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## Appeal Decision

Hearing Held on 27 July 2017

Site visit made on 27 July 2017

**by Debbie Moore BSc (HONS) MCD MRTPI PGDip**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 18<sup>th</sup> August 2017.**

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**Appeal Ref: APP/M2325/W/17/3166394**

**Land Off Woodlands Close, Newton with Scales**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Hollins Strategic Land LLP against the decision of Fylde Borough Council.
  - The application Ref 16/0554, dated 22 July 2016, was refused by notice dated 12 December 2016.
  - The development proposed is described as: "Outline application for up to 50 No dwellings (all matters reserved other than access)".
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### Decision

1. The appeal is allowed and planning permission is granted for: "Outline application for up to 50 No dwellings (all matters reserved other than access)" at Land off Woodlands Close, Newton with Scales in accordance with the terms of the application, Ref 16/0554, dated 22 July 2016, subject to the conditions attached in the schedule to this Decision.

### Procedural Matters

2. The application was made in outline with all matters reserved for subsequent approval, except access. I have determined the appeal on this basis, treating the layout plan as indicative. However, I have taken account of the parameters and mitigation measures set out primarily in the appellant's Design and Access Statement, and shown on the indicative layout plan. These include the provision of open space, a landscape buffer and the retention of ecological features, as agreed by the main parties.
3. The emerging Fylde Local Plan<sup>1</sup> was submitted to the Secretary of State for examination in December 2016. Stage 1 and 2 Hearings have been held and the Council is in the process of a further round of consultation on a range of items. At the Appeal Hearing, the Council advised that it anticipates Stage 3 Plan Hearings will be necessary, and it is likely that the emerging Local Plan will not be adopted until 2018.
4. During the Local Plan Hearing sessions, the Council acknowledged that the 5-year housing land supply and housing trajectory would have to be amended in light of new evidence regarding delivery. The Council produced a Housing

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<sup>1</sup> Fylde Local Plan Publication Version (June 2016)

Supply Statement<sup>2</sup> which stated that it can demonstrate a housing land supply of 5.1 years. In response, the appellant produced a rebuttal statement, which argued that the Council can only demonstrate a supply of 4.1 years. In advance of the Appeal Hearing, the Council acknowledged that the housing land supply figure of 5.1 years is subject to further public consultation, and it should only be afforded moderate weight.

5. However, during the Appeal Hearing the parties submitted an agreed updated position that the Council can only demonstrate a supply of 4.8 years. In view of this, the Council accepted that the Housing Supply Statement can only be afforded limited weight at the present time. The main parties agreed that, in the context of paragraphs 14 and 49 of the National Planning Policy Framework (the Framework), that relevant policies for the supply of housing should not be considered up-to-date and the proposal should be determined in the context of the presumption in favour of sustainable development. Furthermore, in the Statement of Common Ground (SoCG), it was agreed that paragraph 14 is engaged due to the Local Plan and its evidence base in respect of development needs being time-expired.
6. A signed and executed planning obligation by way of unilateral undertaking<sup>3</sup> has been submitted to the satisfaction of the main parties. The unilateral undertaking, including proposed amendments in relation to highways matters, was discussed at the Appeal Hearing and interested parties had the opportunity to comment. The document was amended after the Hearing, by agreement. I am satisfied that interested parties would not be prejudiced by my consideration of the amended unilateral undertaking, as those amendments were discussed. I return to this matter below.

### **Main Issue**

7. From all that I have seen and read, I conclude that the main issue is the effect of the development on the character and appearance of the area, in particular the setting of Newton village and the separation between Newton with Scales and Kirkham.
8. In addition, there are a series of other considerations to be taken into account.

### **Reasons**

#### *The Development Plan*

9. The most relevant development plan policies are saved policies from the Fylde Borough Local Plan (as altered) dated October 2005. The appeal site is within the designated countryside area and the main parties agreed that the proposal would be contrary to Policy SP2, which seeks to restrict development in the countryside. It was also agreed that SP2 is a relevant policy for the supply of housing and cannot be considered up-to-date. The settlement boundaries were established several years before the Framework was published and the application of Policy SP2 is not achieving a five-year supply of deliverable housing in accordance with the objectives of paragraph 47 of the Framework. Consequently, Policy SP2 carries limited weight.

