



Department for
Communities and
Local Government

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Our Ref: APP/E2340/A/13/2195745
Your ref: sa 4445 Knox Lane

26 November 2013

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY PERSIMMON HOMES LANCASHIRE
KNOTTS DRIVE, COLNE, LANCASHIRE
APPLICATION REF: 13/12/0397P**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Mike Robins MSc BSc(Hons) MRTPI, who held a public local inquiry on 16 and 17 July 2013 into your client's appeal against the refusal of Pendle Borough Council (the Council) to grant planning permission for the erection of 212 dwellings and associated highway, engineering and landscaping works and public open space at Knotts Drive, Colne, Lancashire, in accordance with planning application ref: 13/12/0397P, dated 1 August 2012.
2. The appeal was recovered for the Secretary of State's determination on 16 May 2013 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for residential development over 150 units or on sites of over 5 ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.

Inspector's recommendation and summary of the decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation, dismisses the appeal and refuses planning permission for the application. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Procedural matters

4. The Secretary of State notes (IR3) that the agreed Statement of Common Ground (SoCG) confirmed that the scheme had been amended during the course of the application to 203 units, and that the Inspector had considered the appeal on that

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basis. The Secretary of State has also taken account of the fact that the SoCG confirms that the Council had withdrawn three of their original four reasons for refusal. The Secretary of State has considered the appeal on the basis of these changes and is satisfied that no interests have thereby been prejudiced.

5. The application for costs (IR1) made by your clients at the Inquiry is the subject of a parallel decision letter also being issued today.

Policy Considerations

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. At the time of the inquiry the development plan for Pendle comprised the Local Plan (LP), adopted in May 2006; and the Secretary of State agrees with the Inspector that the development plan policies relevant to the appeal are those identified at IR12-15. However, as LP Policy 17 designates the appeal site for housing under the Housing Market Renewal programme, the Secretary of State agrees with the Inspector (IR190) that, as that scheme appears to have ended, the LP is out-of-date in that respect, and he has given that little weight.
7. Other material considerations that the Secretary of State has taken into account are: *the National Planning Policy Framework* (the Framework); *Technical Guidance to the National Planning Policy Framework* (March 2012); Circular 11/1995: *Use of Conditions in Planning Permission*; and the *Community Infrastructure Levy (CIL) Regulations 2010* as amended. The Secretary of State has also had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.

Main Issues

Housing land supply

8. The Secretary of State notes that the main parties agree (IR24) that there is only a 2.1 year supply of available housing land in Pendle and that the Council have confirmed that they cannot identify sufficient land to meet a 5 year Housing Land Supply. The Secretary of State gives significant weight to this factor as, in accordance with paragraph 49 of the Framework, it means that the Council's relevant policies for the supply of housing are not to be considered up-to-date and a presumption in favour of sustainable development should apply.

Design and effect on the character and appearance of the area

9. For the reasons given at IR151-169, the Secretary of State agrees with the Inspector's conclusions at IR170-172 that the proposed development would fundamentally conflict with LP Policy 13 and with section 7 of the Framework, where good design is noted as a key aspect of sustainable development. He agrees with the Inspector that there is little evidence of a design led approach to the appeal scheme and little attempt to connect the housing into its countryside setting. He therefore concludes that the proposal falls significantly short of the expectation for high quality design in both the LP and the Framework.

10. In particular, the Secretary of State agrees with the Inspector that no distinctive elements appear to have been addressed to 'ground' the development in Colne, either in terms of the layout, engagement with the surrounding moorland or with local landmarks (IR 162). He also agrees that the small sloping area of public open space has been poorly integrated with the scheme and that the scheme design does not provide a logical, accessible and legible form of development while, in a number of areas, the slope would prevent easy access for the less mobile (IR 163).
11. The Secretary of State further agrees with the Inspector that the use of retaining walls, to cope with the sloping nature of the site, would become the defining element of the entire development as considerable lengths are proposed; and that this approach would give the site a significantly engineered appearance, for which there is no reference locally (IR 167). Overall, he agrees with the Inspector (IR168-169) that there is little evidence of a design led approach to public and private spaces, particularly with regard the orientation of the houses and the planting scheme; and this represents a missed opportunity to provide a more naturalistic setting to respond to this transitional site. The Secretary of State therefore also agrees with the Inspector (IR188) that the scheme falls significantly short of the expectation for high quality design (as required by LP policy 13) and so fails to comply with the development plan. He also considers that it falls short of the high quality and inclusive design expected by the Framework.

The effect of the proposal on the biodiversity of the site

12. The Secretary of State agrees with the Inspector (IR173) that, although concerns regarding the impact on biodiversity no longer form part of the Council's reasons for refusal, the concerns of others make it appropriate for him to consider the issue. The Secretary of State has carefully considered the arguments set out by the Inspector at IR174-182; and agrees with his conclusion at IR183 that, although the areas of habitat creation proposed as part of the appeal scheme would represent mitigation only in part, compensation would be an acceptable approach, in accordance with paragraph 118 of the Framework. The Secretary of State therefore also agrees with the Inspector at IR184 that, on balance, the proposed condition to secure habitat creation proposals and delivery, accompanied by the provisions in the Unilateral Undertaking (see paragraph 17 below), would comply with LP policy 4D.

Proposed housing mix

13. The Secretary of State notes (IR165) that the absence of affordable housing, due to the appeal scheme's viability, reduces the overall mix. He also agrees with the Inspector that there should have been an assessment of the needs of the local community and at least a justification for the sole provision of two-storey 2, 3 and predominantly 4 bedroom market dwellings (IR 165). While, like the Inspector, the Secretary of State acknowledges that the mainly 3/4 bed detached and semi-detached housing development would represent an improvement in the housing stock available (IR191), he also agrees that, realistically, dismissal of this scheme (on design grounds) would delay, rather than jeopardise, the delivery of housing

on the site and, with a suggested build rate of 25 units per year, the implications of such a delay would be relatively limited in terms of rate of supply (IR 191).

Other matters

14. The Secretary of State agrees with the Inspector's reasoning and conclusions on matters raised by local residents and relating to public engagement (IR 193-194), the effect of the development on highway safety (IR 195), and the need for housing (IR 196-198).

Planning Balance

15. While acknowledging the appellant's argument that the provision of housing in an area of shortfall is, by definition, a consideration (IR199), the Secretary of State agrees with the Inspector that, for the reasons given at IR200-202, while the site can be regarded as a sustainable location, the scheme is relatively unsustainable because of failings with the design approach. The Secretary of State also agrees with the Inspector (IR203) that, while the site is challenging in terms of its topography and biodiversity interests, account must be taken of the fact that it has been identified for the delivery of housing and of its importance to the setting of the town. However, for the reasons given at IR204, the Secretary of State agrees with the Inspector that it would appear that very little contextual analysis has been undertaken to inform the design, so that it fails in a number of key respects to provide for a high quality, sustainable community that would contribute to enhancing the area for existing or future residents.

Conditions and obligations

16. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed conditions (IR136-138). He is satisfied that the conditions listed by the Inspector at Annex A to the IR are reasonable and necessary and meet the tests of Circular 11/95. However, he does not consider that these overcome his reasons for refusing the appeal. Furthermore, having carefully considered the appellant's suggestion that a condition could be imposed to alter the proposal to be in outline, with all matters other than access reserved for future determination (IR208-212), the Secretary of State agrees with the Inspector (IR211) that such an approach is not appropriate and should be set aside.
17. The Secretary of State has also considered the Inspector's reasoning and conclusions on the Obligations as set out at IR144-148. He is satisfied that the provisions set out in the executed Unilateral Undertaking dated 31 July 2013 can be considered to be compliant with CIL Regulation 122 and paragraph 204 of the Framework. However, for the reasons set out above, he does not consider that these provisions are sufficient to overcome his concerns with the appeal proposals as identified in this decision letter.

Overall Conclusions

18. As the relevant LP policies are out of date, the Secretary of State gives significant weight to the fact that the Framework indicates that, in the absence of an up-to-date, adopted development plan and the Council's failure to demonstrate a five-

year supply of deliverable housing sites, planning permission should be granted for the proposal. However, in this case, the Secretary of State also considers that this needs to be weighed against the adverse impacts of the scheme which, when assessed against the policies in the Framework as a whole, significantly and demonstrably outweigh the identified benefits. He therefore concludes that, overall, the appeal scheme would not meet the tests as regards the presumption in favour of sustainable development.

Formal Decision

19. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the erection of 203 dwellings and associated highway, engineering and landscaping works and public open space at Knotts Drive, Colne, Lancashire, in accordance with planning application ref: 13/12/0397P, dated 1 August 2012.

Right to Challenge the Decision

20. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

21. A copy of this letter has been sent to Pendle Borough Council. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak
Authorised by the Secretary of State to sign in that behalf



Report to the Secretary of State for Communities and Local Government

by Mike Robins MSc BSc(Hons) MRTPI

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

Date: 3 October 2013

TOWN AND COUNTRY PLANNING ACT 1990 APPEAL BY PERSIMMON HOMES LANCASHIRE

**ERECTION OF 212 DWELLINGS, COMPRISING 21 NO 2-BEDROOM, 66
NO 3-BEDROOM AND 125 NO 4-BEDROOM UNITS AND ASSOCIATED
HIGHWAY AND ENGINEERING WORKS, LANDSCAPING AND PUBLIC
OPEN SPACE.**

LAND ADJACENT TO KNOTTS DRIVE, COLNE, LANCASHIRE

Inquiry held on 16th and 17th July 2013

Land Adjacent to Knotts Drive, Colne, Lancashire

File Ref : APP/E2340/A/13/2195745

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File Ref: APP/E2340/A/13/2195745

Land Adjacent to Knotts Drive, Colne, Lancashire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Persimmon Homes Lancashire against the decision of Pendle Borough Council.
- The application Ref 13/12/0397P, dated 1 August 2012, was refused by notice dated 8 January 2013.
- The development proposed was 212 Dwellings, comprising 21 No 2-bedroom, 66 No 3-bedroom and 125 No 4-bedroom units and associated highway and engineering works, landscaping and public open space.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. The inquiry sat on the 16 and 17 July 2013, with an accompanied site visit on the 17 July. An unaccompanied visit was made to various sites, recommended by all parties, on the 18 July 2013. At the Inquiry, an application for costs was made by Persimmon Homes Lancashire (the appellant) ¹ against Pendle Borough Council (the Council). This application is the subject of a separate Report.
2. This appeal was recovered under Section 79 and paragraph 3 of Schedule 6 of the above Act by the Secretary of State (SoS), because the appeal involves proposals for residential development over 150 units or on sites of over 5 ha, which would significantly impact on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities.
3. An agreed Statement of Common Ground (SoCG) was submitted, which confirmed that the scheme had been amended during the course of the application to 203 units, this Report has considered the appeal on this basis. Furthermore, in the SoCG, the Council confirmed that of their original four reasons for refusal, three had been withdrawn. These related to the provision of open space, the sequential availability of preferential sites of lower environmental value, associated with Policy 17 of the Replacement Pendle Local Plan and land protected for Housing Market Renewal purposes, and the loss of land of ecological value. Thus, the remaining matter between the main parties related to the design of the scheme. The Council's reason for refusal is as follows:

The design and layout of the proposed estate is poor and unacceptable. The long, straight roads of the closely packed, mainly detached houses will mitigate (sic) against the development of local communities and the extensive open plan parking areas in front of the houses will produce a poor uninteresting streetscape. The development will therefore be unacceptable in its design contrary to Policy 13 of the adopted Replacement Pendle Local Plan and the National Planning Policy Framework.

¹ All abbreviations used are set out in Annex C of this report

4. Both main parties confirmed that they understood the term 'mitigate' to in fact be an error and the term should be 'militate'.
5. At the Inquiry, the matter of Certificate A on the application form was raised. This came about due to the late confirmation that Beazer Homes Ltd was the unencumbered owner of the land. The signatory was the appellant's representative, and in signing Certificate A, he had effectively confirmed that Persimmon Homes Lancashire was the owner of the land.
6. As Beazer Homes Ltd is a wholly owned company under Persimmon plc, it was agreed by the main parties that it was unlikely that the company in ownership of the land would have been prejudiced. On consideration of this matter, and the comments received from parties regarding the implications, it is accepted that the owner of the site had not been identified on the application, and as such was not notified in accordance with Articles 6 and 7 of the Town and Country Planning (General Development Procedure) Order 1995. However, the landowner is part of Persimmon plc, one of whose brands is Persimmon Homes, the applicant, and now appellant, in this case.
7. Consequently, whilst the error on the certificate of ownership was serious, it is suggested that it does not render it no certificate at all, or make the application a nullity. The application has been determined and an appeal heard. None of the parties have been prejudiced, nor do I consider there to be evidence that this was a deliberate act; no obvious benefits would accrue to the appellant. It is considered that the application and subsequent appeal are therefore valid.
8. A Unilateral Undertaking was submitted to the Inquiry, however, concerns over the relationship between the developer and the owner led to a request for further time to review the document. A period of 14 days was granted after the Inquiry closed to allow for submission of a new undertaking. This was complied with, and a Unilateral Agreement, signed and dated 31 July 2013, has been submitted by the appellant under the provisions of the Town and Country Planning Act 1990.

The Site and Surroundings

9. This appeal relates to an area of land to the south of the town of Colne. The site lies within the identified settlement boundary; it is steeply sloping and covers approximately 9.89 Hectares. The high ground, to the southeast, is mostly rough grazing land and gives on to open countryside, whereas the lower areas to the northwest comprise former railway sidings. This area is mostly overgrown, but evidence remains in the form of small structures, fencing, hardstanding and man-made level changes. Two roads, Knotts Drive and Knotts Mount, are proposed for access, and these run through an existing residential estate constructed in the 1990s.
10. The wider area of Colne includes the historic market town centre, which is a Conservation Area (CA), with well preserved sandstone buildings, shop fronts and key public buildings such as the church and town hall, with its clock tower being a strong and defining element of views from many parts of the town. However, much of the surrounding land use and housing reflects its industrial past.

