



Appeal Decision

Inquiry held on 15-17 & 21-23 May 2013

Site visit made on 24 May 2013

by Louise Crosby MA MRTPI

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

Decision date: 27 June 2013

Appeal Ref: APP/T2350/A/12/218887

Land at Mitton Road, Whalley, Lancashire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by David Wilson Homes North West and AC Surveyors & Valuers against Ribble Valley Borough Council.
 - The application Ref: 3/2012/0637, is dated 18 July 2012.
 - The development proposed is for the erection of 116 No two, three, four and five bedroom dwellings and 21 No one bedroom bungalows, together with associated landscaping, open space, drainage infrastructure, car parking and access roads.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 116 No two, three, four and five bedroom dwellings and 21 No one bedroom bungalows, together with associated landscaping, open space, drainage infrastructure, car parking and access roads at Mitton Road, Whalley, Lancashire in accordance with the terms of the application, Ref: 3/2012/0637, dated 18 July 2012 and subject to the schedule of conditions set out in the attached Annex.

Procedural matter

2. A draft Unilateral Undertaking (UU) was submitted at the inquiry. By the close of the inquiry the UU, although agreed, still required signing. I gave the appellants time to submit it after the close of the inquiry. A signed version was received by me on 20 June 2013. The UU secures an education contribution of £297,011; a transport contribution of £105,000; and a Travel Plan contribution of £50,000. It would ensure that 30% of the dwellings are 'affordable units' and that 15% of the total number of dwellings are single storey, single bedroom dwellings for the elderly. Also, 50% of this type of dwelling would be 'affordable units'. I shall deal with this in more detail below.

Main issues

3. The main issues are:
 - i) the effect of the proposal on the character and appearance of the surrounding area;

- ii) the effect of the proposal on the setting of the Whalley Conservation Area;
- iii) whether the proposal would preserve the setting of Whalley Viaduct, Whalley Abbey and Whalley Abbey Gatehouse; and
- iv) the effect of the proposal on housing land supply.

Reasons

Background and policy context

4. The North West Regional Spatial Strategy has recently been abolished and so in this case the only relevant adopted development plan is the Ribble Valley Districtwide Local Plan (1998) (LP). It was agreed at the inquiry that its housing policies and policy ENV19 are out of date and so carry very little weight. The emerging Core Strategy: 2008-2028 – A Local Plan for Ribble Valley is due to be examined in July this year. Given the stage that this plan has reached the Council say that the policies within it should be afforded only limited weight in this decision and I agree.
5. The site is identified in the Council's Strategic Housing Land Availability Assessment (2009) (SHLAA). It assesses numerous sites in Whalley and after consideration, in line with an adopted methodology, some were excluded and others included. The appeal site was included and identified as being available within the next 5 years and deliverable within a 6-10 year period. It also says that there is a reasonable prospect that housing will be developed on this site and that in determining any future planning applications the impact on the Viaduct, but mainly on the open nature of the countryside, should be borne in mind.
6. The appeal site is located outside, but adjacent to, the settlement limits for Whalley as defined in the LP. However the main parties agree that the settlement boundary is out of date and will need to expand to accommodate the projected growth within the borough and therefore more weight should be placed on the emerging Core Strategy in this regard. This identifies Whalley as being a key service centre expected to accommodate a significant level of growth over the plan period (2008-2028). While Clitheroe is at the top of the hierarchy of most sustainable settlements, Whalley and Longridge both rank 2nd. Importantly, unlike Longridge, Whalley has a railway station that is very close to the appeal site.

The effect of the proposal on the character and appearance of the surrounding area

7. The site is currently an agricultural field that is divided by a belt of trees. It is contained within existing clearly defined boundaries. To the west of the site is the elevated A59, to the north the existing traditional dwellings on Mitton Road, to the south Ridding Lane and to the east Broad Lane and Whalley Viaduct. The Viaduct, Whalley Abbey ruins and Whalley Abbey Gatehouse are all listed buildings; and Whalley Abbey ruins and Whalley Abbey Gatehouse are also scheduled ancient monuments (SAMs). In addition, the site lies adjacent to Whalley Conservation Area. The main parties agree that the central most visible part of the Viaduct, part of which is within Whalley Conservation Area, is the most important section to be taken into account when considering this scheme. Having visited the site and the surrounding area, I agree.