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<sup>2</sup> Five Year Housing Supply Statement, base dated 31 March 2017, Examination in Public Edit July 2017

<sup>3</sup> Section 106 of the Town and Country Planning Act

10. Paragraph 215 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. The appellant cited *Anita Colman v Secretary of State for Communities and Local Government* [2013] EWHC 1138 (Admin). This considered the consistency of the individual relevant development plan policies with the policies of the Framework for the purpose of deciding how much weight to give the policies. In the light of this case, the appellant argued that Policies HL2, EP10 and EP11 are not consistent with the Framework, as they do not allow for a 'cost benefit' approach.
11. Policy HL2 is partially concerned with the supply of housing, and in this respect it cannot be considered up-to-date. However, the policy also addresses the social and environment impacts of development and establishes a series of criteria against which proposals for new housing development will be assessed. It is expressed in restrictive terms and limits the ability of the decision maker to take the benefits of a particular development into account. However, the policy is consistent with the Framework insofar as it seeks to direct development towards sustainable locations, take account of the different roles and character of different areas, and ensure a good standard of amenity for existing residents. Overall, I find that Policy HL2 carries significant weight.
12. Policy EP10 seeks to protect the distinct character and important habitats of the Borough. The use of the word protected is restrictive and there is no scope to weigh any benefits against the harm. Similarly, Policy EP11 states that new development in rural areas should be sited in keeping with the distinct landscape character types identified in the Landscape Strategy for Lancashire and the characteristic landscape features defined in Policy EP10. In that respect it is worded in such a way that leaves no room to accommodate harm without breaching the policy. However, the policy also seeks to secure development of a high quality design that reflects the local vernacular style, which is consistent with the design objectives of the Framework.
13. The Council argued that the spirit of Policies EP10 and EP11 is consistent with the Framework in seeking to recognise the intrinsic character and beauty of the countryside. Nevertheless, I consider that there is a degree of conflict with the Framework, due to the absence of any scope to weigh benefits against harm. This reduces the weight I attach to Policies EP10 and EP11.
14. In the decision notice, the Council also cites conflict with emerging Policies ENV1, GD7 and GD3. Paragraph 216 of the Framework states that decision-takers may give weight to relevant policies in emerging plans according to the stage of preparation of the emerging plan, the extent to which there are unresolved objections and the degree of consistency of the relevant policies in the emerging plan to the policies in the Framework.
15. Policy ENV1 requires development to have regard to its visual impact within its landscape context and landscape type in which it is situated, and Policy GD7 seeks to achieve good design in development. Both policies are broadly consistent with the Framework. However, the Council advised that there are unresolved objections in relation to GD7. Although the text of all representations received in response to the emerging Local Plan consultation has been provided to me, the extent and significance of any objections to either policy is unclear and, consequently, I afford Policies ENV1 and GD7 limited weight.

16. The appeal site is within an Area of Separation (AoS), designated in the emerging Local Plan. Policy GD3 states that the AoS is designed to preserve the character and distinctiveness of individual settlements by restricting inappropriate development that would result in a coalescence of two distinct and separate settlements.
17. The Area of Separation Background Paper (November 2014) set criteria for the identification and assessment of land considered to be of landscape value and which contributes to the setting of settlements. It provided an assessment of 13 potential areas, of which two (including the land between Kirkham and Newton with Scales) were considered appropriate for inclusion within the AoS. The Council considered that the identification of the AoS between Kirkham and Newton with Scales attributed 'value' to the landscape in which the appeal site is located. The Council indicated that, in the context of the emerging policy, development within the AoS would be unacceptable in principle.
18. The Council considered that Policy GD3 carries moderate weight as it has been considered during the Hearing sessions into the emerging Local Plan. The policy has been amended to allow for an assessment to be made against its aims and objectives, and further amendments are required to reflect that the AoS is lower in hierarchy than Green Belt land. The revised wording is not before me and, in any event, there are significant outstanding objections to the policy. In these circumstances, I can only afford limited weight to Policy GD3.

#### *Effects on Landscape Character*

19. The appeal site extends to approximately 2.8 hectares and is greenfield land, which has been used for grazing. The site is bounded with relatively high hedgerows to the north, south and west and there is a pond towards the northern half of the site. The topography falls southwest across the site, with a moderate change in levels. The site is located within the countryside area, as defined in the adopted Local Plan, but its eastern boundary adjoins the Newton with Scales limit of development boundary. The site's western boundary is approximately one kilometre from the Kirkham limit of development boundary.
20. The northern boundary of the site adjoins the A583 Blackpool Road, where there is a bus lay-by with a brick shelter. The eastern boundary adjoins residential development, including that off Avenham Place, Highgate Close and Woodlands Close. Two storey houses are the predominant form of development although the properties on Woodlands Close are dormer bungalows. There is commercial ribbon development along the A583.
21. The proposed residential development would be accessed via Woodlands Close. The proposal is made in outline and the layout plan only indicates how development could proceed on the site. The appellant's Design and Access Statement points to a development density of 18 dwellings per hectare, centrally located public open space, and the retention of boundary vegetation particularly along the western and southern boundaries. A field pond on site is also shown as being retained and enhanced.
22. There are no landscape designations attributable to the site. The site lies within the 'Lancashire and Amounderness Plain (32)'<sup>4</sup> and the 'Fylde 15d' Local Landscape Character Area<sup>5</sup>. The landscape character is described as gently