11. The town centre occupies a ridge between two valleys, and the appeal site lies within the area known as the South Valley. The valley bottom here is dominated by the main road and the Spring Garden Mill. The southern part is more rural in character, although some Victorian terraced housing remains. To the southwest, beyond the appeal site, are the educational establishments of St John Fisher and Thomas More Roman Catholic High School, Pendle View Primary School and Pendle Vale College. These are linked via a footpath, part of which runs through the appeal site. Access is reported to be permissive though this part of the site.

Planning Policy

12. A comprehensive list of policies that may be relevant is set out in the SoCG, however, the Council's remaining reason for refusal refers to Policy 13 of the adopted Replacement Pendle Local Plan (the Local Plan). An Order to revoke the Regional Strategy for the North West came into force on 20 May 2013. The Order also revokes all directions under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 preserving policies contained in structure plans in the area. Neither of the main parties sought to rely on the related policies.
13. The Local Plan was adopted in May 2006, and comprises the development plan for the area. Local Plan Policy 13 sets out that the Council will protect and enhance the heritage and character of the Borough and the quality of life for its residents by encouraging high standards of quality and design in new developments. The policy seeks that the siting and design of development should be in scale and harmony with the surroundings, innovative where possible and should contribute to the character of the area.
14. Notwithstanding the Council's position, the Lancashire Wildlife Trust maintained objection to the scheme on ecological grounds. In this, Policies 4C and 4D of the Local Plan were referred to. Policy 4C seeks to ensure protection, conservation and, where appropriate, enhancement of designated sites, including sites of Local Natural Importance (LNI). Policy 4D deals with wildlife corridors, species protection and biodiversity generally, and sets out that development proposals that would adversely impact or harm legally protected sites will not be permitted, and that proposals should ensure that biodiversity levels are maintained and, where appropriate, enhanced.
15. In written representations and at the Inquiry, local residents, mostly part of an opposing group, 'Get Knotted', raised, among other matters, further concerns regarding traffic and the need for the proposal in light of existing brownfield land and empty homes in the area. Local Plan Policies 17 and 18 address these matters in terms of the location of new housing and housing market renewal. These policies are considered later in this report in light of the situation regarding the five-year housing land supply in the district.
16. Relevant national policy is contained in the National Planning Policy Framework, (the Framework) published in March 2012. Paragraph 6 states that the purpose of the planning system is to contribute to the achievement of sustainable development. The policies set out in the Framework itself constitute the Government's view of what sustainability means in practice. The Framework includes an implementation period in relation to development plan policies. While

the starting point for determination of any appeal remains the development plan, Paragraphs 214 and 215 indicate the importance of consistency with the Framework up to, and now following the 12 month implementation period. I have taken this into account in this report.

17. Relevant policies include paragraph 14, which states that there is a presumption in favour of sustainable development. Where the development plan is absent, silent, or out-of-date, the presumption means that permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, or unless specific policies in the Framework indicate that development should be restricted.
18. Core planning principles are set out at paragraph 17. These include the need for the system to be plan-led, empowering local people to shape their surroundings. However, another of these key principles is that every effort should be made to identify objectively, and to meet, the housing and other needs of an area, and to respond positively to opportunities for growth. Amongst other things, planning decisions should secure a high quality of design and contribute to conserving and enhancing the natural environment.
19. With regard to housing, paragraph 47 states that the aim should be to boost the supply of housing significantly. Paragraph 49 states that if a 5 year supply cannot be demonstrated, local housing policies should not be considered up-to-date. Section 7, requiring good design, establishes the importance the Government attaches to the design of the built environment, with paragraph 58 setting out relevant criteria. While paragraph 60 states that architectural styles should not be imposed, nor should innovation be stifled, it is, however, proper to seek to promote or reinforce local distinctiveness. Paragraph 64 explicitly states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. The appellant refers also to paragraph 65, which states that Councils should not refuse permission for buildings or infrastructure which promote high levels of sustainability, because of concerns about incompatibility with an existing townscape, if those concerns had been mitigated by good design.
20. Paragraph 109 addresses the natural environment and sets out that the planning system should protect valued landscapes and minimise impacts on biodiversity, providing net gains where possible. This may be achieved by establishing coherent ecological networks, which are more resilient to current and future pressures. In determining applications, paragraph 118 states that if significant harm to biodiversity cannot be avoided, permission for development should be refused.

Planning History

21. An application for 209 dwellings was submitted in 2000. Refused by the Council in 2002, when the scale had been reduced to 190 dwellings², the scheme was taken

² Reference: 13/00/0073P

to appeal and subsequently called in by the SoS³. Planning permission was refused by the SoS in 2005. An application for 101 dwellings, made in 2001, was refused by the Council⁴ in 2005.

The Proposal

22. The appeal scheme would provide 203 dwellings of traditional form. These would generally be of two-storeys, primarily detached and semi-detached houses, each with at least two off-street parking spaces. Two spine roads and seven cul-de-sacs are to be provided, while the significant fall of approximately 60 metres across the site, has resulted in a layout that would require a number of retaining walls up to 5 metres in height.
23. There are two defined accessible areas of open space, one central on the site and the other in the northwest corner linking the internal road to the footpath to the schools. There are also two areas on the steeper sloping parts of the site set aside for habitat creation as part of the scheme's response to the biodiversity of the site currently. Access to these would be more limited, although there is a footpath proposed running to the south of the site and connecting to the Wackersall Road. This is a track, which lies within the western boundary of the site and leads to some houses further to the south.

Other Agreed Matters

24. In the SoCG, the Council confirmed that the site had been designated for housing under the Housing Market Renewal programme in the Local Plan, and that it is included in the Strategic Housing Land Availability Assessment (SHLAA) for development. It forms part of the Council's identified housing land supply (HLS). In terms of the HLS, the Council confirmed, both in the SoCG and in evidence, that they cannot identify sufficient land to meet a 5 year HLS. The main parties agree that there is only a 2.1 year supply of available housing land in Pendle.
25. A viability appraisal had been submitted by the appellant. This indicated that the viability of the scheme would be compromised by the inclusion of affordable homes. This assessment was reviewed by an independent consultant for the Council, who subsequently accepted the position and the soundness of the figures. The Council have agreed that the development would be acceptable without affordable housing provision.

³ APP/E2340/A/02/1098593

⁴ Reference: 13/01/0149P

The Case for Persimmon Homes Lancashire

The Site

26. The appeal proposal is for a development consisting of 203 dwellings generally of two-storey height and comprising primarily detached and semi-detached homes. Part of the site was previously railway sidings but it is substantially re-vegetated. It is this area that has the main ecological interest within the site.

27. As the site is located on the urban edge of Colne, it is close to a wide range of shops, schools and other facilities. In locational terms and proximity to jobs, facilities and services the site is accepted as a sustainable one. The evidence demonstrates:

- There is no objection to the principle of residential development of the site;
- There is no objection by the Council to the principle of residential development of any part of the site (in particular the railway sidings) subject to conditions protecting any ecological interest;
- The site lies within the defined settlement boundary of Colne;
- The site is designated for residential use.

28. In respect of the plethora of issues that have been raised in opposition to the proposed development, the position of the Council is clear:

- There is no highway or transportation basis for objecting to the proposal;
- There is no ecological justification to refuse planning permission;
- The site enjoys no open space protection;
- There is no objection to the proposed development based upon:
 - any previous mine workings;
 - contamination issues.

29. The site is identified in the SHLAA as land available for development and, more particularly, identified as making a contribution to the five year supply of land. As accepted in cross examination, it must therefore have already been concluded by the Council to be a sustainable location for development otherwise it should not have been identified in the SHLAA.

Land Supply

30. The stock of consents in place for residential development is approximately 840 and it is accepted that that cannot deliver the number of homes that are needed within the Borough. The agreed position is that the Council can demonstrate a

supply of 2.1 years against a requirement of at least 5 years of available housing land.

31. That has implications in terms of the policy consequences flowing from the Framework, and the shortage of supply at 2.1 years is, of itself, a significant and weighty consideration in favour of residential proposals. There does need to be consideration of whether the proposal constitutes sustainable development and this has been addressed⁵.
32. The Framework is very clear as to what is meant by sustainable development and the approach of the Council, is contrived. Paragraph 14 is to be interpreted in accordance with the definition of what is sustainable development in the paragraphs that immediately precede it. The economic, social and environmental components of sustainable development were addressed in detail in the evidence of Mr Sedgwick. His conclusion was that the development was sustainable when those aspects were addressed. That is hardly surprising. The site has been considered previously by the SoS⁶ and was not rejected on sustainability grounds, and in 2005 sustainable development was a key issue, with Planning Policy Statement 1 - *Delivering Sustainable Development* (PPS1) issued just prior to the SoS decision. Furthermore, the site is within the defined settlement limit and allocated as suitable for residential development.
33. Paragraph 47 of the Framework exhorts Councils to “boost significantly” the supply of housing land. The Tetbury decision⁷ is an example of the SoS giving considerable weight to the absence of a five year supply. In that particular case, development was permitted outside a settlement boundary and within an AONB in circumstances where there was a 3.5 year supply and a recognised “fundamental conflict” with the provisions of the development plan. There is no question that the footnote to paragraph 14 was definitely engaged.
34. It follows that, on this analysis, the design consideration referred to in the evidence of Mr Watson cannot be “ring-fenced” such that if a development is regarded as being the subject of poor design it must be refused, irrespective of all and any other material considerations. Design, like all other material considerations, is part of the balance that needs to be undertaken in terms of the assessment of development proposals.
35. The Council’s interpretation of paragraph 64 of the Framework would be contrary to section 70(2) of the 1990 Act that provides:

“In dealing with such an application the authority shall have regard to the provisions of the development plan so far as material to the application, and to any other material consideration”
36. Design is a material consideration, as are many other issues in this case, including the acknowledged benefits. If poor design were the “game stopper” contended by

⁵ Document 6 Mr Sedgwick Proof of Evidence (PoE)

⁶ APP/E2340/A/02/1098593

⁷ APP/F1610/A/11/2165778 - Document 6, Mr Sedgwick PoE appendix

the Council that determined the outcome of any decision (including that of the SoS) there would be a failure to have regard to other material considerations. This is a point that goes beyond weight to a material consideration. The case for the Council is that there are no considerations that would overcome a conclusion of poor design

37. The Framework as a whole has to be read. It identifies a number of material considerations. These include the need to have an up-to-date 5 year supply of housing land sufficient to meet the identified need and to “boost significantly” the supply of housing. These are matters to put into the planning balance. As an example, if the total loss of the significance of a heritage asset needs to be balanced against public benefits, the issue of design must also.

38. The approach of Inspector Middleton in the Harrogate decision letter dated 20th May 2013⁸ is the correct one. Having identified benefits and harm, and the only harm identified was that relating to design considerations, he concluded by referring to paragraph 64 of the Framework⁹. Inspector Middleton then continued¹⁰:

“I conclude that this adverse impact of the proposal, which is contrary to the Development Plan, significantly and demonstrably outweighs the benefits discussed above when assessed against the policies in the Framework taken as a whole.”

39. This is the language of a balancing exercise entirely consistent with the case of the appellant. Inspector Middleton specifically used the policy in the Framework at paragraph 14, and did not reject consideration of the benefits of that proposal being material after a finding of poor design. The Council were therefore left to argue that Inspector Middleton got it wrong. The converse is true. It is the Council that have got it wrong.

40. The error has led the Council to an untenable position. Having placed their exclusive interpretation on paragraph 64 they have not attempted in their evidence to conduct a balancing exercise (Mr Watson in cross-examination).

Benefits

41. It is to be noted that there is a complete absence on the part of the Council's evidence whereby they identify and balance any benefits arising as a consequence of the proposal. These benefits include:

- Contributing to the identified shortfall in meeting housing need
- The contribution that housing of the type proposed (detached and semi detached) assists in diversifying and refreshing the housing stock the existing majority of which consists of the classic terraces of a mill town

⁸ APP/E2734/A/12/2185433 Document C2

⁹ Paragraph 44 of decision - Document C2

¹⁰ Paragraph 45 of decision - Document C2

- Contributing to the national policy exhortation to “boost significantly’ the supply of housing
- Economic benefits, including that of the New Homes Bonus providing over £1.2M to the Borough;
- Additional resident spending as a consequence of the occupation of the residential development permitted, supporting the vitality and viability of nearby shops and services;
- Planning obligations to fund improved public transport;
- The creation of open spaces, recognised in the officer report where the following is provided:

“Waterside has a deficiency of Natural Greenspace, Green Corridors, Amenity Greenspace and Play Areas. The development would be adequately serviced by open space and would contribute to the provision within the Waterside Ward.”
- Improved accessibility through the site. The site access ways, including those for pedestrians and cyclists, would improve accessibility to the education facilities in close proximity to the appeal site in a safe, convenient and accessible manner.

Design

42. This is now the sole reason for refusal relied on by the Council to resist the development proposals. Before addressing the specifics of the criticisms made, it is important to place this issue within the context for decision-making.
43. The appeal proposal represents a sustainable development. Mr Sedgwick in his evidence¹¹ addressed the meaning of sustainable development within Framework. He concludes that:
- In the context of economic sustainability, it would support investment in growth in housing, be located where future residents would contribute to the local economy and contribute to meeting housing need;
 - In the context of the social role, it would support the requirement for strong and healthy communities by the delivery of modern housing. There is a recognised need in Pendle to replace and refresh the surplus of pre-World War I terraced housing stock;
 - In the context of the environmental role, the appeal proposals would involve an improvement in biodiversity, prudent use of natural resources, the minimisation of waste and, in the design of new housing, the moving to a low carbon economy. The site is in a sustainable location with convenient access

¹¹ Document 6 Mr Sedgwick PoE Pages 9-11.

to a good range of schools, shops, workplaces, public transport and other services and facilities.