8. The appeal site is located in the River Calder valley bottom, close to the river. The appeal site can be seen from many near and elevated, distant vantage points. I shall discuss what I consider to be the most important ones below. The proposal would consist of a mix of single storey, 2 storey and 2/3 storey dwellings. The western corner of the site would contain a play area and open green space. The single storey dwellings would be mainly located in the area around Cross House, an existing 1½ storey traditional dwelling on the corner of Broad Lane and Ridding Lane. The 2/3 storey townhouses would be positioned along the eastern boundary of the site, adjacent to Broad Lane. These dwellings have been designed with staggered roofs and elevations which greatly reduces their overall scale and mass.
9. This part of the site is closest to the grade II listed Viaduct which is an important landscape feature here. The highest part of the 2/3 storey dwellings would be around 4m lower than the Viaduct and the distance from the rear elevation of these dwellings to the Viaduct would be between 30m and 37m. Those set farthest away would be screened by existing mature trees located along the boundary of the site.
10. It seems from evidence before me that the Council encouraged the general design principles that have been adopted here i.e. a gradual increase in height of development across the site towards the Viaduct and leaving part of the site undeveloped. This would result in the greatest impact being on Broad Lane, but from here the dwellings would still appear modest in scale compared to the Viaduct, particularly when their distance from Broad Lane is taken into account, along with their detailed design and landscaping.
11. The development would be set back from Ridding Lane by an area of landscaped green space and a play area. Also, the dwellings on this part of the site would be 2 storeys high and on the opposite side of Ridding Lane there are open fields with the river beyond. Some views towards the Viaduct from the part of Ridding Lane close to Cross House would be interrupted by the 2/3 storey dwellings close to Broad Lane, but the best views (where one can see through the arches) near Cross House, would be preserved as this part of the site would contain bungalows. From further back along Ridding Lane (towards the A59), the taller dwellings would interrupt views of part of the Viaduct, but not the central most visible section. As such, the rural character and appearance of this lane would not be unduly harmed and views of the central most visible part of the Viaduct would, in the main, be preserved.
12. Ridding Lane also extends eastwards, under the Viaduct, and eventually joins with The Sands. From here limited views of the appeal site are available because of the angle of view through many of the arches and their depth. Where there is a clear view through the arches this would be to the part of the site near Cross House which would contain bungalows. Some of the taller houses beyond would be visible to a very limited degree, but overall from here the proposal would not result in any discernible visual impact.
13. On the busy elevated A59 the main view of the site is from a lay-by where people are likely to stop for short periods. From here, views of the proposed development (which would be set back from this road and embankment), would be filtered by trees and hedges along the edge of the carriageway and thus not appear unduly harmful.

14. Clearly, when viewed from Mitton Road (close to the entrance to the site), the landscape would change by virtue of the introduction of housing. However, from Mitton Road the development would be experienced in the context of existing residential development along this road. Views from here of the Viaduct would be greatly reduced, but the current view is very much shielded by trees and there are far better views of the Viaduct from other parts of Whalley and the surrounding area. From the rear gardens and windows of the existing dwellings on Mitton Road, abutting the appeal site, again the views would change greatly. Nevertheless, some views of the Viaduct would still be available.
15. From various points along public footpaths on The Nab and the area around Painter Wood, some of the finest views of the Viaduct are available, with the appeal site beyond. From these elevated vantage points the sheer length and uniformity of the arches can be more readily appreciated. Also from here existing development can be seen at either end of both sides of the Viaduct. From slightly lower down, on Whalley Road and Longworth Road, closer views are available although it is the central section spanning the river that is most prominent. From here it is generally seen in the context of a flat rural landscape with the river running through it and The Judge Walmsley Mill Complex beyond.
16. The appellants' photomontages show that from the distant, elevated views on The Nab the proposed development would be visible and appear as a sizable extension to the housing that currently exists in this area. However, it would not appear as an alien feature in this landscape which is already layered with built development. Importantly it would not detract from the character and appearance of the surrounding area, the overall dominant features would be the Viaduct, the remaining (most prominent) fields, the river and the hills in the distance. From lower down, on Whalley Road and Longworth Road, the proposed development would be barely noticeable beyond the viaduct.
17. Taking all of the above into account, including the position of the site on the edge of the existing village with clear defensible boundaries the proposal would have only a moderate adverse impact on the character and appearance of the surrounding area. Nevertheless, conflict with LP policy ENV3 occurs, in so far as it aims to conserve and enhance the open countryside and only allow development that benefits the area¹.

The effect of the proposal on the setting of Whalley Conservation Area

18. As a consequence of Whalley Conservation Area being extended in 2007, part of the central most visible section of the Viaduct; Cross House; and parts of Broad Lane fall within it. Whalley Conservation Area Appraisal (2005) (CAA), which recommended this extension describes the Viaduct as a local landmark and a dominant feature within the landscape to the west of Whalley and says that this particular area has a rural, open character which relates well to the first part of The Sands and the medieval route out of the Abbey to the west. The Sands area is identified as having a number of principal positive features and these include views to the west through the arched openings of the red brick Viaduct; a rural open character with trees and open green spaces; and little traffic and peaceful character.

¹ Para 4.2.13 of Ribble Valley Districtwide Local Plan

19. The CAA highlights as an opportunity the open fields to the west of The Sands and south of the River Calder. Two of these are adjacent to the Viaduct. It identifies them as particularly valuable assets which should be included in the extended conservation area and protected from development. However, I note that in doing this it did not seek to protect the appeal site, at the other side of the Viaduct, in the same manner or indeed at all.
20. English Heritage² advises that setting is the surroundings in which an asset is experienced. The appeal site lies adjacent to the western edge of the conservation area. It is within its setting and has an open rural character. Clearly the open setting of the conservation area, provided by the appeal site, would be greatly reduced if the appeal site were developed.
21. The development would be experienced mainly from the area around Broad Lane and Ridding Lane (west of the Viaduct), but some limited glimpsed views through the arches would be available when travelling along The Sands/Ridding Lane (east of the viaduct). From Broad Lane and Ridding Lane some of the proposed 2/3 storey dwellings along the eastern boundary of the site would appear dominant when viewed from this small part of the Conservation Area.
22. The tranquillity in the part of the conservation area along Broad Lane would be reduced as the area would generally become busier and noisier. However, I saw when I visited the site that Broad Lane already carries a limited number of vehicles. From time to time these break the solitude in this area along with the passing trains and the noise of traffic from the elevated A59 road and Mitton Road. Importantly Broad Lane would only be used as an emergency access from the site for motor vehicles. So the main increases in noise along Broad Lane would be from within the appeal site. Following the construction phase, this is not likely to be excessive.
23. Given the overall scale of the proposal, in comparison to the open rural character that exists at present, the proposal would have a moderate adverse effect on the setting of this discrete part of the conservation area and thus its character and appearance. This harm would be ameliorated to some degree by the existing and proposed landscaping which would soften the effect of the built development. The proposal would lead to a modest degree of harm to the setting of the Whalley Conservation Area (and thus lead to much less than substantial harm to the significance of this designated heritage asset). As such, it would conflict with LP policy ENV16.