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<sup>4</sup> National Landscape Character Area (NLCA, Natural England 2014)

<sup>5</sup> Lancashire Council Council's Landscape Character Assessment (December 2000)

undulating farmland, predominately used as improved pasture. Field ponds are a characteristic feature, providing important habitats. Field sizes are generally large to medium with low clipped hawthorn hedgerows and blocks of woodland. The main parties agreed that the landscape is generally a small-scale landscape, where low-lying topography and intervening vegetation limit long views and provide enclosure. There are man-made elements in the vicinity, including the A583, air traffic from Warton airfield and pylons, masts and street lighting.

23. The Council considers the site to be a valued landscape, within the meaning of paragraph 109 of the Framework, primarily because it has been identified as AoS within the emerging Local Plan. Also, it is asserted that the local landscape character of the site, and the area immediately surrounding it, is not typical of either the national or regional assessments. In particular, it was explained that the ancient field enclosures result in small, irregular shaped fields with ponds and well-maintained, high hedgerows with occasional groups of mature trees. This provides a more tranquil and intimate landscape than that described in the assessments. The local residents explained that the site is distinctive as it is a small field with established hedgerows and is not intensively farmed. The area surrounding the site is characterised by equestrian activity, public rights of way and a working farm. Newton village is well-screened and the site contributes to the setting of the village. As such, the landscape is not considered typical of the Fylde and the site is highly valued by local people.
24. The appellant rejected the assertion that the site forms part of a valued landscape and a 'box 5.1 assessment' has been submitted.<sup>6</sup> The Framework does not define a valued landscape for the purposes of applying paragraph 109, and the box 5.1 assessment is not used expressly for this purpose. However, I accept that it is a useful tool in assessing landscape character. The appellant's assessment concludes that the landscape is not of high quality and does not have any features which place it out of the ordinary or above general countryside.
25. I appreciate that the landscape pattern south and west of Newton village remains largely intact. However, I note that according to the County Council's Historic Landscape Characterisation Report for Lancashire, ancient enclosure covers almost 20 percent of the County. The historic enclosure is not described in the national or local character assessments. Moreover, the appellant maintained that the significant elements of ancient enclosure landscape type have been lost and the remaining feature, the boundaries to the south and west that remain as hedgerow, would be retained. Overall, I do not find that there is sufficient evidence that the site should be considered a rare or highly significant example of an ancient enclosure.
26. The main parties agreed that, in order for a landscape to be considered as valued landscape in the context of paragraph 109, it must mean something more than the countryside in general. This is apparent from the wording of paragraph 109, and this interpretation is consistent with relevant planning appeal and High Court decisions. It is clear that the landscape around the village, including the appeal site, is valued by local residents but there is limited evidence that the site has distinguishing characteristics or that the surrounding landscape is not typical of the character assessments described

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<sup>6</sup> Box 5.1 on page 84 of the Guidelines for Landscape and Visual Impact Assessment (third edition) 2013 (GLVIA3)

above. I do not agree, therefore, that the landscape is valued in the context of the Framework.

27. Nevertheless, the site provides a pleasant outlook for local residents and it contributes to the setting of the village. The development would result in the loss of the greenfield site, it would have a permanent effect and would lead to a noticeable change to the local landscape. The mitigation measures would limit the adverse effects to a certain extent. The proposed development density, combined with the open space and landscape buffer would soften the appearance of the development and enable it to assimilate with the adjoining development. Moreover, due to the topography and intervening vegetation, the impact of the development on the landscape character would be restricted to the area relatively close to the site.
28. Overall, I find that the proposal would result in modest erosion to the landscape character, but the defining landscape characteristics of the wider area would not be adversely affected.

#### *Visual Effects*

29. The main parties have agreed the extent of the study area (the Zone of Visual Influence), to enable views towards the site to be assessed. The visual receptors (or people affected by the change in views) were agreed to be the residents of Newton with Scales located in properties immediately adjacent to the site and along the A583, residents of the more distant properties on the edge of Kirkham and Freckleton, users of public rights of way and users of local roads and lanes.
30. The residents of the properties on Woodlands Close, and the other properties adjacent to the site, would experience a significant degree of change to their outlook, especially those houses which directly face the site. Residents in more distant properties along Manor Drive and Lower Lane, to the north and south of the A583 respectively, would be less affected as they currently see the site either in the context of the existing development or across the A583. The views are limited due to the topography and intervening vegetation, and therefore, the change in view would be marginal.
31. Walkers and users of the public rights of way to the south and west only experience glimpsed and far reaching views of the site. Where visible, the site is viewed in the context of the intervening landscape, which is open but features man-made elements such as pylons and telegraph poles. The edge of the site is screened by the hedgerows. Overall, the development would be visible but its impact within the wider landscape would be low.
32. Users of the public right of way to the north view the site in the context of the A583 and the commercial development along the road. The built form of the village is evident. Whilst the view is relatively close range, the boundary vegetation restricts full views. Also, the site is long and narrow which would limit the extent of the built edge in views from the north. The change in view would be moderate, which would be offset to a degree by the proposed buffer strip.
33. Parrox Lane, to the south and west of the site, is a pleasant rural lane from which there are intermittent views of the site through breaks in the hedgerows. The development would be visible from Parrox Lane and there would be a

