19, page 358-359) .

Ground 5

The Decision reached by the Defendant on 17th April 2020 was "ultra-vires" the Defendant Council in that a decision identified by the Constitution of the Council to be taken by Full Council was in fact taken by the Leader alone as an Executive decision.

[6] §213 NPPF and footnote 4 above.

69. The Defendant's web site identifies this decision as a decision to be taken by the Leader of the Council alone as an Executive decision. (Core Bundle tab 15, pages 328-329). If this is an executive decision then the Claimant does not raise a legal impediment to this process in the circumstances of the Covid 19 Pandemic.

70. However, on the web site at the time of drafting this claim - the Full Constitution of the Council (Articles 4 and 13 of the constitution only are provided as an extract in the Core Bundle at table 14, pages 308-327) provides in Article 4.02:-

"Only the Council will exercise the following functions :

(i) approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer "

71. For the reasons already identified in the earlier grounds this decision was the approval of a policy framework for the level and distribution of housing and calculation of land supply and so fell within Article 4.02 - as such it was required to be dealt with as a matter for full council in a meeting of the Full Council under the terms of the constitution or in a meeting as otherwise resolved by the Council under the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (the full regulations are provided at Bundle pp to and the relevant excerpts dealing with Council flexibilities are provided at Core Bundle tab 26, pages 399-404).

72. The decision was not one reached by the Full Council by meeting (including any flexibilities for such meetings) but by the Leader as an executive function.

73. In the Defendant's constitution Article 13 - Types of decision are identified including those reserved for full Council under Articles 4.02 & 13.03 and key decisions under 13.03 (ii). P

Article 13.03 provides (Core Bundle tab 14, pages 310-311) as follows:-

"Types of decision
Decisions reserved to full Council. Decisions relating to the functions listed in Article 4.02 will be made by the full Council and not delegated.

Key decisions
(i) Any capital or revenue budget decision (contract or scheme approval) in excess of £100,000

and/or

(ii) Any decision which is likely to have a significant positive or negative impact (e.g. in environmental, physical, social or economic terms including the discontinuance of any service) on the people living or working in communities in two or more wards except that matters will not be key decisions simply because that work would be carried out in two or more wards e.g following the approval of a Council wide programme of work.
A decision taker may only make a key decision in accordance with the requirements of the Access to Information Procedure Rules set out in Part 3 of this Constitution.

74. The DDR at 1.6 identifies this decision as a key decision. Accordingly, this is **both** a reserved decision and a key decision and accordingly should be taken by Full Council on **either or both** bases and was not. Accordingly the decision is 'ultra-vires" the Defendant. (see *Gordon Peters*).

75. For the avoidance of doubt this claim only challenges the making, interpretation and application of policy in the jurisdiction of the Defendant. For reasons that are clear in the claim the Claimant does not claim the standing to pursue this claim against adjoining local planning authorities or have any interest in doing so.

Relief

76. The decision of the Defendant shall be quashed and the Defendant shall pay the costs of the Claimant.

77. Permission to bring this claim is sought.

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