Whether the proposal would preserve the setting of Whalley Viaduct, Whalley Abbey and Whalley Abbey Gatehouse

24. Whalley Viaduct is a Grade II listed building. It is the longest in Lancashire with 48 round headed arches on battered piers. It is an impressive structure and feat of engineering. It was opened in 1850 and its purpose was and still is to span the River Calder valley floor. Unusually, it has 2 'blind' arches at either side of the arch that spans The Sands (a narrow road). These are ecclesiastical in style and reference the historical route to the Abbey through the Gatehouse.
25. The Viaduct is clearly important as a local landmark and is very dominant in views into and out of Whalley village. Indeed, images of it appear in numerous places including on a mural at Whalley Railway Station (painted by local school

² English Heritage Guidance – The Setting of Heritage Assets

- children); in magazine articles about Whalley; and in the opening credits of a local television news programme.
26. Since the function of the Viaduct is to span the open valley floor, this landscape is integral to its design, although it is a functional structure with no formal or indeed designed setting. It is the landscape features that made the Viaduct necessary in the first place and these contribute towards the setting of the asset and are an integral part of its significance. Both main parties agree that the Viaduct has a linear setting and that the appeal site falls within it and I agree.
27. Turning to consider the degree to which the setting makes a contribution to the significance of the heritage asset. Clearly the open countryside setting is important to its significance. The contrast between the undeveloped open countryside to the west of the Viaduct (including the appeal site) allows one to appreciate the sheer height and scale of the Viaduct. The close up views from Broad Lane, the appeal site and Ridding Lane allow for a comparison with the human scale, which is undoubtedly striking. With the proposed development, these would, on the whole, still remain as would the way in which one experiences the Viaduct from these places.
28. This Viaduct and its setting are best appreciated in long distance elevated views, such as from The Nab and Painter Wood. From these elevated areas the Viaduct is extremely striking and impressive because one can clearly see the central section of the Viaduct spanning the valley floor with the open countryside (including the appeal site) beyond. The proposal would lead to the appeal site being partially developed with dwellings, associated infrastructure and amenity space. This would lead to a reduction in the open green space which contributes towards the setting of the Viaduct. However, as I have already found, from these elevated areas the proposed development would be seen in the context of other development and more important open aspects of the valley floor, closer to the river, would remain.
29. The Council agree that, in principle, some development could take place here. The amount of development proposed in this case would have a modest effect on the setting of the designated heritage asset. Overall, given the distance between the Viaduct and the proposed dwellings and the dominant scale of it, which would still prevail, this small degree of harm to the setting of the designated heritage asset and thus to its significance would be less than substantial.
30. I will now consider the effect of the proposal on the setting of Whalley Abbey and its Gatehouse, both of these are grade I listed buildings and scheduled ancient monuments. They lie to the east of the appeal site, beyond the Viaduct. The Cistercian Abbey ruins enable visitors to observe the plan form of the development and understand how individual buildings would have related to one another. According to the list entry for Whalley Abbey building work began on the site in c.1320. The Abbey has formed part of an established community since it was founded.
31. The Gatehouse was built in 1480 and is likely to be the oldest remaining building within the Abbey complex and is significant as the main entranceway to the Abbey and as the last remaining component of the precinct walls. It is a functional and fortified Gatehouse and is visually prominent because it is a standalone feature separate from the main Abbey complex. The Sands/Ridding

Lane and Broad Lane are elements of the setting of the Gatehouse that contribute to its significance as they formed the medieval route to the Abbey. While the development would be clearly visible from Broad Lane, the historic route would still exist and Broad Lane would still appear as a narrow lane although its semi-rural character would be diminished slightly.

32. Consequently the character of this part of the setting would be affected to a minor degree, but I am not convinced that this would result in material harm to the significance of the setting of these heritage assets. Moreover, this would be the only harm to the setting as the important undeveloped area around The Sands/Ridding Lane and its major contribution to the significance of the heritage assets would be largely unchanged by the proposal. Overall the proposal would preserve the setting of Whalley Abbey and its Gatehouse and result in less than substantial harm to the significance of both these listed buildings.