moderate change in view. The effect would be mitigated by the proposals to supplement the boundary hedgerows, but it is likely that the rooftops would be visible. This would result in a moderate change in view.

34. Further afield, users of Freckleton Road and Kirkham Lower Lane experience the site in longer distance views, and in the context of other built development and man-made features. The change in view would be marginal.
35. Overall, I find that the development would result in a moderate amount of visual harm.

#### *Area of Separation*

36. The Council is particularly concerned about the visual impact of the development when viewed from the A583, and the perception of coalescence of the settlements. There is approximately one kilometre between the limits of development of Kirkham and Newton with Scales. However, the A583 connects the settlements and there is ribbon development along the main road, which adds to the perception that the settlements are joined.
37. During the site visit I walked some distance along the road, and found that views of the site are limited. Newton village is relatively well screened and, as local residents pointed out during the Hearing, it is not apparent that there is a village there when viewed from the A583. There are glimpses of houses from the main road, although deciduous foliage restricts views in the summer months.
38. I agree with the appellant that users of the road are likely to be transient and would therefore have a low sensitivity to development. Nonetheless, Newton village is currently distinct as a separate settlement, which is reinforced by the undeveloped nature of the site and the adjoining field. Also, the site is in a place where there is undeveloped green space on both sides of the road. The site essentially forms one of two fields between the edge of the village and the ribbon development. The AoS background paper identifies that “..there is a risk of the settlements merging if the ribbon development between the two settlements is allowed to expand”. The loss of the site to development would result in an expansion of the built form towards the start of the ribbon development, and an encroachment into the AoS.
39. My attention has been drawn to a previous appeal decision in Preston where the effect of development on the emerging plan AoS designation was considered.<sup>7</sup> In that case, the Inspector found that although the development would narrow the gap between settlements, there would be no risk of merger. However, the site-specific circumstances relating to the appeal before me appear to differ, particularly due to the A583 and the presence of ribbon development.
40. Whilst the mitigation would provide screening, the development would contribute to the coalescence of the settlements and would inevitably adversely affect the openness of the land between the settlements. It would result in moderate harm to the setting of Newton village, contrary to emerging Policy GD3.

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<sup>7</sup> APP/N2345/A/13/2208445 dated 12 June 2014

### *Conclusion on landscape matters*

41. The development would result in a modest erosion of landscape character restricted to the area relatively close to the site, but the defining landscape characteristics of the wider area would not be adversely affected. There would be a moderate amount of visual harm. Also, the development would contribute to the coalescence of the settlements of Newton with Scales and Kirkham, and would result in a moderate amount of harm to the setting of Newton village. Consequently, it would not comply with saved Policies HL2, EP10 and EP11, and emerging Policies ENV1 and GD7 which, amongst other things, seek to protect the distinct landscape character of the area.

### **Other matters**

#### *Highway safety*

42. The local residents advanced a series of concerns in relation to highway safety. This included the width of the road and pavement along Woodlands Close and its ability to serve the development safely, the impact of parked cars on Woodlands Close, the visibility splay at the junction with Bryning Lane, access for emergency and refuse vehicles, queueing at the junction with the A583 and access for construction traffic. It was also contended that the A583 in this location is an accident hotspot and evidence from the Lancashire Police and Road Safety Partnership was submitted.
43. The appellant's Transport Statement<sup>8</sup> states that the site has good accessibility, with pedestrian and cycle linkages to local amenities, and access to public transport. The trip generation assessment indicates that the proposal will generate 27 vehicle trips in the 'AM peak' and 25 in the 'PM peak', concluding that the development would not have an impact on the operation of the surrounding highway network.
44. The Highways Authority was satisfied that the development would not have an adverse effect on highway safety or capacity. It was observed that queuing does occur at the junction of Bryning Lane with the A583, and the Highways Authority considered that upgrading the traffic controllers on this junction would improve efficiency. The Highways Authority also stated that the proposed access arrangements would be acceptable and in accordance with the 'Manual for Streets' (2007) and local design guidance contained within 'Creating Civilised Streets' (2010). Although there is an accident record in the vicinity of the site, the Highways Authority did not consider this atypical for a road with the level of traffic carried by the A583.
45. The appellant's 'lines of visibility' indicate that the full carriageway width of Bryning Lane is visible to the south of the junction with Woodlands Close. This is consistent with what I saw on site. To the north, the line of visibility is partially obscured from the view of a driver emerging from Woodlands Close. However, this is the section of the carriageway in which vehicles would normally be travelling away from the junction, and the area within which visibility is obscured is limited. Consequently, I am satisfied that the junction of Woodlands Close with Bryning Close would not pose an impediment to the development.