44. There is an absence of a 5 year HLS and the Local Plan is considerably out of date. The context for decision-making must therefore be paragraph 14 of the Framework. In order to overcome the presumption in favour of the grant of planning permission, the Council have to identify any adverse impacts of granting planning permission that would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
45. As indicated earlier, this approach is consistent with that of the Harrogate decision introduced to the Inquiry by the Council.

Design Policy

46. The subject appeal application was considered by two committees of Pendle Borough Council. Although the Regional Spatial Strategy has been abolished, the Framework and Local Plan policy context remains exactly the same today as when this application was considered by those committees.
47. Therefore, the Framework exhortations, in relation to securing good design and its importance in determining planning applications and appeals remain the same. However, the policy is a reiteration of advice in PPS1, January 2005. It is not new advice and PPS1 did contain the following:
- Good design is a key...element in achieving sustainable development. Good design is indivisible from good planning.....Design which is inappropriate in its context or fails to take the opportunities available for improving the character and quality of an area and the way it functions should not be accepted."
48. It is clear that the officers of the Council had sufficient development control experience to represent an expert and informed opinion on the appropriateness of the design of the appeal scheme. If they did not, then that may be regarded as another aspect of unreasonable behaviour.
49. The chronology of events leading to the refusal of permission is replete with opportunities for the professional officers of the Council to consider their recommendation in relation to the proposal, including that of design.
50. The Members' consideration of an earlier iteration of design, at which Mr Watson was present, elicited some robustly expressed criticism (Mr Watson examination in chief). The appellant amended the scheme. Mr Watson, being aware of Members' views, prepared his report. It must be expected that he was alive to the criticisms made earlier, and had them in mind in his assessment. He evidently did not share the Members' view. Members may also have been of similar view to the other reasons for refusal. The reason they had to resile from these is evidence of the paucity of the Member's understanding. Mr Watson had, furthermore, to address Policy 13 of the Local Plan and paragraphs 13.5-13.7 of the written justification. This involved him inevitably concluding:

- That siting and design was in scale and harmony with the surroundings and contributed to the character of the area¹²
- Appropriate landscaping would be introduced¹³
- That it provided for the needs of the occupants whilst responding sensitively to the site characteristics and surroundings¹⁴
- The site layout, external appearance and use of materials for walling and roofs would be sympathetic to their surroundings and reflected the character of the area¹⁵
- The scheme represented a high standard of design¹⁶

51. The report of 6th December 2012 addressed design. The recommendation was to approve the planning application. Members chose to reject that recommendation, although it was clear that:

"The Democratic and Legal Manager advised before the vote was taken that the decision to refused (sic) this determination would represent a significant risk of costs and therefore the decision would be recorded as a recommendation to the Development Management Committee."

52. The matter was therefore referred to the committee that finally determined the application on 19th December 2012. It was plain that in the interim there was the further opportunity for the professional officers to reconsider whether there was any merit in the proposed reason for refusal in relation to design, or any other matter.

53. A report of 19th December 2012 remained unchanged. The report recorded the changes that had been made by the appellant following discussions and continued:

"... the overall feel of the development is that of a suburban and not urban development which reflects the edge of settlement location."

It included the following observations:

"The house types are standard and provided the materials to be used are acceptable would fit acceptably into the landscape of the area."

"The relationship with the existing houses is acceptable with no distances between the new and existing which would impinge on the minimum privacy distance of 21m."

¹² Document C5 - Local Plan - Policy 13.1, first bullet point

¹³ Document C5 - Local Plan - Policy 13.1 fourth bullet point

¹⁴ Document C5 - Local Plan - paragraph 13.6

¹⁵ Document C5 - Local Plan - paragraph 13.6

¹⁶ Document C5 - Local Plan - paragraph 13.7

There is a reference then to the retaining structures. It continued:

“Visually these would be large features but would only be visible to the rear of houses.”

54. It recognised the Police concerns about security, but referred to there being no access points being proposed along the boundary of concern, and that this would deter opportunist burglaries. The overall comment that one sees is that:

“Each dwelling has an adequate amount of amenity area associated with it. The development is not cramped and has adequate levels of open space. It also has open watercourses running through it which add to the open feel to the development.”

55. The recommendation to approve the appeal application was an acceptance that the development proposed was appropriate in design terms, (Mr Watson in cross examination). In short, to accord with the Local Plan and the Framework, the development was concluded to be of good design. This is particularly clear from the iterative process that led to the recommendation. Given that design issues had been raised by Members in October and again at the beginning of December, the author of the officer report would have been well aware of the need to address this issue carefully and with authority (Mr Watson in cross-examination). The conclusion had to be that the design was compliant with the policies in the Local Plan and the Framework to achieve good design.

56. The thought process of the Members of this final committee can be seen from the minute¹⁷, in which they articulated the first reason for refusal as:

“The design and layout of the proposed estate is poor. The long straight roads of closely packed, mainly detached houses will mitigate against the development of local communities and the extensive open plan parking areas in front of the houses will produce a poor, uninteresting streetscape. The development will therefore not be in character with the existing Knotts Drive and Knotts Mount estate, some of which is built on similar terrain.” (emphasis added)

57. The reason for refusal, as issued, deleted the words emphasised above. However, it is clearly discernible that the rationale behind the reason remained the same; namely, that Council regarded the design philosophy to be one of ensuring that the proposed development was to be in character with the existing adjoining estate.

58. In the reason for refusal there is no reference to the Conservation Area or the terraces of densely built pre-WWI housing.

59. Paragraph 4 of the Code of Conduct for the RTPI requires the members of the Institute to provide only their bona fide professional opinion. The evidence of Mr Watson was careful to distinguish between the “Council’s view” and did not articulate his own professional opinion.

¹⁷ Document A2

The Council Case at Appeal

60. Mr Swift has been called to support the Members' reason for refusal. However, it is clear from considering the minutes of the meeting on 19th December 2012 that Mr Swift is, in fact, unable to professionally support that view. Rather, he proceeds to criticise the development and its supporting documents by reference to a failure to draw townscape inspiration from the elsewhere, including the Conservation Area and the rows of terraced housing characteristic of Colne.

61. The Members were clear in their view that they wanted the character of the existing Knotts Mount estate to be reflected in the development proposal. That is hardly surprising as the Local Plan clearly expressed that the Pendle "faced the major difficulties"¹⁸ of dealing with problems of redundant and unfit housing that had affected the Borough's ability to maintain and attract new population. The evidence of Mr Swift is diametrically opposed to the criticism in the reason for refusal. At 5.2.6 of his evidence¹⁹ he states:

"The housing proposed is all two storey in height, and therefore will not reflect the typical two-three storey heights found within the Conservation Area, which is so distinctive of Colne. This will create continuity with the existing adjacent development, however as previously stated this would not be considered a quality scheme in terms of design."

62. Mr Swift's analysis is inadequate. It fails to recognise that Section 3 of his evidence, in terms of the Urban Design and Landscape Policy Context, remained the same at national and local level as when the application was considered. Nor did it recognise the professionalism of the development control and professional officers of Pendle Borough Council in preparing reports on the scheme. It simply did not address the officers' analysis and conclusions in the officer report, or the appellant's engagement with the professional officers of the Council, both pre-and post-application, including amendments to accommodate discussions in respect of the design. Nor did it recognise that the site is within the defined settlement limits of Colne and is identified in the Local Plan as a housing development site.

63. There is also a fundamental error in the themes developed by the Council in cross examination of Mr Sedgwick. That error is that the alleged "failure" to consider alternative means by which to develop a design for the use of the site fails to address the question of whether the proposal represents good design. There could be any number of good design solutions for any particular site. The question is not whether this could have been designed differently, but whether the design being considered was appropriate. This is particularly apparent when the Council do not challenge the principle of the development. The appellant's design of the development has been greatly influenced by a combination of physical factors including:

- The topography of the site;

¹⁸ Document C5 – Local Plan - paragraph 13.7

¹⁹ Document 5 - Mr Swift PoE

- The position of the existing accesses from the development;
- The retention of the water course and avoiding culverts;
- Responding to the ecological value of the site and providing habitat creation to mitigate the loss of interest at the former sidings;
- The requirements of Lancashire County Council in terms of the highway consultation responses.
- Accommodating the pedestrian and cyclist desire lines through the site;
- Facilitating access to the countryside beyond the appeal site.

64. All the above are accommodated by the design of the development. In accordance with the advice in paragraph 62 of the Framework, early engagement on design took place and continued through the application process (Mr Watson in cross-examination). The appellant fully engaged with that process.

65. The current criticisms are post-determination and prepared against a background of an appeal having been launched with a clear costs warning from the Council's legal adviser ringing in the ears of members.

66. The eliding of the development proposals with a comparison to that in the CA is wholly misguided. The development is not within the CA, nor can it be considered to remotely affect the setting of that heritage asset, as accepted by the Council (Mr Swift in cross-examination). Rather, the development is intended to be of its time, reflecting the physical factors referred to above and achieving Building for Life (BfL) 12 standard²⁰. This is a useful framework and tool in order to judge the design acceptability of the proposal, and was assessed in evidence by the appellant²¹. It is hardly surprising that the preamble to the document states:

"Building for Life is the industry standard, endorsed by the Government, for well-designed homes and neighbourhoods that local communities, local authorities and developers are invited to use to stimulate conversations about creating good places to live."

It continues:

"The twelve questions reflect our vision of what new housing development should be: attractive, functional and sustainable places. Redesigned in 2012, BfL 12 is based on the new National Planning Policy Framework and the Government's commitment to build more homes, better homes and involve local communities in planning."

67. The aim of BfL 12 is to engage with the public, if this has to be devolved for expert opinion, i.e. a design professional, this flies in the face of public engagement. The analysis by Mr Sedgwick is therefore a robust and sound basis

²⁰ Document 6 - Mr Sedgwick PoE - Appendix PKS2

²¹ Document 6 - Mr Sedgwick PoE

on which to inform a judgment as to the appropriateness of design, which is recognised to be an important material consideration in the determination of appeals. That is a proposition that is unchallenged by the appellant.

68. The development proposed in this appeal would be contextually appropriate and represents good design in accordance with the aspirations contained within the Framework. In particular, the proposal would respond to the adjacent development as encouraged by the Council – for good reasons in relation to the rationale behind Housing Market Renewal and the failure to attract residents. The proposal responds in two ways (Mr Sedgwick, in response to Inspector's question):

- It would be similar in form and type to the modern adjoining development; and,
- It would finish off the urban edge of the development of Colne in this location. The existing edge of the Knotts Drive estate is abrupt and raw. The proposal addresses this aspect and would respond accordingly.

69. In respect of the design issues, this would be a successful development that would meet the aspirations for the site. The site would work as a residential development meeting the needs of the community it will serve and beyond. It would be integrated with the adjoining site and contribute to meeting the open space requirements of both the residents of the development and those beyond it, together with improved accessibility to the wider area. Access to the countryside would be facilitated through the site where none lawfully exists. Habitat creation would be secured and brought in to the wider design philosophy to be part of the amenity of residents and to act as an area of transition to the open and unmanaged countryside beyond.

70. The residential units would meet the type required to refresh the housing stock and attract new residents to the borough. The topography that has influenced the layout would be used to facilitate a very efficient and effective use of the land to meet housing need. The roadways are accepted as being able to meet adoptable standards. It would be integrated physically and spatially with the adjoining development and wider Colne. This would be a development where people will want to live, and, through good design, the development would achieve all the objectives that are appropriate to be secured.

Ecology

71. It is no part of the reasons for refusal in respect of the Council to seek to resist the development proposals on the basis that the site has sufficient ecological interest to justify the refusal of permission.

72. This site has been subject to ecological considerations for a period of well over a decade. An Inspector considered the ecological status in 2003, and the SoS endorsed that Inspector's findings in March 2005. The conclusion was that the

site did not have sufficient ecological interest to warrant a designation as a Biological Heritage Site (BHS)²².

73. The BHS Review Panel, following the dismissal of the appeal, designated it as a BHS. In 2007, Persimmon appealed that designation. Specialist surveys were commissioned demonstrating that the site did not meet the appropriate criteria. The conclusion of that analysis²³ was accepted. The site has not been subsequently designated as having any ecological status, notwithstanding the invitation so to do by the BHS Review Panel.

74. There have been a plethora of ecologically based surveys to inform decision-making on this site including:

- Phase 1 Habitat Survey;
- National Vegetation Classification (NVC) Survey;
- Soil Survey;
- Fauna Surveys (including an invertebrate survey post-appeal).

75. The ecological advisers to the Council considered the appeal application. The response of Greater Manchester Ecology Unit (GMEU) dated 16th October 2012²⁴ states that the development proposal is acceptable and recommends that conditions be attached. This can be treated as an independent expert analysis of the appeal proposals. Their observation²⁵ states:

“Only relatively small parts of the mosaic on the application site can be classified as scarce or threatened plant communities in their own right. These include small areas of heath. Most of the mosaic is made up of developing scrub, mesotrophic grassland, ruderal vegetation and bare ground, all of which are common vegetation types. Parts of the site show clear signs of natural succession to the more common vegetation types, rough grassland and scrub. If there is no intervention it is therefore likely that the already small areas of heath on the site will reduce still further in area and will become more fragmented and isolated. And by their nature plant communities included in the Priority Habitat Type ‘Open Mosaic Habitats on Previously Developed Land’ are habitats of early succession and often have a natural tendency to subcede to other habitat types.”

76. The position is that the ecological interest of the sidings is “on its way out”²⁶ as the natural process continues. This fact is recognised in the GMEU response²⁷ and accepted by Lancashire Wildlife Trust (LWT).

²² Document 7 - Mr Hesketh PoE - Appendix 1

²³ Document 7 - Mr Hesketh PoE - Appendix 2, Page 22.

²⁴ Document 7 - Mr Hesketh PoE - Appendix 7, Page 141 et seq.