Housing land supply

33. The main parties agree that even if the Council can demonstrate that they have a 5-year supply of housing land that would not in itself be a reason to prevent other housing sites being approved. The Council accepts that the housing policies in the LP are out of date and so the default position in paragraph 14 of the National Planning Policy Framework applies. This advises that where the development plan is out-of-date planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole; or specific policies (such as those protecting designated heritage assets) in the Framework indicate development should be restricted.
34. Both main parties have reached different conclusions in relation to the Council's current housing land supply. This is principally because of the different calculation methods used. The appellants favour the Sedgfield approach³ and the Council the residual method. The other variables which are in dispute are firstly whether a site in Whalley, with outline planning permission, (Lawsonsteads) should be included in the supply side of the calculation; and secondly whether the non-delivery discount to be applied should be 10% or 20%.
35. Dealing first with the calculation method, the key difference is that the residual method spreads the existing shortfall, which is agreed, over the plan period (around 15 years in this case), whereas the Sedgfield approach deals with the shortfall over the first 5 years. The Framework requires a 20% buffer (in cases where there has been persistent undersupply) to be brought forward from later in the plan period. To my mind it must then follow that the historic undersupply should be given the same priority. In doing this it is envisaged that a greater supply would increase the prospect of delivery and ensure choice and competition in the market for land⁴. This is critical if the supply of housing is to be significantly boosted.
36. So, taking the Sedgfield approach, regardless of whether Lawsonsteads is included or whether a non-delivery discount of 10% or 20% is applied the Council cannot demonstrate a 5-year supply of housing. At best, they have a

³ This refers to the methodology used by Sedgfield Borough Council in calculating its 5-year supply requirement.

⁴ Para 47 of the Framework

4.5 year supply, based on the inclusion of Lawsonsteads and a 10% non-delivery discount. This scheme would provide 116 dwellings on the edge of one of the most sustainable locations in the borough and even more importantly 30% of them would be affordable units. When considered in the context of the unmet housing need in this area and in particular the need for affordable homes, this benefit attracts significant weight in the overall planning balance.

Other matters

37. Third parties have expressed concerns about a number of other matters not already dealt with above and so I shall deal with the principal ones now. In terms of highway safety and traffic issues, the planning application was accompanied by a traffic impact assessment and this was subsequently added to at the request of Lancashire County Council (LCC). On the basis of this information the County Highway Engineer concluded that there was sufficient capacity on the relevant part of the road network to accommodate the additional traffic from this development. Taking this into account as well as my observations when I drove around Whalley during the morning peak-time, I agree.
38. In reaching this conclusion I have also had regard to the fact that the proposed dwellings would be within a very short walking distance of Whalley railway station and bus stops. Between them they provide regular services to a number of places including Clitheroe, Preston, Bolton, Blackburn and Manchester. This is likely to reduce the number of trips made by car and Whalley village centre contains a variety of shops and services, within walking or cycling distance of the appeal site. Moreover, 30% of the dwellings would be 1 bedroom bungalows for the elderly and these residents would be less likely to be using the roads at peak times than younger people travelling to school and work.
39. In terms of highway and pedestrian safety, while there is a footpath in front of the appeal site it terminates in front of the dwellings on Mitton Road. At this point pedestrians would have to cross to the footpath on the other side of the road via a new traffic island in the road. Given that the road is in a built-up area with a speed limit of 30mph I am satisfied that this would be safe.
40. Moreover, there would be a network of paths within the site leading onto Broad Lane, close to No 4. Although Broad Lane also has no footpath, it is a short walk to the one on Mitton Road and Broad Lane is restricted to 'access only' for motorised vehicles. Some additional works are proposed by the appellants to improve highway and pedestrian safety in this area. I am also content that the visibility splays at the junction of the site and Mitton Road would be adequate.
41. I appreciate that car parking in Whalley village is also of concern to local residents. It seems that free car parking is at a premium and in high demand, but on the day I carried out my site visit I saw that the pay and display car park in the centre of the village was not full. Overall, on the basis of the evidence before me the proposal would not be detrimental to highway or pedestrian safety or overload the existing highway network.
42. The amount of available school places in local schools is of real concern to local residents. However, following lengthy negotiations between LCC Education Department and the appellants, LCC have confirmed that there is likely to be

sufficient capacity at the local secondary schools to accommodate need arising from the proposal. At Whalley Primary School there would be a lack of places in some years, based on projections. LCC have raised no objection to the proposal subject to a contribution being secured to fund additional primary school places. The submitted UU satisfies this requirement.

43. In relation to flooding and drainage the planning application was supported by a detailed flood and drainage assessment and the proposed dwellings would be placed within the area of the site at the lowest risk of flooding. On this basis the Environment Agency and United Utilities have raised no objections subject to the imposition of planning conditions. These would ensure that, among other things, finished floor levels are set at a certain level, surface water run-off is controlled and the site is developed with a drainage scheme based on sustainable drainage principles. I agree with this approach.
44. Local residents have suggested that the site may contain archaeology linked to the fact that the site is close to the original medieval entrance to the Abbey. However, following some investigative trial trenching by the appellants, the County Archaeologist is content that the site could be developed without the need for any further investigative work. While I can understand local residents' concerns in this regard, on the basis of the work that has been undertaken already, I concur with this professional advice. As such, it would be unreasonable to impose an archaeology related condition.
45. Turning to the matter of living conditions, the residents of the dwellings on Mitton Road, which abut the appeal site, would have a different outlook if the appeal site were to be developed. However, the separation distances between existing and proposed dwellings would be ample and so no harmful levels of overlooking would occur. Moreover, the fact that the view for existing residents would change is not in itself a reason to withhold planning permission. While there would be some increase in noise and disturbance during the construction of the dwellings and associated infrastructure this could be controlled to an acceptable degree with the use of a planning condition to ensure that development takes place within the parameters of an agreed construction management plan.