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<sup>8</sup> 160721/SK21630/TS01(-00) July 2016 and Supplementary Note dated 7 February 2017

46. I appreciate the concerns about parking on Woodlands Close, but adequate parking within the development could be ensured at reserved matters stage. Despite existing parking levels, the road width is such that emergency vehicles and construction traffic could normally pass parked cars or vans.
47. In order to promote sustainable travel and alleviate queueing, the Highways Authority has requested off-site highway works. This includes the upgrading of the east and west bound bus stops on the A583, upgrading the traffic signals at the junction of the A583 with Bryning Lane to include a new signal controller, and pedestrian facilities. These measures would be secured via the Unilateral Undertaking.

#### *Amenity*

48. The local residents set out their concerns about the effect of the development on their living conditions. In particular, the cul-de-sac would become an estate road leading to noise and disturbance from vehicles and car headlights. Concern was also expressed about the proximity of the houses to existing development, in relation to overshadowing and privacy.
49. The development would lead to an increase in vehicles using Woodlands Close, with associated noise and disturbance. However, the predicted number of trips is such that this would not have a material adverse effect on living conditions. I accept that car headlights and/or brake lights would have an impact on the ground floor rooms of houses facing the junctions of Woodlands Close and Bryning Lane. However, I agree with the Council's assessment that this would either be restricted to certain times of the day, or would not be a frequent occurrence due to the number of vehicles involved. Therefore, the impact on living conditions would be relatively minor.
50. Other concerns about noise and disturbance during construction could be addressed through appropriate conditions.
51. The planning application was made in outline and matters of appearance and layout are reserved for later approval. The relationship between proposed and existing development would be considered as part of an application for reserved matters.
52. I have considered the arguments made about the negative effect of the development on property values in the vicinity, but there is no evidence that this would be the case. In any event, the planning system does not protect the rights of one individual over another.

#### *Habitats*

53. The local residents explained that the site is species rich. In particular a variety of bird species are regularly seen, including barn owls and pink footed geese. The residents argued that the retention of the hedgerows and other mitigation would not offset the loss of the site to development, and overall the environment would be degraded to the detriment of biodiversity.
54. The Greater Manchester Ecology Unit advised that the appellant's ecological survey<sup>9</sup> is sound. This found that the site supports agriculturally improved grassland. None of the habitats within the site were considered to be species

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<sup>9</sup> Ecological Survey and Assessment [ERAP Ltd ref: 2015\_316] dated August 2016

rich, indicative of semi-natural habitat or significant ecological value. There are a number of features of ecological value including the pond, which is part of a wider network, and hedgerows. The retention of these features was welcomed and conditions would be required to ensure the retention and protection of ecological features and species on the site. Natural England has advised that the proposal is unlikely to affect any statutorily protected sites and landscapes.

55. I have taken into account the information provided by the residents in relation to the ecological value of the site and the variety of species observed. However, the evidence from the ecologists is that the development would not have a material adverse effect on the site's ecological value. The mitigation measures could be secured by conditions and key ecological features would be retained. On this basis, I find that the proposal would minimise the impact on biodiversity.

#### *Drainage*

56. The local residents expressed concerns about drainage, including that the village is adjacent to a high flood risk area and surface water drainage is an ongoing issue.
57. The appellant's Flood Risk Assessment assessed the site to be at a low or very low risk from flooding. The Council advised that the proposal has been considered by the Lancashire County Council Flood Risk Management Team, the Environment Agency and United Utilities and no objections have been raised to the development. Conditions would be required to ensure that the development would not increase the risk of flooding elsewhere and that appropriate plans and management are put in place for any sustainable drainage system. On this basis, I am satisfied that adequate measures could be put in place to ensure that the development would not pose an unacceptable risk to flooding.

#### *Electricity*

58. The local residents stated that the existing electricity supply is unreliable and the addition of 50 houses would make the problem worse. The appellant referred to the Utility Study,<sup>10</sup> which provided an overview of statutory infrastructure in the vicinity of the site. The report is not wholly conclusive that there would be sufficient capacity in the network to supply the development. However, this would need to be addressed by the developer. There is very limited evidence that the existing supply would be adversely affected by the development.