²⁵ Document 7 - Mr Hesketh PoE - Appendix 7, Page 142.

²⁶ Mr Hesketh - in answer to Inspector's Qs

²⁷ Document 7 - Mr Hesketh PoE - Appendix 7 page 142

77. The correspondence recognised the importance that the application should include sufficient and satisfactory proposals for mitigating and/or compensating for any harm caused to biodiversity interest. The consultation response continued:

“There is therefore a case that, should the planning authority decide that the application should be permitted, habitat compensation measures should largely be carried out on a separate part of the application site. This is what is proposed by the developer ...”

78. The appellant proposes to create 18,250m² of species rich grassland acid/heath mosaics. Importantly, the maintenance of the ecological interest would be brought under management unlike the existing status of the railway sidings.

79. Both the physical extent, and the degree to which the ecological interest can be managed, would represent at least a maintaining of the interest in the site and, it could be argued, would represent a significant enhancement.

80. It is clear that the officers of the Council accepted the advice of GMEU and there is no conflict with Local Plan or Framework policy²⁸.

Outline Condition

81. The appellant's case is, and remains, that the proposal represents good design, is contextually appropriate and would make a positive contribution to the character of the area. The Council seek to characterise the appellant's approach to be concerned only in relation to house design. Mr Sedgwick demonstrates the opposite is true as BfL 12 addresses all appropriate aspects of good design as was expressly accepted (Mr Swift in cross examination), and if it were concluded that a development met that standard, it would be of good design.

82. If the conclusion were to be contrary to the appellant's case, the evidence of Mr Sedgwick requires consideration to be given to whether the objection on design grounds can be overcome by the imposition of a condition. It should only be engaged if a decision is made concluding the scheme is poor and otherwise unacceptable. This is a process already required by policy²⁹:

B25. Whenever appropriate, planning authorities will be expected to show that they have considered the possibility of imposing relevant planning conditions to allow development to proceed. They should consider any conditions proposed to them before refusing permission. A planning authority refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs where it is concluded on appeal that suitable conditions would enable the proposed development to go ahead.

83. There is no evidence that the Council gave this matter any consideration. There has been no evidential basis put forward by the Council to lead to a conclusion that such a course is inappropriate. In a case where the principle of development

²⁸ Document 7 - Mr Hesketh PoE - paragraphs 6.4, 6.11 and 6.14

²⁹ Circular 3/2009

is accepted it is difficult to see what justification there could be to resist the imposition of an appropriately worded condition.

84. As the development proposal was “full”, approval of outline permission with all matters reserved has to protect the position of the Council. Any full application contains the ‘seeds’ of an outline application, access, for example, is often left as a ‘reserved matter’ even when it has not been reserved. In view of the evidence, it is a given that an appropriate design solution is available – otherwise the principle of development could not be accepted.

85. The same considerations as in a *Wheatcroft* application apply, as every full application has matters contained within it that can be reserved. PINS advice³⁰ is therefore relevant:

“5. There may be occasions where amendments could be made to a scheme without prejudice to the delivery of a fair and more efficient system. Where amendments are proposed to a scheme, the Inspector will be guided in their decision making by the *Wheatcroft* Principles. In the ‘*Wheatcroft*’ judgement the High Court considered the issue of amendments in the context of conditions and established that *“the main, but not the only, criterion on which...judgment should be exercised is whether the development is so changed that to grant it would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation”*. It has subsequently been established that the power to consider amendments is not limited to cases where the effect of a proposed amendment would be to reduce the development.

10. There may be occasions where it has not been possible for the appellant to know what amendments might be acceptable during the passage of an application. For example, in non-determination cases where the local planning authority has failed to maintain communication with an appellant, the local planning authority’s objections may not be known until after submission of an appeal. Similarly, where elected members have overturned officers’ advice the specific points of objection to a scheme may not be identified until the decision notice is issued.”

86. The Design and Access Statement (DAS) remains fit for purpose and can be deployed. It is also subsumed into the *Wheatcroft* test. It was accepted by the LPA as valid. It would, together with the proposed condition, set the parameters for the future proposals coming forward as reserved matters.

87. In terms of prejudice, it is difficult to discern who would suffer prejudice. In any future consideration of reserved matters, it is a matter for the Council to decide with whom to consult on any application. But we would suggest it is obvious that the change expressed in the condition is not remotely considered capable of prejudicing a third party.

88. It must be remembered that an Inspector and the SoS have previously considered that the site could be developed for 198 houses. The Council had taken no issue on the capacity of the site. They therefore considered the site capable of being

³⁰ PINS Advice Note 09

developed satisfactorily at that number and they have produced no evidence to suggest that a different approach needs to be adopted.

89. The threat of legal challenge is a vapid one bereft of any merit.

Conclusions for the appellant

- the appeal proposal would contribute to economic, social and environmental sustainability;
- the appeal site and proposal is sustainable;
- there is a significant shortfall in the five-year deliverable supply of housing land. Paragraph 14 of the Framework is engaged and the appeal application needs to be considered against the policies of the Framework as a whole;
- the biodiversity interest of the site will be maintained and enhanced by ensuring its future security;
- the design is contextually appropriate and represents good design in accordance with the requirements of the Framework. BfL 12 is an appropriate tool to measure the design acceptability of the appeal proposal.

The Case for Pendle Borough Council

90. So far as Pendle Borough Council is concerned, this is a single issue case. Having reviewed its case for this appeal and having sought both external legal and professional design advice, it determined that it would not pursue reasons 2, 3 and 4 as set out in the decision notice. The case for the Council rests solely on reason for refusal 1, which relates to the poor and consequentially unacceptable design of the development.
91. 'Poor design' as enshrined in the reason for refusal, is exactly like a planning torpedo; it punches a hole through this appeal proposal such that it sinks outright. The appellant seems to labour under the misapprehension that because the Council cannot demonstrate a 5 year HLS, the benefits of 203 new houses will keep the project afloat.

Planning policy framework

92. The Framework does not change the statutory status of the development plan as the starting point for decision making. In this case, for the purposes of section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004, the adopted development plan comprises the Replacement Pendle Local Plan 2006.
93. Policy 13 of the Local Plan is consistent with the Framework and pursuant to paragraph 215, it is agreed that full weight should be accorded to it. The scheme fails against it. Given the centrality of good design to all types of development in Pendle, it cannot be said that the scheme complies with the Local Plan even when the Plan is read "as a whole". If the conclusion is reached that the appeal scheme does indeed represent poor design, then this consequence was also agreed by Mr. Sedgwick in cross-examination. Accordingly, the Council argues that the determination process starts on the basis that, for the purposes of section 38(6), the proposed development is not in accordance with the adopted development plan and planning permission should be refused unless material considerations dictate otherwise.
94. It is common ground that the supply of deliverable housing in Pendle is 2.1 years. Paragraph 49 of the Framework means that the housing supply policy, and only the housing supply policy, of the Local Plan should be considered out of date. Paragraph 49 also states that housing applications should be considered in the context of the presumption in favour of sustainable development.
95. This does not mean that a housing application has some special magic or is inherently sustainable. It simply means that a decision should be made in the context of paragraph 14. All forms of development, whether housing schemes or not are made in the context of paragraph 14. The appellant appears to want to pre-judge whether this scheme is or is not sustainable. Some of the considerations discussed by Mr. Sedgwick are considerations which may well go to what might be termed locational sustainability, or old style PPG 13 sustainability, but they do not relate to the concept of "sustainable development" within the meaning of the Framework. If such an approach is preferred, schemes must be assessed prior to going through the paragraph 14 test. In such cases, would an

incinerator or pig farm be considered sustainable? Sustainable development is the output, not the prejudgement.

96. Sustainable development is that development which passes the policy tests in paragraph 14. Put another way, paragraph 14 does not say that it only applies to a pre-filtered category of development, which has been termed 'sustainable' on a free standing basis. Sustainable development will be permitted pursuant to adopted development plan policies, which themselves are consistent with the Framework; the second bullet point and two subsidiary indents of the second half of paragraph 14 apply.
97. The second part of paragraph 14 has two limbs. For decision taking, the presumption in favour of sustainable development means approving development proposals that accord with the development plan without delay. Where the development plan is absent, silent or relevant policies are out of date, it means granting permission unless 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; or specific policies in this Framework indicate development should be restricted.
98. The Framework is the most important of the "other material considerations". Indeed, Mr. Sedgwick, in cross-examination, confirmed that the appellant was not placing reliance on any other material considerations to justify planning permission. Section 7 in general and paragraph 64 in particular, reinforce Policy 13 of the Local Plan and make plain that planning permission should be refused for development of 'poor design'. Mr. Watson is clear in his view that paragraph 64 is one of the identified specific policies in the Framework, referenced in the final indent of paragraph 14, which indicates that development should be restricted. There is no caveat and no balancing exercise in paragraph 64.
99. Mr. Sedgwick (in cross-examination) found paragraph 64 "incomprehensible". It is perfectly straightforward. It is only "incomprehensible" to him because it doesn't sit well with his firmly held, but incorrect, interpretation of the Framework. Reference to paragraph 133, which deals with cultural heritage impacts, is irrelevant in this appeal. Paragraph 133 explicitly does provide for balancing of wider benefits against total loss or substantial harm to heritage significance; indeed, had Central Government wished to put a balancing provision within paragraph 64 in a similar way to paragraph 133, then it would have done.
100. Poor design is poor design, and should be rejected, whether or not, pursuant to paragraph 49 of the Framework, the housing supply policy of the Local Plan is out of date. If this scheme is unable to satisfy what is deliberately written as a gatekeeper policy, a policy which must be satisfied before the issues of housing shortfall and balance and so on are tackled, then planning permission should be refused. A scheme could be 'decent' even 'mediocre', when the shortfall may help, but not poor.

101. Interestingly, in paragraph 7.4 of his proof of evidence³¹, Mr. Sedgwick accepts that poorly designed development “is not sustainable”. This is true, but does not go far enough. Poorly designed development is not sustainable and should be refused permission. To say otherwise would mean that in the very considerable number of Council areas across the country in which a 5 year housing shortfall cannot be demonstrated, housing schemes of poor design quality, which do not fulfil the tenets of sustainable development, would be thrown up by volume house builders.
102. The appellant seeks to argue that there is some form of sliding scale and that if the housing shortfall is gross enough, practically anything, including schemes acknowledged to be of ‘poor design’ will do. There is no support for such an approach anywhere in the Framework, either explicitly or implicitly. Indeed, such an approach, to facilitate construction of unsustainable housing developments, which do not build sustainable communities, is antithetical to the objectives of the Framework. Central Government has gone out of its way to ensure that we should not repeat planning mistakes from the past.
103. The planning system is here to protect the public interest. Mr. Sedgwick in cross-examination had no answer to the simple proposition that for the sake of what might be a few months of delay, planning permission for an unsustainable scheme should be refused and the appellant shaken out of a “cookie cutter” mindset and required to come back with good design. The force of this point becomes even stronger with an assumed build out rate of only 25 units per year; even were it to take a year to bring forward a scheme of good design, the actual planning harm is a delay of bringing 25 units to the open market by 12 months. Set against the permanent and irreversible problem of creating a poor place in which to live, the public interest is clearly better served by refusal. The only other alternative would be an outline condition, but this is rejected for the reasons set out below.
104. Even were the Council to be wrong and paragraph 64 means that a decision maker should go on to consider other material considerations, the Council submits that the decision maker would arrive at exactly the same result. The harm caused by poor design both to the character and quality of the local area and the way it functions, including future living conditions for those people who would live on the development, is such that it would significantly and demonstrably outweigh any benefits.
105. A comparable and recent decision is that at Harrogate³². All of the benefits claimed in this appeal were also on the table there. Notwithstanding a substantial shortfall against the 5 year HLS and woeful delivery of affordable housing, the appeal scheme represented poor design and could not be saved by minor modifications by the Inspector. In fact, the position was even more extreme in Harrogate because the Local Planning Authority had already accepted the principle of residential development on the appeal site and had granted planning

³¹ Document 6 – Mr Sedgwick PoE

³² APP/E2734/A//12/2185433 – Document C2

permission for a smaller scheme. Planning permission was refused on the basis of a breach of paragraph 64, exactly the same approach that is commended here. Although the appellant does not appear to like the notion, poor design can be a torpedo; a single hit to a residential scheme that is sufficient to justify the refusal of planning permission.

Why the proposed development is of such poor design quality

106. The appellant's evidence on design has been non-existent in a number of important respects and remarkably thin in others. Mr. Sedgwick has no design qualifications whatever and is not a housing scheme designer, and the appellant has not called the scheme designer or architect. There was no townscape assessment of Colne undertaken, even though Mr. Sedgwick accepted in cross-examination that this was an important building block.
107. There is a complete absence of evidence regarding how the poor quality baseline assessment that was undertaken was translated into a design rationale capable of delivering high quality design on this site. No landscape character analysis was undertaken, the Landscape and Visual Impact Assessment (LVIA) is little more than a viewpoint analysis, devoid of any photomontages and completely avoiding assessment from important and key views to the south.
108. No consideration has been given to planning for the social inclusion of disabled, elderly or infirm residents, many of whom, even on the appellant's own case, could not negotiate or enjoy the public open space (POS) or on-site gradients. Mr. Sedgwick was simply left to say, in cross-examination, that the design inspiration had been congruity with the existing suburban extension because "that is what Persimmon felt officers were leading them to".
109. This uninspired approach simply isn't good enough for the appeal site. The proposed development represents poor design for the following reasons, articulated clearly and comprehensively by Peter Swift of Planit:
- The proposed development would not add to the quality of the local area, not just in the short term but in perpetuity;
 - The proposed development would not establish a strong sense of place using streetscapes and buildings which would create attractive and comfortable places in which to live;
 - The proposed development does not optimise the potential of the site to accommodate development, create and sustain an appropriate mix of uses (including incorporation of green and other public space) or support local facilities and transport networks;
 - The proposed development does not respond to local character and history and does not reflect the identity of local surroundings and materials, notwithstanding the accepted need for encouraging appropriate innovation;
 - The proposed development would not create safe and accessible environments where crime and disorder and the fear of crime do not undermine quality of life and community cohesion;
 - The proposed development would not represent good architecture or appropriate landscaping.