Unilateral Undertaking

46. A UU under S106 of the Town and Country Planning Act 1990 has been submitted relating to the provision of the contributions and matters set out above. The UU binds the owner to covenants with both Ribble Valley Borough Council and LCC. The Community Infrastructure Levy (CIL) Regulations require that any planning obligation providing for contributions, such as those set out above, must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
47. The covenants with Ribble Valley Borough Council relate to the provision of the number and proportion of affordable dwellings, as set out above. This is in accordance with the Council's document '*Addressing Housing Need in Ribble Valley*' (January 2012) which sets out the type and tenure of affordable housing that is required. On the basis of the advice in this document and the data from the Whalley Housing Needs Survey 2011, I am satisfied that the need for affordable housing in this development is justified.

48. As already mentioned there is insufficient capacity within the local primary school to be able to accommodate the additional pupils the proposed new housing is likely to generate. Specific information and calculations have been provided in an open and transparent manner by LCC to show where the deficit in school places would occur as a result of this development. The commuted sum is derived from this evidence and based on the LCC document '*Lancashire County Council - Planning Obligations in Lancashire Methodology – Contributions towards education places – Update December 2012*'. The owner covenants with LCC to provide a commuted sum (as set out above) towards the provision of the necessary primary school places.
49. The owner also covenants with LCC to provide commuted sums in relation to off-site highway improvement works and Travel Plan funds. Detailed evidence has been provided to show how the contributions have been arrived at, including a break down of off-site works. These are in accordance with '*The Lancashire County Council document: Planning Obligations in Lancashire Policy 2008*'.
50. I am satisfied that the provisions of the submitted UU would meet the three tests set out in Regulation 122 of the CIL Regulations 2010 and the tests in the Framework.

Conditions

51. In addition to the standard time condition, and those already mentioned, a number of other planning conditions are required. An implementation condition is reasonable to ensure that the development is carried out in accordance with the approved proposed plans, for the avoidance of doubt and in the interests of proper planning. External materials will require the prior written approval of the Council to ensure that they respect the character and appearance of the surrounding area. Conditions in respect of renewable energy and the code for sustainable homes are necessary to comply with the policies in the Council's LP and emerging Core Strategy.
52. Landscaping and tree conditions are important since this existing site contains some fine mature landscaping and along with additional planting this will help settle the built development into its surroundings. Ecology related conditions are necessary to protect nature conservation issues and avoid the disturbance of habitats of protected species. Because of the proximity of some of the dwellings and gardens to the elevated A59 road a condition is necessary to ensure that the noise environment is satisfactory and thus the living conditions of the future occupiers of these units are protected.

Overall Conclusion

53. The appeal site is identified in the Council's SHLAA as being suitable for housing and is located on the edge of one of the most sustainable locations in the borough where there is a historic and current unmet need for both market housing and affordable housing. In addition, the Council cannot demonstrate that they have a 5-year supply of specific deliverable sites for housing. The proposal would also bring some economic benefits in terms of construction jobs and to the local economy from the increased population.
54. While the development would result in some moderate harm to the character and appearance of the surrounding area; and only minor harm to the settings of a number of designated heritage assets these would not significantly and

demonstrably outweigh the benefits, summarised above, when assessed against the policies in the Framework taken as a whole; or specific policies which seek to protect heritage assets. So, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Louise Crosby

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Cannock	Of Counsel. Instructed by the Solicitor to Ribble Valley Borough Council
He called	Mr Aydin Zorlutana Mr Adrian Dowd Mr John Macholc Mr Colin Hirst

FOR THE APPELLANTS:

Mr Christopher Boyle QC	Of Counsel. Instructed by Graham Love of Turley Associates
He called	Mr Roger Mascall Mr Jonathan Berry Mr Graham Love Mr Phillip Livesley

INTERESTED PERSONS:

Ms Copley	CPRE
Mr M Diack	Local resident
Mr R J M Loebell	As above
Ms K Czapowski	As above
Mr S Scott	As above
Mr M Harper	As above
Mrs Higgins	As above
Mr N Walker	As above
Mr Barker	As above

DOCUMENTS

- 1 Copy of letter of notification of the inquiry
- 2 Photographs of Stockport Viaduct
- 3 Appellants' rebuttal statement in relation to an education contribution
- 4 Appellants' position statement in relation to an education contribution
- 5 Statement of Common Ground – highway matters
- 6 Draft Section 106 agreement (v10)
- 7 Statement of Common Ground – design matters
- 8 Opening submissions on behalf of the appellants
- 9 Mrs Copley's statement to the inquiry on behalf of CPRE
- 10 Mr N Walker's (local resident) statement to the inquiry
- 11 Written statement from Save Whalley Action Group (Mrs Higgins) statement to the inquiry
- 12 Mr R J M Loebell's (local resident) statement to the inquiry
- 13 Ms K Czapowski's (local resident) statement to the inquiry
- 14 Statement on behalf of Lancashire County Council in relation to education
- 15 Agreed education position statement between the main parties
- 16 Mr M Diack's (local resident) statement to the inquiry
- 17 Updated HLS calculation (17 May 2013)
- 18 Copies of correspondence between Mr M Diack and Mr Moir (County