#### *Other Matters*

59. The site is considered to be Grade 2 agricultural land. The loss of the land to development would be contrary to Policy EP22 of the Local Plan, which seeks to protect the best and most versatile agricultural land. The Council stated that the Borough has significant amounts of Grade 2 land available and the loss of the site would not be detrimental to this provision. It was common ground that the conflict with Policy EP22 should be afforded limited weight.
60. I have considered the concerns of the Parish Council and others with respect to the impact of the development on local medical and dental facilities. However,

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<sup>10</sup> UCML Level 1 Report dated 15 January 2016

there is no evidence that existing services would not be able to accommodate the additional demand generated by the development.

61. There are three listed buildings on Grange Lane. These are some distance from the boundary of the site and the intervening development means that the setting of the listed buildings would be unaffected by the proposal. Overall, there would be no harm to the significance of the designated heritage assets.

## **Other Considerations**

### *Five Year Housing Land Supply*

62. The Framework is a material consideration of significant weight. It seeks to boost significantly the supply of housing and requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing.
63. As set out above, the Council accepted that it can only demonstrate a 4.8 year supply of deliverable housing sites at the present time and for the purposes of this appeal. It is common ground that the application should be determined in the context of the presumption in favour of sustainable development and paragraph 14 of the Framework is engaged.

### *Unilateral Undertaking*

64. A signed and executed planning obligation by way of unilateral undertaking<sup>11</sup> has been submitted to the satisfaction of the main parties. The deed secures contributions towards education facilities, the provision of affordable housing and highway improvements.
65. I am satisfied that, in respect of each planning obligation in the deed, it would meet the tests of the Framework and Regulation 122 of the Community Infrastructure (CIL) Regulations, namely: (i) it is necessary to make the development acceptable in planning terms; (ii) is directly related to the development and; (iii) fairly and reasonably related in scale and kind to the development. I have also received a Statement of Compliance with the Community Infrastructure Regulations 2010, and I am satisfied that the obligations would comply with the pooling restrictions in Regulation 123 of the CIL Regulations.
66. The main parties have agreed a condition in respect of public open space. On this basis, I find that the scheme would make adequate provision for affordable housing, public open space, education facilities and transport improvements. Accordingly, I agree with the parties that the Council's third reason for refusal has been addressed.

## **Planning Balance**

67. The development would fall outside the settlement boundary of Newton with Scales and would be in the countryside for development plan purposes. It would result in the loss of best and most versatile agricultural land, there would be a modest erosion of landscape character and there would be a moderate amount of visual harm. Also, the development would contribute to the coalescence of the settlements of Newton with Scales and Kirkham, and have a moderate adverse effect on the setting of Newton village. Consequently, the

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<sup>11</sup> Section 106 of the Town and Country Planning Act

development would be contrary to the development plan. However, the Council is unable to demonstrate a five-year supply of deliverable housing sites and housing supply Policy SP2 is considered out-of-date. The weight attached to the conflict with the policy is significantly reduced. Also, for the reasons set out above, Policies ENV10 and ENV11 have been found to be not entirely consistent with the Framework and their weight is reduced. I have also found that the policies of the emerging Local Plan carry limited weight.

68. There is a serious and significant shortfall in the housing supply. Whilst I appreciate that the emerging Local Plan is progressing, the Council anticipates Stage 3 Hearings will be required and the shortfall is likely to persist. The development would provide up to 50 additional homes, which are likely to come forward within the next five years. There is a clear need for affordable housing in the local area, and the development would secure up to 15 affordable homes. I find that the provision of housing would be a significant benefit.
69. The main parties agree that the site is in an accessible location and there would be economic benefits in the form of jobs within the construction industry and the associated supply chain, and increased spending in local shops and businesses.
70. The balancing exercise in paragraph 14 of the Framework is a 'tilted balance' because planning permission must be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In this case, I find that the adverse impacts identified would not significantly and demonstrably outweigh the benefits.
71. My attention has been drawn to an appeal in Wrea Green,<sup>12</sup> where the Inspector reached a different conclusion having assessed similar issues. However, it appears that the site subject to that appeal differed in that it was open and highly prominent. Consequently, the Inspector found there would be serious harm to the setting and character of the village.

## **Conclusion**

72. Having regard to all that I have seen and read, and taking into account all matters raised, I conclude that the appeal should be allowed.

## **Conditions**

73. The conditions were discussed during the Hearing. I have made some minor revisions to the suggested conditions to take account of the discussions and to ensure the conditions meet the tests of the Framework.
74. I have not imposed the part of the Council's suggested condition 4 that required bungalows on plots 1, 2, 40 and 41, as I consider this should be resolved at reserved matters stage when the layout would be finalised. The remainder of that condition duplicates the requirements of the agreed amended condition 5 in the SoCG, so is not necessary.