110. In his assessment, Mr. Sedgwick uses BfL 12, which adopts a traffic light system. In order to assist the inquiry, Mr. Swift was able to convert his own analysis in to the same traffic light system. The like for like comparison is as follows:

		Council	Appellant
1.	Connections	Amber	Green
2.	Facilities and Services	Green	Green
3.	Public transport	Green	Green
4.	Meeting local housing req.	Amber	Amber
5.	Character	Red	Green
6.	Working w/site and context	Red	Green
7.	Creating well defined streets/space	Amber	Amber
8.	Easy to find your way around	Red	Green
9.	Streets for All	Amber	Green
10.	Car parking	Amber	Green
11.	Public/private spaces	Red	Green
12.	External storage/amenity space	Green	Green

111. Whichever system is used, Mr Swift made the point that the result is the same; principles of good design are portable between guidance documents. The four findings of 'Red' against key criteria, bolstered by five findings of 'Amber' highlight just how poorly designed the appeal scheme. It fails all of the aims and objectives of paragraph 58 of the Framework.

112. Mr. Swift is rightly trenchant in his criticism of the design. To suggest, as the appellant does in its Application for Costs that "there is nothing in the Council's Proofs of Evidence that constitutes real and specific evidence that justifies a refusal of permission", is absurd. It was expressly agreed by Mr. Sedgwick in cross-examination that the Council had done so. The issue for the decision maker is which evidence is to be preferred.

113. Detailed, well set out and persuasive justification for the Council's position is set out in Mr. Swift's Appendix 1 and Appendix 2³³. The entire approach of the appellant towards the site is poor, but the results of the appellant's failure to design properly are obvious to see. To take one clear example, the dominant, shading and visually overbearing heavy engineering treatment of the crib-locks, juxtaposing retaining walls of 3 metres and perhaps 5 metres with POS, has no precedent in modern residential development that Mr. Sedgwick could think of. His design reference points of Edinburgh Castle and Tatton Hall for this appeal site in Colne are inappropriate. It is an engineering solution imposed on the land with no proper thought given to appropriateness, reinforcement of existing character or socially cohesive development.

³³ Document 5 – Mr Swift PoE - appendices

Conversion to Outline application

114. The appellant attempts to play a 'get out of jail' card of suggesting that instead of refusal of permission on grounds of poor design, this could be treated as an outline scheme with all siting, layout and design matters to be dealt with at a later stage. This is not acceptable, and in the Council's view would be susceptible to legal challenge.
115. From a Council perspective, Mr. Watson would not have authority to accept such a move; the resolved position of objection to this scheme on the part of elected members is clear, and the position would have to be taken back to committee. In its application for costs, the appellant makes plain that this is a test case and is seeking guidance on what is or is not poor design; it may well shape its future approach on what happens. Imposing an outline condition and putting off all design issues would not achieve Persimmon's own desired purpose in running this appeal.
116. This scheme was put forward as a full application and assessed as such. The DAS, had it been done properly, should have informed the scale, nature and location of development on the appeal site. Without undertaking a thorough design process, the decision maker cannot be in a position to know what sort of housing numbers could satisfactorily be accommodated on the appeal site, or where on the appeal site development should take place. To set a range of housing numbers without a DAS would be to put the cart before the horse. Mr. Sedgwick was unable to answer the Inspector's question regarding whether or not any better designed scheme, which was viable could be brought forward. If this is the scheme that would come forward any way, judgement ought not to be postponed.
117. If this scheme is poorly designed, subject only to the possibility of minor changes, which would not offend the principle set out in the case of *Wheatcroft*, planning permission should be refused. The criticisms raised by the Council demand root and branch reappraisal and an outline planning permission with a range of housing numbers would represent a substantial alteration with the potential to subvert the consultation process that it would clearly fall outside the elements set out in the *Wheatcroft* case. Mr. Sedgwick agreed in cross-examination that it would constitute a substantial alteration; as such, there is common ground that the qualifying criterion, that the alteration is not a substantial alteration, is not met.

Conclusions for Pendle Borough Council

118. The Council has no doubt that a housing scheme of good design could be designed on the appeal site. This is not it. Notwithstanding invitations to withdraw, the appellant has pushed on with poor design.
119. Lord Greaves³⁴ described the design as 'atrocious'. Mr. Swift, a very experienced designer with experience of working for volume house builders,

³⁴ Ward councillor for Waterside, and on the planning committee

including Persimmon itself, rates the scheme as “2 out of 10” with “only a few worse schemes” seen in his career (Mr Swift in examination in chief). There is no suitably qualified voice and no evidence of proper baseline assessment, design rationale, design iteration to set against this. As Mr. Sedgwick was forced to accept, this is a scheme drawn up by nameless operatives at Persimmon and dropped from on high without any justification.

120. The Council fully accepts the urgency of housing need in Pendle, accepting delivery has been poor for some time. It would run counter to every aspect of the Framework to grant planning permission for this scheme now, knowing that it is unsustainable and will fail to produce a decent, enjoyable, safe place to live with an acceptable degree of amenity. Planning permission should be refused. Persimmon should go away and do the job properly; it hasn't listened to the Council and refusal of planning permission by the SoS is the only way to make it do so now. It is the right planning outcome for this part of Colne, which will be changed forever by housing development.

Case for Interested Persons

Mrs Slater – Local Resident and representing 'Get Knotted'.

121. While accepting and appreciating the discussion on housing land supply, residents of Colne expect to see delivery of new housing on brownfield land or utilising the large number of empty houses in the area. This is approximately 4% of the housing stock or 1400 homes in the district. The population increase between 2001 and 2011 was only 200, and this did not support the need for more housing. Recent development of differing styles in the Borough was being mothballed and not being sold. More new homes would just shift the issue and exacerbate the empty homes problem. The previous SoS decision was concerned about the need for additional housing and the situation has not changed.
122. Residents felt there was a lack of engagement. The event put on by the applicant generated lots of concerns, but with no follow up from the company residents thought there was 'no point' in the engagement. This contrasted with the development of the South Valley Masterplan³⁵ by URBED, which reflected the engagement with residents. Residents felt the design overall would be poor and photographs of the surrounding area, highlighting both the visual importance of the site and the existence of large brownfield sites, as well as a local paper extract relating to the South Valley Masterplan supported these positions³⁶.
123. The existing estate was built years ago with four different developers and was not looked at holistically. The residents had concerns that the same would happen here and they felt there were no homes for elderly, no bungalows and the scheme appeared to be the same standard boxes. The open space was not considered to be accessible and play spaces would be really only for small children; spaces for older children were only found at the other end of Colne.
124. The existing railway sidings were well used as informal open space by residents and their loss was a concern. Their wildlife value was important, and monitoring, carried out by a Council employee living near the site, was reported to have identified rare moth species. There was also concern about the additional traffic and access to the site, which would be difficult, particularly in winter. Increased traffic generally would be a risk, as the existing estate often had children playing out in the streets. Finally, the residents had concerns about the disruption during construction, an effect that would last for years with the reported slow build rate.

Mr Lamb – Lancashire Wildlife Trust.

125. Mr Lamb prefaced his submissions with an acceptance that, from an ecological point of view, if the railway sidings were retained as POS there would not be a problem with the scheme.
126. The sidings should fall under the definition of a local site of importance, having previously held BHS status because of bryophytes. The BHS selection panel had

³⁵ Document C3

³⁶ Document IP1

recommended its consideration as an Open Mosaic Habitat on Previously Developed Land (OMHPDL), a UK Biodiversity Action Plan (BAP) priority habitat, and its protection through local designation. The Council has a duty to conserve biodiversity under the Natural Environment and Rural Communities (NERC) Act 2006.

127. The site, whether designated or not, does support a mosaic of habitats, notably heathland (lowland) of European importance and grassland (lowland meadow), of national importance. With a habitat of European importance on a site that should be designated as a locally important site, Policies 4C and 4D of the Local Plan are applicable, as is paragraph 118 of the Framework. The lowland heath is considered by the LWT to be the only example in East Lancashire that is publicly accessible.
128. The scheme would not protect this valued site and would not enhance biodiversity, it cannot be sustainable development. In terms of the need to adapt to climate change, this should be a sacrosanct core area for protection, with a buffer zone. Aerial views show how the railway provides a corridor connection from Skipton through to Preston. Development of the land would severely restrict wildlife movement.
129. The scheme would destroy habitats of importance and cannot demonstrate that there would not be a net loss; it should demonstrate a gain. Positive management has not been considered, however, the LWT would be prepared to support in the positive voluntary management of the site. With such management, the site could regain its BHS status.
130. There were errors in the appellant's submissions regarding the designating body and matters relating to invertebrates were raised by objectors, a matter arising from the definition of OMHPDL. The appellant's conclusions that biodiversity concerns could be fully mitigated are not correct; the value of the site will not disappear under colonising trees and scrub within a few years. The ecological impacts of the site cannot be 'mitigated by the creation and retention of a range of appropriate habitats on parts of the appeal site that are to remain undeveloped', as this is compensation and not mitigation, and does not pass the test of paragraph 118 of the Framework. The habitat compensation scheme will not create a site of sufficient value to be a site of Local Natural Importance (LNI), or replace the lowland heathland and lowland meadow that will be destroyed.
131. The Council have failed to comply with their duty under the NERC Act by not designating the site. The site should be a District Site, i.e. a LNI in Pendle, as an OMHPDL, albeit one that needs conservation management in order to retain the status in the medium to long term. There will be more species of invertebrates than has been recorded in surveys. The ecological consultant's letter of 21 November 2012³⁷ accepts retention would be preferable, but the conclusion that public pressure on the area would be a risk is not correct.

³⁷ Document 7 - Mr Hesketh PoE - Appendix 7

132. The discussion at the Inquiry on poor design refers also to watercourses, habitat creation, green infrastructure and open space, and not just the built environment. In this case, biodiversity provides the Council with a stronger case than just poor design. Mr Swift scored the application as 1 or possibly 2³⁸ out of 10, in terms of ecological design, it would be a 1 possibly 2.
133. The application fails to meet the definition of sustainable development in the Framework, and fails several of the core planning principles set out in paragraph 17. It does not satisfy the sequential test of paragraph 118.
134. In over 21 years involved in planning Mr Lamb could not, nor he suggested could colleagues present, identify an example of a housing or industrial development that has provided an ecological improvement and net gain in value, other than minerals or flood schemes.

Written Representations

135. The appeal questionnaire includes written representations from a considerable number of local residents. As a result of notification of the Inquiry, Mrs Slater and Mr Lamb also submitted written representations, in addition to their oral statements. Additional representations were received from the chairman of Get Knotted, and another local resident. These dealt with the concerns regarding consultation, need, build rates, wildlife impacts, flood risk, design, lack of facilities, highways and localism, specifically that the decision was made by democratically elected councillors, representatives of the local people.

Conditions

136. A list of agreed draft conditions was made available at the Inquiry³⁹. I have considered them in light of discussions at the Inquiry and in the context of Circular 11/95 – *The Use of Conditions in Planning Permissions*. Some minor changes to wording and the inclusion of an additional condition regarding bird nesting periods were agreed with the main parties at the Inquiry.
137. Notwithstanding my recommendations regarding the use of an outline condition in this case, I have included a further set of conditions reflecting the appellant's suggested approach⁴⁰. It must be noted that this approach was not accepted in principle by the Council, but was offered by the appellant under circumstances where a decision is reached that the proposed design is poor and otherwise unacceptable.
138. With regard to the draft conditions associated with grant of a full planning permission, condition 1 is a standard implementation condition. A condition is necessary to establish delivery and timings of the habitat creation, biodiversity enhancements and management (2), as is one to ensure vegetation clearance occurs outside of bird nesting periods, as sought by GMEU (17). In light of the sloping site, and in response to matters addressed during the application, a

³⁸ Mr Swift's actual statement was 2 or 3 out of 10. (Inspector's comment)

³⁹ Document C4

⁴⁰ Document 6 - Mr Sedgwick PoE - Issue 4

condition is suggested regarding the delivery of foul and surface water drainage, the principles of which have been agreed with the Council and consultees (3).

139. The Highway Authority had identified constraints on the local road network and a programme of local road improvements, a condition is therefore necessary to address those that are not dealt with under the submitted legal undertaking. This will address highway safety risks in terms of vehicles and pedestrians (4). Similarly, it is necessary to address the provision of parking on the site, the construction of estate roads and suitable cycle paths (conditions 14, 115 and 16). The former use of the site as railway sidings supports the need for a condition relating to contamination (5), and the significant slopes across the site support the need for a condition relating to slope stability (11).
140. The construction period is reported to be some five to eight years, with an average build rate of 25 to 30 houses per year. In such circumstances, I consider it necessary to have an agreed phasing programme (6). With the scheme reliant on retaining structures, and limited details provided on their heights and construction, it is necessary to include a condition to address this (7). Similarly, to protect the character and appearance of the area, I recommend conditions to address site levels, a detailed landscaping scheme and submission of external material samples (8, 9, 10).
141. To address the living conditions of current and future residents in the area, I consider it necessary to impose conditions relating to noise mitigation, for dwellings on the northern boundary adjacent to the railway line (12), and for a construction management plan (13). Otherwise than as set out in this decision and conditions, for the avoidance of doubt and in the interests of proper planning, it is necessary that the development shall be carried out in accordance with the approved plans.
142. Turning to the appellant's proposed outline approach, this suggests that only access would be subject to approval, with all other matters reserved. I have therefore compiled a further set of proposed conditions reflecting this; where relevant, the reasoning behind the inclusion of conditions is as above. Minor changes to a number of conditions are necessary to address this change to an outline permission, while some conditions directly related to reserved matters have necessarily been deleted. While most of the remaining conditions are common between the two approaches, the minor changes I have made have not been seen subsequently by the main parties.
143. In the event of the appeal succeeding, a schedule of conditions relating to both the full application (Annex A), as originally submitted, and the appellant's proposed approach to an outline permission (Annex B), are included and annexed to this report.