- Archaeologist)
- 19 Mr S Scott's (local resident) statement to the inquiry
 - 20 Copy of brief for Mr Livesley from David Wilson Homes (North West)
 - 21 Red line plans for Lawsonsteads
 - 22 Mr M Harper's (local resident) statement to the inquiry
 - 23 Draft planning conditions (version 2)
 - 24 Agreed 5 year HLS calculations (20 May 2013)
 - 25 Copy of report to RVBC planning and development committee, entitled Housing Land Availability (dated 17 Jan 2013)
 - 26 Pages 10 & 11 of Circular 01/2006
 - 27 Copy of e-mail, dated 16 May 2013, from Sarah Wozencroft to Colin Hirst
 - 28 Appellants' statements on Planning Obligations (21 May 2013)
 - 29 Copy of Lancashire County Council - Planning Obligations in Lancashire Methodology – Contributions towards education places – Update December 2012
 - 30 Planning Obligations in Lancashire Policy
 - 31 Appellants' written response to third party representations, including the highway safety concerns raised by Mrs J Higgins
 - 32 Draft planning conditions (version 3)
 - 33 Written closings on behalf of third parties presented by Mr Diack
 - 34 Mr Cannocks's closing submissions on behalf of the Council
 - 35 Mr Boyle's closing submissions on behalf of the appellants

DOCUMENT SUBMITTED AFTER THE INQUIRY

Signed version of the Unilateral Undertaking dated 12 June 2013.

ANNEX

Schedule of conditions in respect of planning permission granted for the erection of 116 No two, three, four and five bedroom dwellings and 21 No one bedroom bungalows, together with associated landscaping, open space, drainage infrastructure, car parking and access roads at Mitton Road, Whalley, Lancashire.

Commencement of Development

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.

Drawings and Plans

- 2) This permission shall be implemented in accordance with the proposal as detailed on drawings:

Site location plan NW-09-16

Boundary Plan NW-09-17

Proposed Planning Layout (presentation) Plan NW-09-06D

House Type Portfolio Plans NW-09-07 Rev C (listed as they appear in the document):

House Type CE4 House Ref H421---5 planning 2 of 2 (plots 23, 24, 58, 120, 121, 132, 133, 136)

House Type CE4 House Ref H421---5 planning 1 of 2 (plots 23, 58, 120, 133)

House Type CE4 House Ref H421---5 planning 1 of 2 (plots 24, 121, 132, 136)

House Type CE5 House Ref H431---5 planning 1 of 2 (plots 18, 19, 21, 22)

House Type CE5 House Ref H431---5 planning 2 of 2 (plots 18, 19, 21, 22)

House Type CE6 House Ref H431---5 planning 1 of 2 (plot 20)

House Type CE6 House Ref H431---5 planning 2 of 2 (plot 20)

House Type CE7 House Ref H436--X5 planning 2 of 2 (plots 25, 59, 73 & 76)

House Type CE7 House Ref H436--X5 planning 1 of 2 (plots 59, 73, 76)

House Type CE7 House Ref H436--X5 planning 1 of 2 (plot 25)

House Type CE8 House Ref H455---5 planning 1 of 2 (plot 123)

House Type CE8 House Ref H455---5 planning 2 of 2 (plot 123)

House Type CE9 House Ref H469---5 planning 1 of 2 (plot 57, 74, 75, 122)

House Type CE9 House Ref H469---5 planning 2 of 2 (plot 57, 74, 75, 122)

House Type CE11 House Ref H500---5 planning 1 of 2 (plots 119, 131, 135)

House Type CE11 House Ref H500---5 planning 2 of 2 (plots 119, 131, 135)
House Type CE13 House Ref H536---5 planning 1 of 2 (plots 56, 118, 134)
House Type CE13 House Ref H536---5 planning 2 of 2 (plots 56, 118, 134)
House Type CY1 House Ref P206---5 planning (plot 107)
House Type CY2 House Ref SH35---5 Rev A (plots 26, 30 & 38)
House Type CY2 House Ref SH35---5 Rev A (plots 5, 36, 51, 66 & 72)
House Type CY3 House Ref P231-W-5 (plots 110)
House Type CY3 House Ref P231-W-5 (plots 65* & 90*)
House Type CY4 House Ref P231-V-5 (plots 79, 1118, 126)
House Type CY6 House Ref P331---5 (plots 92, 103 & 104)
House Type CY6 House Ref P331---5 (plots 77)
House Type CY7 House Ref P382---5 (plots 49,50, 53-55, 69-71, 78, 80, 81, 91, 108, 109, 112, 113, 127-129)
House Type CY8 House Ref H431---5 planning 1 of 2 (plot 117)
House Type CY8 House Ref H431---5 planning 2 of 2 (plot 117)
House Type CY8 House Ref H431---5 planning 1 of 2 (plot 12)
House Type CY8 House Ref H431---5 planning 2 of 2 (plot 12)
House Type CY10 House Ref H455---5 planning 1 of 2 (plots 11, 82, 83, 114, 115, 124, 125, 130)
House Type CY10 House Ref H455---5 planning 2 of 2 plots 11, 82, 83, 114, 115, 124, 125, 130)
House Type CY11 House Ref H469---5 planning 1 of 2 (plot 116)
House Type CY11 House Ref H469---5 planning 2 of 2 (plot 116)
House Type CY12 House Ref SH27---5 Rev A (plots 13, 14, 15, 16 17, 29, 67, 68, 84, 85, 86, 87, 105 & 106)
House Type CY12 House Ref SH27---5 Rev A (plots 1, 2, 3, 4 27 & 28)
House Type CY13 Walsham (plot 52)
House Type CY14 House Ref SH38---5 Rev A (plots 9, 10 & 37)
House Type CY14 House Ref SH38---5 Rev A (plots 6 & 7)
House Type CY15 Walsham Splayed (plot 8)
House Type V1 Ruby (plots 35, 64, 89)
House Type V2 Ruby (plots 32, 33, 34, 61, 62, 63)
House Type V3 Ruby (plots 31, 60, 88)
Plan NW-09-11A Planning Plots 39-40 and 137
Plan NW-09-12 Planning Drawing Plots 93-102
Country Edge Garages CEG1, CEG2, CEG3, CEG4, CEG5, CEG6