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<sup>12</sup> APP/M2325/A/13/2200215 dated 16 April 2014

75. In addition to the standard time limit conditions and the requirement for the submission of reserved matters (1, 2, 3), I have imposed a condition specifying the approved plans as this provides certainty (4).
76. I have imposed a condition restricting the scale of the development to two-storeys, as agreed at the Hearing, to limit the visual impact of the development (5).
77. Conditions requiring the implementation of the landscaping strategy, tree and hedgerow retention and the provision of public open space are necessary to ensure the mitigation measures are secured (6, 7, 8, 14).
78. Details of finished floor levels are required to ensure a satisfactory relationship with adjoining development and to minimise flood risk (9). I have imposed conditions to ensure the development is carried out in accordance with the Flood Risk Assessment and to control surface water drainage (10, 11, 12).
79. A construction method statement is required to protect the amenity of neighbouring occupiers and the safety of highway users (13).
80. Conditions to ensure the ecological features of the site are protected are necessary (15, 18, 19, 20, 21).
81. I have imposed conditions to restrict the hours of construction and mitigate other disturbance to protect the amenity of neighbouring residents (16, 17).
82. Finally, a condition is required to ensure the junction with Woodlands Drive is constructed in accordance with approved details and visibility splays are maintained (22).
83. I have not imposed the suggested condition requiring off-site highway works, as this matter is now part of the unilateral undertaking.

*Debbie Moore*

Inspector

## **APPEARANCES**

### **FOR THE APPELLANT:**

Sarah Reid	Kings Chambers: Instructed by M Symons
Matthew Symons	Hollins Strategic Land
Sara Boland	Influence Environmental
John Thompson	SK Transport Planning Ltd

### **FOR THE LOCAL PLANNING AUTHORITY:**

Matthew Wyatt	JWPC Ltd
Eddie Graves	Fylde Borough Council
Kate Lythgoe	Fylde Borough Council

### **INTERESTED PERSONS:**

David Thompson	Local Resident
Peter Woods	Local Resident
Neil Fox	Local Resident
Annette Sharkey	Local Resident
Peter Sharkey	Local Resident
Cllr Liz Oades	Local Councillor and Resident

## **DOCUMENTS SUBMITTED AT HEARING**

Statement of Common Ground signed and dated 26 July 2017

Phides Estates (Overseas) Ltd v SSCLG [2015] EWHC 827 (Admin)

Anita Coleman v SSCLG [2013] EWHC 1138 (Admin)

Email from United Utilities (Developer Services and Planning) dated 16 May 2017

Email from Lancashire County Council (Highways) dated 26 June 2017

Email from Lancashire County Council (Legal) dated 20 July 2017

Extract from Lancashire Road Safety Partnership website dated 4 July 2017

Closing Submissions of behalf of the Appellant

## **DOCUMENTS SUBMITTED AFTER THE HEARING BY AGREEMENT**

Section 106 Unilateral Undertaking

## CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Local Plan Ref LOC002; Proposed Site Access General Arrangement: Ref SK21630-001.
- 5) The scale of the development shall be no greater than two-storeys in height.
- 6) Any application for approval of the reserved matter of landscaping shall provide for a development which demonstrates compliance with the principles of the landscape strategy indicated on the Indicative Layout Plan: Ref 001 Rev 03. This scheme shall include, but not be limited to, the following details:
  - a. Retention of existing trees, hedgerows and other vegetation on or overhanging the site;
  - b. Public open space, with the provision of an equipped play area;
  - c. A compensatory planting scheme to replace any trees or hedgerows to be removed as part of the development;
  - d. Soft landscaped areas to provide an entrance to the development, linkages to the existing pond and countryside beyond;
  - e. The introduction of additional planting within the site which forms part of the internal development layout and does not fall within (a) to (c);
  - f. The type, size, species, siting, planting distances and the programme of planting of hedgerows, trees and shrubs. Reference should be made to paragraph 5.7 of the submitted Ecology Survey and Assessment (August 2016);
  - g. Enhancement measures of the pond as per 5.6.3 and 5.6.4 of the submitted Ecology Survey and Assessment (August 2016).
- 7) The approved landscaping scheme shall be carried out during the first planting season following the occupation of the buildings or the completion of the development, whichever is the sooner; and the areas which are landscaped shall be retained as landscaped areas thereafter. Any trees, shrubs or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) Prior to commencement of the development hereby approved, details shall be submitted to and approved in writing by the local planning authority of the on-going maintenance of the communal areas of public open space / amenity landscaping, and equipped play areas required by

condition 6. The development shall thereafter be maintained in accordance with the approved schedule of maintenance.

- 9) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 10) No development shall take place until a surface water drainage scheme, based on the hierarchy of drainage options in the Planning Practice Guidance with evidence of an assessment of the site conditions, has been submitted to and approved in writing by the local planning authority. The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and no surface water shall discharge to the public sewerage system either directly or indirectly until all other options in the hierarchical approach have been discounted.