Obligations

144. A Unilateral Undertaking, signed and dated 31st July 2013, was submitted by agreement after the Inquiry. This sets out the developer's responsibilities in terms of a Management Company and a Habitat Management Company. Furthermore, contributions are set out in relation to bus services, cycleways and

signage and travel plans. I have considered these matters in light of the Framework, paragraph 204, and the statutory tests introduced by Regulation 122 of The Community Infrastructure Levy (CIL) Regulations, 2010.

145. With regard to the management companies, it is necessary that to ensure the long term provision of estate facilities and the ecological areas, such companies should be properly established with appropriate management structures, funding and guarantees.
146. The contributions relate to the promotion of sustainable travel choices. The site is some distance from the main town centre and the current bus service is reported to be only every two hours. The bus contribution would provide funding for five years to increase that to one every hour. There is existing pedestrian access through the site connecting to an informal footpath leading to the schools to the west of the site. The introduction of formal cycleways and footpaths has implications for the use of both on and offsite paths. The contributions sought are to provide capital works, lighting and signage for these routes. Finally a contribution is sought to meet the costs of a full Travel Plan and ongoing support from Lancashire County Council Travel Planning Team.
147. The improvement to the bus service accords with the Local Plan, where Policy 30 sets out that developers will be required to contribute to public transport improvements on sites of 0.4 Hectares or more. This policy also supports new developments making provision for cycle access and cycle routes. The Travel Plan Contribution, derives from figures set out in an adopted Supplementary Planning Document (SPD) - *Planning Obligations in Lancashire*, and amounts have been agreed between the appellant and Lancashire County Council.
148. I am satisfied that the contributions sought, and the undertakings set out in the legal agreement, are necessary to make the proposal acceptable in planning terms and are fairly and reasonably related in scale and kind to it.

Conclusions

149. The following conclusions are based on the oral and written evidence given to the Inquiry, and the accompanied and unaccompanied inspections I made of the site and its surroundings. The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.

150. Taking account of these matters the main considerations are:

- The effect of the proposed housing development on the character and appearance of the area, with particular regard to design;
- The effect of the proposal on the biodiversity of the site.

Consideration 1: The Effect on the Character and Appearance of the Site, with Particular Regard to its Design

151. Over the course of the application and appeal, a number of matters fell away leaving the only point of contention between the main parties as being the design of the development. In this, the positions are starkly opposed. The appellant suggests that the scheme represents good, sustainable development that responds to the constraints of the site and reflects the neighbouring existing estate, as sought by the Council. It is a scheme they consider responds to what the market wants and supported by the Framework's presumption in favour of sustainable development. As the principle of housing on this site is agreed, were the scheme to be considered too poor to be approved, they have suggested an approach whereby the design could form one of a number of reserved matters for later consideration. [3, 29, 43, 50, 51, 55, 63, 68, 69, 82]

152. The Council, on the other hand, consider the scheme to be of poor design, which, despite accepting the principle of housing on the site and the need for housing in Pendle, is sufficient to warrant dismissal of the appeal. They argue the design is so poor that the scheme cannot be considered to be sustainable development, and the presumption in favour, as set out in the Framework, cannot override this. [98, 100, 101, 102, 103, 119, 120]

153. The need for good design is clearly articulated in both the Local Plan, in Policy 13, and in the Framework, notably section 7, where good design is noted as a key aspect of sustainable development. In cross-examination, the appellant accepted that Policy 13 was consistent with the Framework's approach on design, and I agree with this. Full weight can therefore be ascribed. [93]

154. Both main parties considered that design is more than just the aesthetics or style of the houses, and the Council accepted that standard house types, as employed here, can, if properly integrated into a wider design philosophy, be an acceptable approach to good design⁴¹. Thus, while the design of a proposed development can have very distinct effects on the appearance of an area, it also

⁴¹ Mr Swift – Examination in chief

affects the character and the way it functions, both in relation to its location and for the future occupants.

155. The town of Colne lies at the end of urban development extending northeast from Burnley, at the transition into open moorland. Formed across river valleys, there is complex topography across the town and a long history of industrial development associated with wool and cotton mills. Much of the housing was associated with mill workers, but with the mills themselves occupying the valley floor, this extended in terraces up the slopes and out towards the moorland. [9, 10]
156. Colne has a character defined by its industrial heritage and its transitional location; there is a consistency in the form and materials used in the traditional buildings, and a townscape that still connects the town with the surrounding countryside. The town centre remains relatively intact with some impressive buildings. This proposal involves the development of a key edge of settlement site, close to the transition between town and countryside, and between Colne and the neighbouring town of Nelson. Although clear views of the site from the valley bottom are limited, it is clearly visible across the valley and from the footpaths to the south and west of the site. The proposal would be perceived as a significant new element of the town and a notable extension into the surrounding countryside. [11, 107]
157. In their proof of evidence, the Council provided an assessment of the landscape and urban fabric of the site and its surroundings⁴². A similar analysis was not available within the appellant's submissions. The appellant's LVIA provided a review of visibility of the site, albeit not from some key viewpoints, including that of the footpath to the south, and the DAS provided very limited detail on the context or the design principles. The appellant accepted, in cross-examination, that such contextual analysis was important, however, no details on either the approach to design or the levels of architectural input could be confirmed. Indeed the principal design approach set out in the cross-examination of the appellant's main witness led to the suggested design being a basic form of layout responding to the neighbouring estate, the topography and to a highway requirement for 1 in 12 slopes. While this was qualified, and design revisions referred to, I consider this indicative of the apparent approach to design on this site. [55, 64, 106, 107]
158. Revisions were made, both before the Council's refusal and afterwards, but in absence of a clear design philosophy, or a commentary setting out the reasons behind these revisions, this would appear to be a reactive exercise. For a scheme of this scale, in an important edge of settlement location, a clear understanding of the design approach advanced within the DAS and developed in response to reports, such as the LVIA or the ecological assessments, should be evident. [64, 106]
159. However, the lack of such detail cannot, on its own, suggest that the scheme design is necessarily poor, and while the appellant has not provided direct evidence on the nature of, and the personnel involved in, the design process, the

⁴² Document 5 - Mr Swift PoE

scheme provided to the appeal, and defended by the appellant, needs to be assessed. In this case, the appellant did not carry out any assessment of the design in support of the planning application; this may be unsurprising as the officer's report did not challenge the design of the scheme. However, an assessment, drawing on BfL12 was presented with the appellant's Proof of Evidence. [51, 53, 55, 63, 66, 106]

160. The Council employed a Landscape Architect and Urban Designer to review the design and present evidence to the Inquiry. Although this initial assessment was based on 'By Design'⁴³, a revised assessment against BfL 12 was presented through examination in chief. BfL 12 presents a simple traffic light approach to twelve design questions, a red light giving warning that an aspect of the site needs to be reconsidered. The Council's conclusion was that the scheme would represent 4 reds and 5 ambers, the appellant's assessment, indicated that there would be only two ambers. [66, 67, 110, 111]
161. BfL12 cannot be considered as a definitive exercise, and yet the themes it sets out mirror those in Local Plan Policy 13 and in Paragraph 58 of the Framework, which sets out some defining characteristics for the quality of development. I have carefully considered all three, and find that there are a number of clear deficiencies in the design approach presented by the appellant in evidence. [66, 111]
162. The scheme layout presents essentially a number of rows of houses set along spine roads or elongated cul-de-sacs. These rows would be truncated at each end by houses or garages and would be inward facing. There are a number of other cul-de-sac elements, but with very limited interconnectivity between these and indeed between the northern and southern parts of the scheme. I consider the legibility would be poor, with no clear indication by design of where connections, either across or through the estate area, or between town and countryside would be. No distinctive elements appear to have been addressed to 'ground' the development in Colne, either in terms of the layout, engagement with the surrounding moorland or with local landmarks, such as the town itself and its characteristic clock tower. I do not consider that there is a need to assess whether the scheme would affect the CA, but this does not mean that the character of the town should not be properly considered in the design of this scheme. [109]
163. I accept the current informal footpath to the schools would be formalised, albeit as part of a principal estate road, with a connection point in the north-west corner that would cross a small area of POS. This area was poorly integrated with the scheme, but overlooking concerns were suggested to be addressed through a late revision to provide windows in the adjoining houses. Two other pedestrian routes would cross from north to south, although there would be no vehicular access to do so. One route would cross the central POS, but the other would cross an area of poorly defined public/private space, beside parking, garages and the front

⁴³ By Design – Department of Environment Transport And Regions and Commission for Architecture and the Built Environment, 2000

gardens of houses. Furthermore, the appellant accepted, in cross-examination, that in a number of areas the slope would prevent easy access for the less mobile. [108, 109]

164. Overall, I can see little within the scheme design to provide a logical, accessible and legible form of development. The long streets with rows of mostly detached houses orientated west to east, neither responds to the historic townscape, nor is it likely to foster community cohesion. I concur with the Council that the design has failed to produce a development that would function well, establish a sense of place or add to the quality of the area. The proposal does not appear to respond to the character or history of the area, and there is very limited reference to any elements that would lift this scheme above being a nondescript and placeless development. It would fail to respond to the important position it would occupy in relation to the town. [107, 109]

165. The appellant accepted that the absence of affordable housing, due to the scheme's viability, reduced the overall mix of housing. However, in addition to this I note there is no clear assessment of the demand for houses for the elderly or mobility impaired. While a limited mix of sizes is included, there is no assessment or analysis of the need for different types of homes, starter homes or bungalows, for example. This is a large development that should have addressed the need to cater for local community, and at least have included confirmed justification for the sole provision of two-storey 2, 3 and predominately 4 bedroom dwellings. [43, 70, 108, 109]

166. The proposal does present some POS, and I am mindful of the need to balance public access to such areas with the role of some of this space in meeting the biodiversity needs of the development. Nonetheless, the prime space for community use proposed in the centre of the site would appear to be somewhat compromised. In part young children's play space, in part a transit area, no opportunity seems to have been taken to establish character or a sense of place here. It would be sloping and dominated by a large retaining wall to the south, poorly overlooked with little natural surveillance, despite further late addition of windows. [41, 69, 109, 113]

167. The use of retaining walls would become the defining element of this space, and indeed the whole development. While some response to the sloping site is needed, considerable lengths of up to 3 or even 5 metre walls are proposed; this would be a significantly engineered site. Such an approach has no reference locally; indeed the appellant was unable to reflect on any similar approach for housing. [113]

168. In considering the overall approach to public and private spaces, I can see little evidence of a design led approach here. While houses front the streets, there is a lack of positive treatment of corners to assist in legibility, and little positive design for shared spaces. All the houses would be inwardly focussed, and there would appear to be little connection to integrate the housing into its countryside setting; even the limited route proposed through the habitat creation area to the south would not obviously link out to the footpath network. Significant opportunities to engage with the setting would appear to have been ignored or missed, such as

along the southern boundary and the Wackersall Road, where all houses are turned away from the outward view, presenting only their side or rear elevations.

169. Although some planting is shown and some existing trees retained, outside the ecological areas, the planting scheme appears to mostly involve random placement of trees in front gardens, along with the arbitrary crescent of trees across the central POS. This would appear to be irrespective of orientation or reflective of an approach that could provide a more naturalistic setting to respond to this transitional site. [109]

Conclusion on Character and Appearance, Design

170. The appellant suggests that the scheme design responded to the adjacent residential estate as sought by the Council, referring to the Committee minutes in evidence⁴⁴. Setting aside that the conclusion, expressed in these minutes, was that it was not in character with the existing estate, this wording did not carry over into the reasons for refusal. It is insufficient for the developer to rely on such a proposition in any event, as the requirement and expectations for high quality design have been far more clearly articulated and emphasised in the planning process since the period of estates such as that on the neighbouring site. [56, 57, 119]

171. The suggestion that the planning officer's positive support for this scheme through two committee reports should be of significance is misplaced. Members are entitled to use their own judgement, and in this case, consider the implications of whether a scheme on this key site meets the design expectations for the town. [50, 53, 55]

172. While there have been reactive alterations to respond to safety matters and fear of crime, the resulting scheme remains one that would be poorly connected and of nondescript appearance. I find that it fails to respond to the character and appearance of the surrounding area, and would conflict with Local Plan Policy 13, and the design advice within the Framework.

Consideration 2: The effect of the proposal on the biodiversity of the site.