Courtyard Garages CYG1, CYG2, CYG3
Pumping Station Rev A
Planning Plots 39 – 48 & 137 Plan NW-09-11A
Planning Drawing Plots 93 – 102 Plan NW-09-12
Materials Plan NW-09-13C
Colour Street Scenes Plan NW-09-14A
Proposed Site Sections Plan NW-09-15

External Materials

- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Energy Supply

- 4) Not less than 10% of the energy supply required for the development (after completion) shall be secured from decentralised and renewable or low carbon energy sources. Details and a timetable of how this is to be achieved shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development on site. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.

Code for Sustainable Homes

- 5) The dwellings hereby permitted shall achieve a minimum rating level 3 of the Code for Sustainable Home. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code level 3 has been achieved.

Flooding and Drainage

- 6) The development hereby permitted shall be carried out in accordance with the Flood Risk Assessment submitted by David Wilson Homes/RSK dated July 2012 and letter from RSK dated 30 August 2012 given reference number 880213/CW/L02.
- 7) No development other than the formation of the site access shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented, maintained and managed in accordance with the approved details prior to completion of the first dwelling for that phase of the development and adhered to at all times thereafter.
- 8) No development other than the formation of the site access shall take place until a strategy outlining the system of drainage for foul and sewage waste arising from the entire site has been submitted to the Local Planning Authority and approved in writing. This strategy shall include details of any necessary infrastructure including the foul water pumping station. The foul water pumping station shall have a maximum foul pumping rate set at no greater than 5 l/s and shall include sufficient foul

storage to satisfy the design criteria outlined in SFA 6th edition. Thereafter the detailed schemes for foul and sewage waste disposal for the development shall be submitted for approval in accordance with the strategy for the entire site approved under this condition. No dwellings shall be occupied until the approved foul drainage scheme has been completed in accordance with the approved details.

- 9) No development shall commence on site until a scheme, hereinafter called the Sewer Approved Method Statement, for working near the sewers on site has been submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the Sewer Approved Method Statement, unless agreed otherwise in writing with the Local Planning Authority.

Landscaping, Trees and Nature Conservation

- 10) In this condition retained tree means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs v) and vi) below shall have effect until the expiration of 5 years from completion of the final phase of development:
- i) Before the development begins (including any site preparation works and the delivery of materials or any excavations) all trees and hedgerows identified for retention in the Tree Report dated July 2012 by Pinnacle Environment Ltd shall be protected in accordance with British Standard 5837 2012 (Trees in Relation to Demolition, Construction and Design), the details of which shall be agreed in writing by the Local Planning Authority and implemented in full. A Tree Protection Monitoring Schedule shall also be agreed and the tree protection measures shall be inspected by the Local Planning Authority before the site works are begun.
 - ii) During the building works, no excavations or changes in ground levels shall take place and no building materials/spoil/soil/rubble shall be stored or redistributed within tree Root Protection Areas. No impermeable surfacing shall be constructed within the Root Protection Areas.
 - iii) No disturbance, pruning or other arboricultural works to any retained tree identified within Table 3.2 of the Ecological Survey and Assessment dated July 2012 as suitable or with low to moderate potential for bat roosts shall take place until a detailed investigation by a qualified and licensed ecologist has taken place. The results of any investigation including details of any mitigation measures required, along with an implementation plan, shall be submitted to and approved in writing by the Local Planning Authority before any tree works take place.
 - iv) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped without the written approval of the Local Planning Authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (Tree Work).
 - v) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be

planted at such time as may be specified in writing by the Local Planning Authority.