Those details shall include, as a minimum:

- a. Information about the lifetime of the development design storm period and intensity (1 in 30 and 1 in 100 year, plus allowance for climate change), discharge rates and volumes (both pre and post development), temporary storage facilities, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, including watercourses, and details of floor levels as required by condition 9 above.
- b. The drainage strategy should demonstrate that the surface water run-off must not exceed the pre-development green field run-off rate.
- c. Any works required off-site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant).
- d. Flood water exceedance routes, both on and off site.
- e. A timetable for implementation, including phasing as applicable.
- f. Evidence of an assessment of the site conditions to include site investigation and test results to confirm infiltrations rates.
- g. Details of water quality controls, where applicable.

The scheme shall be implemented in accordance with the approved details prior to first occupation of any of the buildings, or completion of the development, whichever is the sooner. Thereafter the drainage system shall be retained, managed and maintained in accordance with the approved details.

- 11) None of the dwellings hereby approved shall be first occupied until details of a management and maintenance scheme for the surface water drainage system to be installed pursuant to condition 10 of this permission has been submitted to and approved in writing by the local planning authority. The scheme shall cover the full lifetime of the drainage system and, as a minimum, shall include:

- a. Arrangements for adoption by an appropriate public body or statutory undertaker, or management and maintenance by a Residents' Management Company;
- b. Arrangements concerning funding mechanisms for the ongoing maintenance of all elements of any sustainable drainage system (including mechanical components) to include details such as: (i) on-going inspections relating to performance and asset condition assessments; (ii) operation costs for regular maintenance, remedial works and irregular maintenance of limited life assets and; (iii) any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime.
- c. Means of access and easements for maintenance purposes;
- d. A timetable for implementation.

The drainage system shall thereafter be installed in accordance with the details and timetable contained within the approved scheme, and shall be managed and maintained as such thereafter.

- 12) No development shall take place until a scheme has been submitted to and approved in writing by the local planning authority to ensure that site drainage during the construction process does not enter the watercourse at an un-attenuated rate. The scheme shall be implemented in accordance with the approved details prior to the commencement of works on site and retained throughout construction.
- 13) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - a. loading and unloading of plant and materials;
  - b. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - c. wheel washing facilities;
  - d. the parking of vehicles of site operatives and visitors.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 14) All the trees and hedges to be retained in accordance with condition 6 shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 15) No clearance of trees and shrubs in preparation for or during the course of development shall take place during the bird nesting season (1st March - 31st August inclusive) unless an ecological survey has first been submitted to and approved in writing by the local planning authority which demonstrates that the vegetation to be cleared is not utilised for bird nesting. Should the survey reveal the presence of any nesting species, then no clearance of trees and shrubs shall take place until a methodology for protecting nest sites during the course of the development has been submitted to and approved in writing by the local planning authority. Nest site protection shall thereafter be provided in accordance with the approved methodology.
- 16) Construction works shall take place only between 08:00 and 18:00 hours on Monday to Friday and 09:00 and 13:00 on Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 17) Prior to commencement of the development hereby approved, a scheme to safeguard the amenity of neighbouring residents from noise, dust and vibration during the period of construction shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be used throughout the construction process.
- 18) There shall be no on site works, including any site clearance, ground works or site set up, until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP must include:
  - a. Risk assessment of potentially damaging construction activities.
  - b. Identification of "biodiversity protection zones".
  - c. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
  - d. The location and timing of sensitive works to avoid harm to biodiversity features.
  - e. The times during construction when specialist ecologists need to be present on site to oversee works.
  - f. Responsible persons and lines of communication.
  - g. The role and responsibilities on site of an ecological clerk of works or similarly competent person.
  - h. Use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 19) Prior to occupation of the development hereby approved, a 'lighting design strategy for biodiversity' for all areas to be lit shall be submitted to and approved in writing by the local planning authority. The strategy shall: (i) identify those areas/features on site that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and (ii) show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit

will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

- 20) There shall be no on site works, including any site clearance, ground works or site set up, until a Reasonable Avoidance Method Statement (RAMS) for the protection of amphibians during works on the site is submitted to and approved in writing by the local planning authority. The approved RAMS shall be implemented for the duration of all works on the site associated with the approved development.
- 21) Prior to commencement of the development hereby approved, a scheme for the provision of bat boxes and bird nesting opportunities within the development shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to last occupation of the development and retained thereafter.
- 22) Development shall not take place until details of the junction and visibility splay between the proposed site access and the highway shall have been submitted to and approved in writing by the local planning authority; and the development shall not be occupied until that junction has been constructed in accordance with the approved details. The junction shall thereafter be retained and the visibility splay kept free of any obstructions.

[end of conditions]