173. Although concerns regarding the impact of the proposal on biodiversity no longer form part of the Council's reasons for refusal, the LWT and local residents remained concerned, specifically about the loss of the former railway sidings. [90, 124, 126]

174. Previously developed sites, which have been allowed to naturally re-colonise, can become habitats of real value, supporting a range of organisms, some very scarce. The question in this case, is whether the ecological value of this part of the site is sufficient to warrant its retention over the provision of housing with associated habitat creation elsewhere on site. [126]

175. The appellant accepts that there is some value to the sidings area, but sets out that the species and habitats present, and the gradual decline in the value of the

⁴⁴ Document A2

site through natural succession, means that the habitat creation scheme would address these concerns and potentially provide improved levels of biodiversity. My own observation of the site noted the extensive incursion of relatively common species and the limited amount of uncovered open land. Although some open areas remain these are predominantly hardsurfaced. Some small areas of heathland were visible, along with more extensive grassland areas. [76, 77 129]

176. The appellant has commissioned surveys over a number of years, initially to inform, successfully, the decision to remove BHS status. Subsequently the surveys, including an NVC survey, soil survey and fauna surveys, including invertebrates, have supported the view that the habitats and species do not meet the levels sufficient to justify designation of the site. [72, 73, 74]
177. I have little to set against this evidence, which was commissioned from an independent consultant. Notably, the conclusions reached in the earlier surveys were accepted by the Council's own ecological consultee, the GMEU. Irrespective of its past status, the site currently does not have any designation. The matter of whether Pendle Borough Council should have designated it as an area of LNI, is not one before this Inquiry or to consider in this report. Neither is the evidence put before this Inquiry sufficient to support that the site should be considered as a candidate BHS or area of LNI. It is recommended that Local Plan Policy 4C, which seeks to ensure the protection of designated sites, does not therefore apply. [75, 131]
178. LWT strongly suggest that there are habitat types, and potentially species, of national or European importance on the site, and that it is an example of OMHPDL, which is UK BAP priority habitat. The Joint Nature Conservation Committee set out revised criteria in 2010 for the definition of OMHPDL. The appellant's surveys and assessment against these criteria, suggest that the site should not be defined as OMHPDL. [73, 126, 127, 128]
179. The sidings area has biodiversity value, but I have limited evidence to question the appellant's findings and conclusively show that site meets these criteria, or that this site has sustainable levels of relevant habitats and species. In the absence of any evidence, I can give little weight to the suggestion that informal invertebrate monitoring has identified relevant species nearby. [124]
180. The site may have the potential to be a site of more significant value, but this would need considerable management and the control of colonising scrub, as well as, potentially, the introduction of new habitats or species. Despite LWT's offer of voluntary support for such management, this would require substantial commitment from the site owner, and the possible exclusion of informal recreational and footpath uses. In the context of a housing scheme, on a site already designated for such use, this would be likely to represent a significant restriction on the scale of development achievable. [129, 131]
181. The appellant accepted that the sidings are of biodiversity importance, with a total area of approximately 15,000 m², but with an area of greatest interest, the acid grassland and acid/mesotrophic grassland, totalling approximately 2,900 m². [78]

182. When the scheme is considered under Local Plan Policy 4D, which seeks to protect wildlife corridors and encourage the re-establishment of habitats and species, the development proposal should ensure biodiversity levels are maintained. The policy allows for the use of conditions and obligations to secure compensatory measures. [79]
183. In this case, there have been two substantial areas of habitat creation proposed, which total approximately 18,250 m². These are in the steeper areas of the site, but this should not inhibit the opportunities to provide suitable habitats. It is unlikely that the full range of OMHPDL type habitats could be created in these higher steeper areas, on soils that have been historically in agricultural use, nonetheless properly established and maintained habitat areas would potentially provide maintenance of, and possible overall gains in, biodiversity. The proposals would represent mitigation only in part, but in light of the acceptance in principle for housing on the site, and the significant pressure in terms of the HLS, compensation would be an acceptable approach here, in accordance with paragraph 118 of the Framework. [78, 127]

Conclusion on Biodiversity

184. A condition is suggested to secure habitat creation proposals and delivery, and the Unilateral Undertaking would address the long term management of these areas. On balance, I would recommend that the proposal would comply with Local Plan Policy 4D in this regard.

Other Considerations

185. The Council consider that a conclusion of poor design should lead to dismissal of any appeal in accordance with paragraph 64 of the Framework. This is strongly opposed by the appellant, who considers that design should form part of the overall assessment of material considerations. While I can see some logic in the Council's argument, when considering the wording of paragraph 64, the quality of design is not a black and white issue, and many schemes may contain both positive and negative elements. [34, 36, 39, 91, 98, 100]
186. This is a challenging site, which has steep slopes, the railway sidings and watercourses running through it. Although my overall conclusion, based on the evidence submitted, is that there would appear to be limited contextual analysis or positive design influence to produce a high standard of design, there are some positive elements to the scheme. [63]
187. The developer is part of a national house building organisation and suggests that the market responds positively to the styles of houses proposed. The proposed layout would also provide modern houses, which would achieve reasonable space standards and include areas of private amenity space for future residents. Some limited improvements to access would be established as the site moves away from private ownership. There would be acceptable levels of vehicular access and parking on site, and the proposal includes provision of landscaping, areas of POS and the watercourses crossing the site would be left open. [41, 63]

188. My initial conclusion was that the design approach fails to take many opportunities to provide a high quality development, and does not respond sufficiently to the character and appearance of the surrounding area. To my mind, the test set out in paragraph 64 of the Framework is a very strict one, and would relate to schemes which completely fail to provide a design which improves the area and the way it functions; a design which could be labelled poor with no redeeming elements. In this case, I find that the scheme falls significantly short of the expectation for high quality design, and so fails to comply with the development plan.

189. In accordance with section 38(6) of the PCPA 2004, the permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. This failure to meet the design expectations set out in the Framework materially affects the weight that should arise, when the document is be considered as a whole. Nonetheless, the benefits arising from the scheme should, in this case, be considered.

Benefits arising from the scheme

190. The agreed shortfall in HLS represents a consideration of significant weight in favour of the scheme. In such circumstances the housing policies in the Local Plan should be considered out-of-date, including Policies 17 and 18. It would boost the supply of housing in the area and would represent an improvement in the housing stock available. It would introduce economic benefits in terms of the New Homes Bonus, as well as investment in jobs and construction in the area. [30, 31, 37, 94]

191. These benefits all arise from the delivery of housing on the site, something that the Council has agreed to in principle. Dismissal of this scheme may jeopardise this delivery, but more realistically would delay it. With a suggested build rate of 25 units per year, the implications of such a delay would be relatively limited. [103]

Other Matters

192. A number of other considerations were raised by local residents including: public engagement; the effect of the development on highway safety; and the need for housing.

Public Engagement

193. Concerns have been raised regarding the level of consultation between the appellant and local people. Evidence confirms that there was public engagement in Easter 2012, and the appellant produced a Consultation Statement, dated April 2012⁴⁵. However, it is not the fact that some consultation did take place that is of concern to local residents, but the perceived lack of response to the matters raised. There is a well established residents group, Get Knotted, and their responses indicate that they believe the appellant did not engage in the way sought by the Framework⁴⁶. [122, 135]

⁴⁵ Document 8

⁴⁶ The Framework - Paragraph 66

194. However, in addition to this consultation exercise, the application was publicised, as was the subsequent appeal. The appeal process has enabled all parties to make representations and present their views to the Inquiry. Therefore, while it cannot be concluded that interested parties were excluded from engagement, there is no reference in the appellant's DAS⁴⁷, for example, to any public engagement, and no indication of any changes incorporated within the scheme design to respond to such engagement. On its own, the level of consultation by the appellant can attract little weight against the proposal, but it may have implications when considering the overall design approach, which is dealt with later in this report. [69, 107]

Highway Safety

195. The scheme was supported by a Transport Assessment⁴⁸. This concluded that there was sufficient capacity within the surrounding road network and junctions. Although some questions were raised by the Highway Authority⁴⁹, in response to the original application, they accepted that there would be sufficient capacity. Road crossing improvements, along with additional public transport improvements, can be secured through legal agreement and conditions. The appellant has agreed to support a formal Travel Plan for the site. Parking would be provided to agreed standards on the site, and while there would be an increase in traffic through the access roads of the existing estate, I do not consider that this would be significantly harmful to highway safety. Accordingly, these concerns attract only limited weight against the appeal scheme. [28, 41, 124, 135]

Need

196. There is no contention between the main parties that the provision of new housing in Pendle has underperformed over a number of years. The current HLS is assessed at only 2.1 years. However, the concerns from interested parties on this matter relate to the existence of empty homes and large areas of redundant brownfield land that they consider should be developed prior to a site that they perceive as being greenfield. In response to my question, Mr Sedgwick responded that the existence of empty homes is a long standing issue in the area because they are typically no longer suitable for residential use and do not address what the market desires. There is a nearby scheme, by the railway arches at the end of Knotts Lane, where a development of townhouses and apartments would appear to have stalled. Mr Sedgwick responded to my questions regarding this site, that the market demand was not for such properties, but for detached and semi-detached family housing.[120, 121, 135]

197. The Council, in their Committee report⁵⁰, set out that the number of empty homes in the area should not impact on the decision regarding this site. This report indicates, and this was confirmed at the Inquiry, that they cannot currently meet the housing need from their existing stock of consents. I have some

⁴⁷ Dated June 2012

⁴⁸ Document 8

⁴⁹ Document 1

⁵⁰ Council Questionnaire

sympathy for the concerns of local residents who consider there to have been little increase in population, and who can see unused brownfield sites, empty homes and the uncompleted development, all close to the proposed site. However, the demand for new homes is not driven solely by population increase, and although the Housing Market Renewal Scheme in the area would appear to have ended, there is a need, and an expectation, that more modern housing needs to replace parts of the former terraced housing stock. [28, 29, 30, 68, 94]

198. The previous SoS decision on this site was taken prior to the current development plan and the Framework. Planning decisions need to be taken in light of these, and to promote house building where a need has been identified. The Council's confirmation of both this need, and the lack of sufficient sites to meet it, is strong evidence in support of the overall need for this development.

Planning Balance

199. In cases where there is conflict with the development plan, material considerations must be considered, and in this case, the appellant agreed, under cross-examination, that the Framework was the only material consideration relied upon, albeit the provision of housing in an area of shortfall is, by definition, a consideration. [98]

200. The appellant suggests that the proposal is sustainable development, supported by the presumption set out in paragraph 14 of the Framework. On the other hand, the Council considers that conflict with the development plan confirms that the outcome of the test in paragraph 14, if referred to after consideration of paragraph 64, is that the proposal is not sustainable development. [32, 37, 43, 95, 98]

201. The Framework provides three dimensions against which to consider the sustainability of development. The proposal would address the economic role as set out. In terms of the social role, the site is located in a relatively sustainable position, as although on the outskirts of the town with some facilities not readily accessible on foot, public transport would be available for access to the wider facilities close by in Colne and Nelson. Therefore, while meeting some elements of the social role, this must be tempered by the lack of good design and the failure to create a high quality built environment. The clear statement in paragraph 56 is that good design is a key component of sustainable development. [43, 101]

202. I have addressed the biodiversity value of the site and measures within the proposal to address these, but note that there is very little commentary on the provision of sustainable construction techniques, orientation of dwellings or renewable energy provision within the scheme. On balance, I would recommend that the site be considered as a sustainable location, but the scheme as relatively unsustainable because of failings within the design approach.

203. This proposal has been recovered by the SoS to consider the effect on the Government's objective to secure a better balance between housing demand and supply and create high quality, sustainable, mixed and inclusive communities. The appeal site is a challenging one, it is steeply sloping and has notable biodiversity interests. Nonetheless, it has been identified for the delivery of

housing, of which there is an acknowledged shortfall in the area. The site is a key one, not just in terms of its scale, but also in terms of its importance to the setting of the town.

204. While the benefits arising from the scheme in relation to the housing supply have been acknowledged, very little contextual analysis would appear to have been considered to inform the design. Dominated by an uninspired road network and inwardly focussed, there has been little obvious architectural input to the scheme other than reactive measures to deal with concerns raised during consultation. As a result, I consider that it fails, in a number of key respects, to provide for a high quality, sustainable community that would contribute to enhancing the area, for existing or for future residents.
205. When considered under the tests of paragraph 14, which seeks to set out the presumption in favour of sustainable development. The proposal does not accord with the development plan in relation to design. Although the housing policies within the development plan are out-of-date, the adverse impacts of the scheme, when assessed against the policies of the Framework as a whole, significantly and demonstrably outweigh the identified benefits; the proposal, would not meet the tests as regards the presumption in favour of sustainable development. [32, 96, 97, 104]

Overall Recommendations

Full Permission

206. I therefore conclude and recommend that the appeal should be dismissed and that planning permission should be refused.
207. In the event that the Secretary of State disagrees, I have set out, in the attached Annex A, conditions that could be attached to any grant of planning permission.

Outline Permission

208. The appellant put forward a condition, which seeks to alter the proposal to be in outline, with all matters other than access reserved for future determination. It was suggested that this was not the preferred approach, as the scheme was considered to be of high quality, but that it could be engaged if the SoS's decision concluded that the detailed application was of an unacceptable standard of design. It was suggested that a scheme of at least 195 dwellings would be necessary to be viable, and with the principle of housing fully accepted by the Council, no party would be prejudiced by such an alteration. [81, 82]
209. The Council strongly refuted this, and indicated that they had legal opinion which could lead to a challenge were such an approach taken. It was suggested that the design failings were so significant that, potentially, a completely different approach would be necessary regarding numbers, density and even the location of development on site, none of which was properly addressed in the DAS. Furthermore, it was suggested that such significant alterations would fail the *Wheatcroft* test, and both the planning committee, who may, in such a case, have

sought further details prior to any conclusions on an outline application, and interested parties, would be prejudiced. [114, 115, 116, 117]

210. In closing, the Council confirmed that they were not, at that time, able to produce the legal opinion on this matter. Consultees and the planning committees had the opportunity to consider the appeal scheme for 203 units. However, I accept that they would not have the opportunity, were this approach to be taken, to consider a proposed outline scheme. However, the appellant has clearly indicated that the scheme would be for at least 195 houses, an amount they consider has been accepted in principle. I can give little weight to the previous SoS decision in relation to deliverable numbers, as suggested by the appellant. This proposal was dismissed on different grounds, and at a time of different planning policy and guidance. [87, 88, 114]
211. The appellant's planning witness could not confirm that a better designed scheme for this number of houses could be brought forward; indeed there is nothing before me to confirm that 195 houses could be successfully delivered, either in terms of planning policy or viability, despite the acknowledged support for housing in principle on this site. In such circumstances, I recommend that the proposed approach of altering the application to an outline one via condition is not appropriate, and should be set aside. [116]
212. In the event that the SoS disagrees, I have set out, in the attached Annex B, conditions that could be attached to any grant of outline planning permission.