- vi) The development shall be carried out in full compliance with the Tree Report dated July 2012 unless the Local Planning Authority agrees in writing to any variations to the requirements of the assessment.
- 11) No development shall take place until a detailed Method Statement for the removal and/or treatment and control of Japanese Knotweed (*Fallopia Japonica*) on site has been submitted to and approved in writing by the Local Planning Authority. The Method Statement shall include details of the proposed working methods to be adopted to prevent the spread of the species during any operation such as mowing, strimming or soil movement. It shall also contain measures to ensure that any soils brought to the site are free of the seeds/root/stem of any invasive plant covered under Schedule 9 of the Wildlife and Countryside Act 1981. Development shall proceed in accordance with the approved Method Statement.
- 12) Before practical completion of the first dwelling details of an external lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The lighting scheme shall demonstrate that artificial illumination of wildlife habitats (including the River Calder and its banks, boundary trees and shrubs and hedgerows) is prevented and minimised. The approved lighting scheme shall be carried out and permanently maintained in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.
- 13) No tree felling/vegetation clearance works, or other works that may affect nesting birds shall take place between 1st March and 31st August inclusive. In the event that works are required to be carried out during the nesting period a comprehensive risk assessment in order to establish the absence/presence of nesting birds should be undertaken. The report of the assessment (together with proposals for mitigation/compensation, if required) shall be submitted to and approved in writing by the Local Planning Authority prior to any works being undertaken. Thereafter, the works shall be carried out in accordance with any necessary and approved measures.
- 14) No development (including clearance of site vegetation) shall take place until a repeat survey for the presence of badgers has been undertaken. The report of the survey (together with proposals for mitigation/compensation, if required) shall be submitted to and approved in writing by the Local Planning Authority in consultation with specialist advisors. Any necessary and approved measures for the protection of badgers shall thereafter be implemented in full.
- 15) The removal of any hedgerow, shrub, vegetation or tall grass or other works that may affect brown hares shall be avoided between 1st February and 30th September inclusive. In the event that works are required to be carried out during the breeding season the area shall be surveyed by a suitably experienced ecologist for the presence/absence of brown hares and their young four weeks prior to the commencement of activities. The results of the survey shall be submitted to and approved in writing by the Local Planning Authority prior to any works being carried out. If the survey demonstrates absence of brown hare and their young then

development may commence. However, if the survey determines their presence, then the area must be avoided and further surveys conducted at four-week intervals with the results submitted to the Local Planning Authority for approval in writing until their absence can be demonstrated.

- 16) Prior to occupation of the first dwelling, a landscape management plan including long term design objectives, timing of the works, management responsibilities and maintenance schedules for all landscaped areas (other than within curtilages of buildings) including the play area, shall be submitted to and approved in writing by the Local Planning Authority. The management plan shall also provide precise details of all play equipment and its maintenance and indicate a timescale when the play space shall be provided and made available for use. The landscape management plan shall be carried out in accordance with the details so approved.
- 17) Prior to practical completion of the first dwelling details of the landscaping of the site, incorporating the recommendations of paragraphs 5.10.3 to 5.10.13 inclusive of the Ecological Survey and Assessment dated July 2012 (identifying how the biodiversity of the site will be enhanced, and including wherever possible the retention of existing trees) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall indicate, as appropriate, the types and numbers of trees and shrubs, their distribution on site, those areas to be seeded, turfed, paved or hard landscaped, including details of any changes of level or landform, specific details for the creation of the pond including its size, shape, location, planting list, cross section drawing and management plan and the types and details of all fencing and screening throughout the site.

The approved landscaping scheme shall be implemented in the first planting season following occupation or use of the development, whether in whole or part and shall be maintained thereafter for a period of not less than 5 years to the satisfaction of the Local Planning Authority. This maintenance shall include the replacement of any tree or shrub which is removed, or dies, or is seriously damaged or diseased, with one of the same species to those originally planted, and of similar size to that removed.

- 18) Before practical completion of the first dwelling details of all garden boundary fencing shall be submitted to and approved in writing by the Local Planning Authority to identify the measures to be taken to encourage habitat connectivity in accordance with paragraph 5.8.1 of the submitted Ecological Survey and Assessment dated July 2012.

Noise Mitigation

- 19) Prior to first occupation of plots 1-5 the noise mitigation measures as detailed in paragraphs 3.4 and 3.6 of the submitted Noise Assessment dated July 2012 shall be provided and thereafter retained.

Construction Management Plan

- 20) No development shall take place until a Construction Method Statement has been 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) a management plan to control the emission of dust and dirt during construction identifying suitable mitigation measures;
- vii) a scheme for recycling/disposing of waste resulting from construction work (there shall be no burning on site);
- viii) a Management Plan to identify potential ground and water contaminants; details for their storage and how the River Calder will be protected against spillage incidents and pollution during the course of construction; and
- ix) a scheme to control noise during the construction phase.

Roads, Parking and Travel

- 21) No part of the development hereby approved shall commence until the site access (plan SCP/12036/SCP1/REVB) the King Street lay-by (plan SCP/12036/FO2) and a bus stop on the western side of Mitton Road have been constructed in accordance with details first submitted to, and approved in writing by the Local Planning Authority in consultation with the Highway Authority.
- 22) No part of the development hereby approved shall commence until a scheme for the construction of the emergency access (plan SCP/12036/FO3/REVB) has been first submitted to, and approved in writing by the Local Planning Authority in consultation with the Highway Authority. The scheme shall be constructed in accordance with the approved details prior to the occupation of the 50th dwelling and thereafter retained.
- 23) No more than 50 dwellings shall be occupied until the Full Travel Plan has been submitted to, and approved in writing by, the Local Planning Authority. The Travel Plan shall include objectives, targets, measures and funding mechanism to achieve targets, monitoring, implementation timescales for delivery (which exceeds the build out period), and the provision of a travel plan co-ordinator. The plan will be carried out, audited and updated in accordance with the approved details.
- 24) At no time in the future shall the emergency route onto Broad Lane be opened up as a public highway for all vehicular traffic. The link shall remain solely for the use of pedestrians, cyclists, public and emergency services.
- 25) No heavy goods vehicles shall enter or leave the site between the hours of 0830 and 0930 and 1500 and 1600 hours.