Mike Robins

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

David Hardy LL.B (Hons),
B.C.L.(Hons) Oxon

Partner, Eversheds LLP
Instructed by Pendle Borough Council

He called
Neil Watson

Head of Planning and Building Control, Pendle
Borough Council

Peter Swift BSc, DipLA,
CMLI

Managing Director, Planit-IE Limited

FOR THE APPELLANT:

John Barrett of Counsel

Instructed by Sedgwick Associates

He called
Paul Sedgwick Dip TP
MRTPI

Planning consultant – Sedgwick Associates

Francis Hesketh
BSc(Hons) CLMI, CEnv,
MCIEEM, MICFor

Ecology consultant - TEP

INTERESTED PERSONS:

Mrs Slater
Mr Lamb BSc(Hons), MSc,
MCIEEM

Local Resident
Lancashire Wildlife Trust

DOCUMENTS

- 1 Council's questionnaire, including letters and e-mails of representation
- 2 Statement of Common Ground
- 3 Interested parties written representations to the Inquiry

Proofs of Evidence and Appendices

For the Council

- 4 Mr Watson's Proof of Evidence
- 5 Mr Swift's Proof of Evidence and Appendices

For the Appellant

- 6 Mr Sedgwick's Proof of Evidence and Appendices
- 7 Mr Hesketh's Proof of Evidence and Appendices

Appellants Supporting Information

(Blue Folders)

- 8 Design and Access Statement; Planning Policy Statement; Consultation Statement and Transport Assessment
- 9 Ground Investigation Report; Noise Assessment; Landscape and Visual Impact Assessment; Interim Travel Plan; Flood Risk Assessment; Ecological Assessment and comments; Arboricultural Report / Tree Survey; Coal Seam Report and United Utilities Services Plan
- 10 Plans and Photographs

Documents Submitted by the Council to the Inquiry:

(Document Folder)

- C1 Pendle Borough Council Notification Letter – dated 14 May 2013
- C2 Appeal ref: APP/E2734/A/12/2185433
- C3 Colne: South Valley Masterplan – URBED
- C4 Agreed Conditions
- C5 Replacement Pendle Local Plan, adopted 2006
- C6 Closing submissions for the local planning authority
- C7 Response to costs application

Documents Submitted by the Appellant to the Inquiry:

(Document Folder)

- A1 Colour Copy – Plan No. JB/PL1/KDC Rev F
- A2 Committee Minutes – 19 December 2012
- A3 Draft S106 Unilateral Undertaking
- A4 Closing submissions for Persimmon Homes Lancashire
- A5 Costs application

Documents Submitted by the Appellant after the Inquiry:

(Document Folder)

A6 Signed Unilateral Undertaking - dated 31 July 2013

Documents Submitted by the interested parties to the Inquiry:

(Document Folder)

IP1 Newspaper extracts and photographs

IP2 Mr Lamb's Statement

Annex A

List of agreed planning conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Prior to commencement of development, a scheme providing full details for the ecological areas shown on approved plan, D3225.001B, to include the timing of provision and a schedule of maintenance, shall be submitted to and agreed in writing by the local planning authority. The scheme shall include:
 - i) A description of features to be managed;
 - ii) The aims and objectives of the Habitat Management Plan;
 - iii) The management actions, including monitoring;
 - iv) The means by which the plan will be rolled forward annually;
 - v) Monitoring and remedial / contingency measures triggered by monitoring, and;
 - vi) Details of the personnel responsible for implementation of the plan and the means by which it will be funded.

The approved scheme shall thereafter be completed in accordance with the agreed timing of provision, and the areas shall thereafter be maintained in accordance with the approved schedule.

- 3) Prior to commencement of development, full details of the proposed foul and surface water drainage shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the drainage system to that property has been provided in its entirety.
- 4) Prior to commencement of development, a detailed scheme for the improvements to the junctions between Knotts Lane and Burnley Road, and between Khyber Street and Knotts Lane, shall have been submitted to and approved in writing by the local planning authority. The schemes shall be implemented in strict accordance with the approved details prior to completion of the first 15 dwellings. In addition, the Puffin crossings at Albert Street and Queen Street and Burnley Road, near to Phillips Lane, shall be upgraded to a Toucan crossing, and a Puffin crossing shall be provided on the A56 between Knotts Lane and Greenfield Road, prior to completion of the 75th dwelling on the site.
- 5) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which shall previously have been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 6) Prior to commencement of development, a plan and written statement detailing the proposed phasing of the site shall be submitted to and approved in writing by the local planning authority. The plan shall include details of the works involved in each phase, and how each phase is to be completed in terms of the completion of roads, building operations, foul and surface water sewers and landscaping. The plan shall also include details of the number of units in the phase that shall be completed prior to the commencement of the next phase of the development. The approved scheme shall thereafter be carried out in strict accordance with the approved plan and statement.
- 7) Prior to commencement of development full details of the retaining structures to be provided on the site shall be submitted to and agreed in writing by the local planning authority. Development shall be carried out in strict accordance with the approved details.
- 8) Prior to commencement of development, details of the proposed levels on site and how the ground modelling will take place, shall be submitted to and approved in writing by the local planning authority. Thereafter, for each phase, the finished floor levels of all dwellings in that phase, shall be submitted to and approved in writing by the local planning authority, prior to construction of any dwelling in that phase. Development shall be carried out in strict accordance with the approved details.
- 9) Prior to commencement of development, a detailed landscaping scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall be at a scale of 1:200 and shall include:
 - i) The exact location and species of all existing trees and other planting to be retained;
 - ii) An outline specification for ground preparation for landscaped areas outside of the ecological areas;
 - iii) All proposals for new planting and turfing, indicating the location, arrangement, species, size, specifications, numbers and planting densities;
 - iv) All proposed boundary treatments with supporting elevations and construction details;
 - v) All proposed hard landscaping elements and paving, including layout, materials and colours;
 - vi) The proposed arrangements and specifications for initial establishment maintenance and long term maintenance of all planted and/or turfed areas.

The approved scheme shall be implemented in its agreed form prior to the end of the first planting season following substantial completion of each phase of the development to which it is associated. Any trees or plants

- which within a period of 5 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, unless the local planning authority gives written approval to any variation.
- 10) Prior to commencement of development, samples of the materials to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 11) Prior to commencement of development on any phase, a full report on the condition and stability of the land shall have been submitted to and approved in writing by the local planning authority. The report shall contain details of how the site conditions have been investigated and what remedial measures will take place to ensure the stability of any of the land found to be unstable. The remedial measures shall then be undertaken in strict accordance with the approved report, and a verification report submitted to the local planning authority within 3 months of the completion of the works.
 - 12) Prior to commencement of construction work, a scheme for protecting the proposed dwellings on the northern boundary of the site abutting the railway line from noise from the railway shall be submitted to and approved in writing by the local planning authority; all works which form part of the scheme shall be completed before these dwellings are occupied.
 - 13) Prior to commencement of development, including any works of demolition, a Construction Method Statement shall be submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - 14) The car parking shown on each plot shall be provided prior to occupation of the dwelling it relates to. This shall include surfacing of the driveway in accordance with the materials to be agreed under condition 10. The spaces shall thereafter be retained at all times for the parking of cars in association with the occupants of the dwelling.
 - 15) The estate roads into the site shall be constructed in accordance with the Lancashire County Council specification for the construction of estate roads. The estate roads shall be completed to base course level to each plot before any work is commenced on that plot. The estate roads and footpaths on the site shall be completed in their entirety for each phase of the development (as set out under condition 6) within 3 months of the completion of that

phase, or within 30 months of the commencement of the construction of any house in a phase.

- 16) The paths crossing the open space between plots 201 and 1, and between plots 137 and 138, as set out in plan number JB/PL1/KDF Rev F, shall be constructed to allow use by cyclists and shall be maintained thereafter.
- 17) No vegetation clearance shall take place during the optimum period for bird nesting (March to July inclusive).
- 18) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location plan – LP1/KDC Rev A
Topographical Survey – PH105/TOO
Planning Layout – JB/PL1/KDC Rev F
Retaining Structure Plan - JB/PL1/KDC Rev C
Preliminary Development Sections – 5435/01/08 Rev A
The Penrose House Type
The Hanbury House Type
The Hanbury/Penrose House Type
The Rufford House Type
The Hatfield House Type
The Roseberry House Type
The Crathorne House Type
The Winstor House Type
The Clandon House Type
Landscape Masterplan – 4112.03
Tree Survey and Root Protection – 4112.01
Habitat Creation Proposals – D3325.001 Rev B
Existing Culvert Capacities – 5435 Rev A
Proposed Drainage Layout – 5435-01-05 Rev A

Annex B

List of conditions - Outline planning approach suggested by the appellant.

- 1) Notwithstanding the details submitted with the application, 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 begins 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 begin 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 authorises the erection of between 195 and 210 dwellings.
- 5) Prior to commencement of development, a scheme providing full details for the provision of ecological areas, to include the timing of provision and a schedule of maintenance, shall be submitted to and agreed in writing by the local planning authority. The scheme shall include:
 - i) A description of features to be managed;
 - ii) The aims and objectives of the Habitat Management Plan;
 - iii) The management actions, including monitoring;
 - iv) The means by which the plan will be rolled forward annually;
 - v) Monitoring and remedial / contingency measures triggered by monitoring, and;
 - vi) Details of the personnel responsible for implementation of the plan and the means by which it will be funded.

The approved scheme shall thereafter be completed in accordance with the agreed timing of provision, and the areas shall thereafter be maintained in accordance with the approved schedule.

- 6) Prior to commencement of development, full details of the proposed foul and surface water drainage shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the drainage system to that property has been provided in its entirety.
- 7) Prior to commencement of development, a detailed scheme for the improvements to the junctions between Knotts Lane and Burnley Road, and between Khyber Street and Knotts Lane, shall have been submitted to and approved in writing by the local planning authority. The schemes shall be implemented in strict accordance with the approved details prior to completion of the first 15 dwellings. In addition, the Puffin crossings at Albert Street and Queen Street and Burnley Road, near to Phillips Lane, shall be upgraded to a Toucan crossing, and a Puffin crossing shall be provided on

the A56 between Knotts Lane and Greenfield Road, prior to completion of the 75th dwelling on the site.

- 8) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which shall previously have been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 9) Prior to commencement of development, a plan and written statement detailing the proposed phasing of the site shall be submitted to and approved in writing by the local planning authority. The plan shall include details of the works involved in each phase, and how each phase is to be completed in terms of the completion of roads, building operations, foul and surface water sewers and landscaping. The plan shall also include details of the number of units in the phase that shall be completed prior to the commencement of the next phase of the development. The approved scheme shall thereafter be carried out in strict accordance with the approved plan and statement.
- 10) Prior to commencement of development full details of any retaining structures to be provided on the site shall be submitted to and agreed in writing by the local planning authority. Development shall be carried out in strict accordance with the approved details.
- 11) Prior to commencement of development, details of the proposed levels on site and how the ground modelling will take place, shall be submitted to and approved in writing by the local planning authority. Thereafter, for each phase, the finished floor levels of all dwellings in that phase, shall be submitted to and approved in writing by the local planning authority, prior to construction of any dwelling in that phase. Development shall be carried out in strict accordance with the approved details.
- 12) Prior to commencement of development on any phase, a full report on the condition and stability of the land shall have been submitted to and approved in writing by the local planning authority. The report shall contain details of how the site conditions have been investigated and what remedial measures will take place to ensure the stability of any of the land found to be unstable. The remedial measures shall then be undertaken in strict accordance with the approved report, and a verification report submitted to the local planning authority within 3 months of the completion of the works.

- 13) Prior to commencement of construction work, a scheme for protecting the proposed dwellings from noise from the railway to the northern boundary of the site, shall be submitted to and approved in writing by the local planning authority; all works which form part of the scheme shall be completed before relevant dwellings are occupied.
- 14) Prior to commencement of development, including any works of demolition, a Construction Method Statement shall be submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
- 15) Car parking, at a minimum of two spaces per plot, shall be provided prior to occupation of the dwelling it relates to. This shall include surfacing of the driveway in accordance with the materials to be agreed under reserved matters. The spaces shall thereafter be retained at all times for the parking of cars in association with the occupants of the dwelling.
- 16) The estate roads into the site shall be constructed in accordance with the Lancashire County Council specification for the construction of estate roads. The estate roads shall be completed to base course level to each plot before any work is commenced on that plot. The estate roads and footpaths on the site shall be completed in their entirety for each phase of the development (as set out under condition 9) within 3 months of the completion of that phase, or within 30 months of the commencement of the construction of any house in a phase.
- 17) No vegetation clearance shall take place during the optimum period for bird nesting (March to July inclusive).
- 18) The development hereby permitted shall be carried out in accordance with the following approved plans:

Location plan – LP1/KDC Rev A
Topographical Survey – PH105/TOO
Existing Culvert Capacities – 5435 Rev A
Proposed Drainage Layout – 5435-01-05 Rev A
Tree Survey and Root Protection – 4112.01

Annex C	Abbreviations used in this Report
The appellant	Persimmon Homes Lancashire
The Council	Pendle Borough council
SoS	Secretary of State
SoCG	Statement of Common Ground
CA	Conservation Area
LNI	Site of Local Natural Importance
The Framework	National Planning Policy Framework
The Local Plan	The Replacement Pendle Local Plan , adopted 2006
SHLAA	Strategic Housing Land Availability Assessment
HLS	Housing Land Supply
PoE	Proof of evidence
PPS1	Planning Policy Statement 1
BfL	Building for Life
BHS	Biological Heritage Site
NVC	National Vegetation Classification
GMEU	Greater Manchester Ecology Unit
DAS	Design and Access Statement
PCPA	Planning and Compulsory Purchase Act 2004
LWT	Lancashire Wildlife Trust
POS	Public Open Space
CIL	Community Infrastructure Levy
LVIA	Landscape and Visual Impact Assessment
OMHPDL	Open Mosaic Habitat on Previously Developed Land
UK BAP	UK Biodiversity Action Plan
NERC	Natural Environment and Rural Communities Act 2006



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.