**Re: land adjacent to John Smith Playing Field, Chaigley Road, Longridge**

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**ADVICE**

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1. I am asked to advise Mr Andrew Billington in respect of a planning application (ref:3/2017/1100) on land 'adjacent to John Smith Playing Field, Chaigley Road, Longridge, PR3 3TQ' ('the Site') for 'up to 15 self-build dwellings (30% affordable self build) including access'.

2. The application was submitted to Ribble Valley Borough Council ('the Council') on 20th November 2017 and is due to be determined by the Council's planning committee on Thursday 8th March 2018. I have been provided with the officer's report to committee ('the Report') which recommends refusal for three reasons. I am asked to advise on the first reason:

> '1. The proposal is considered contrary to Key Statements DS1, DS2 and Policies DMG2 and DMH3 of the Ribble Valley Core Strategy in that the approval would lead to the creation of new residential dwellings in the defined open countryside, located outside of a defined settlement boundary, without sufficient justification which would cause harm to the development strategy for the borough leading to the creation of an unsustainable pattern of development

contrary to the core aims and objectives of the adopted Core Strategy and the NPPF presumption in favour of sustainable development'.

3. Those instructing me disagree with this characterisation. They contend that the application provides for a local need for self-build housing opportunities. Further the provision of such allocations and opportunities is a duty upon the Council since the coming into force of the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016).

4. Section 1 of the 2015 Act requires:

> s.1(1) Each relevant authority must keep a register of—
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> (a) individuals, and
>
> (b) associations of individuals,
>
> who are seeking to acquire serviced plots of land in the authority's area for their own self-build and custom housebuilding.

5. Further section 2 provides:

> 2 (1) Each of the authorities mentioned in subsection (2) must have regard to each register under section 1 that relates to its area when carrying out the functions mentioned in subsection (4).
>
> …
>
> (4) The functions referred to in subsection (1) are functions relating to—
>
> (a) planning;

6. The 2015 Act continues:

> 2A Duty to grant planning permission etc
>
> (1) This section applies to an authority that is both a relevant authority and a local planning authority within the meaning of the Town and Country Planning Act 1990 ("the 1990 Act").

(2) An authority to which this section applies must give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period.

(3) Regulations must specify the time allowed for compliance with the duty under subsection (2) in relation to any base period.

(4) The first base period, in relation to an authority, is the period—

> (a) beginning with the day on which the register under section 1 kept by the authority is established, and
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> (b) ending with 30 October 2016.

Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period.

(5) In this section "development permission" means planning permission or permission in principle (within the meaning of the 1990 Act).

(6) For the purposes of this section—

> (a) the demand for self-build and custom housebuilding arising in an authority's area in a base period is the demand as evidenced by the number of entries added during that period to the register under section 1 kept by the authority;
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> (b) an authority gives development permission if such permission is granted—
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> (i) by the authority,
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> (ii) by the Secretary of State or the Mayor of London on an application made to the authority, or
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> (iii) (in the case of permission in principle) by a development order, under section 59A(1)(a) of the 1990 Act, in relation to land allocated for development in a document made, maintained or adopted by the authority;
>
> (c) development permission is "suitable" if it is permission in respect of development that could include self-build and custom housebuilding.

(7) A grant of development permission in relation to a particular plot of land may not be taken into account in relation to more than one base period in determining whether the duty in this section is discharged.

(8) No account is to be taken for the purposes of this section of development permission granted before the start of the first base period.

(9) Regulations under subsection (3)—

(a) may make different provision for different authorities or descriptions of authority;

(b) may make different provision for different proportions of the demand for self-build and custom housebuilding arising in a particular base period.

7. Section 2B provides that a council can apply for an exemption from its s.2A duty subject to conditions prescribed in Regulations. I do not understand the Council to have applied for such an exemption and in light of Regulation 11 of the Self-build and Custom Housebuilding Regulations 2016/950 I do not see that the Council could apply for such an exemption

8. The Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016/1027 provide at Regulation 2. Time for compliance with duty to grant planning permission:

> The time allowed for an authority to which section 2A of the Act (duty to grant planning permission etc) applies to comply with the duty under subsection (2) of that section in relation to any base period is the period of 3 years beginning immediately after the end of that base period.

9. Therefore, the Council has a duty to grant sufficient planning permissions to account for the demand arising in each base period for self-build plots as recorded in its self-build register. The base periods are twelve months running from the 31st October each year. There have been two base period end dates since the 2015 Act came into force: 30th October 2016 the most recent base period ended on 30th October 2017. The Council has a duty to grant sufficient permissions within three years of those base period end dates for demand arising within those periods.

10. The duty exists under the Act and the metric of how the demand is measured is prescribed by the Act. No alternative measure of demand is provided.

11. The Council should maintain a self-build register and it is the measure of demand. It would seem to me that it is also the obvious, and statutorily prescribed, measure of the need for a specialised form of housing. Just as councils are required to understand their market and affordable housing need they are also required to understand the need for

other specialist housing such as that for the elderly or in this case those wishing to self-build.

12. The 2015 Act is unusual in clearly specifying how such demand is to be understood. Section 2(4) of the 2015 Act is important in confirming that the duty towards self-builders and the requirements of the Act relate to planning functions. Therefore, it seems clear to me that whilst the 2015 Act addresses the issue as 'demand' the Act also prescribes how 'need' for such specialist housing is to be understood for planning purposes.

13. The primacy of the 'demand' metric under the 2015 Act is confirmed in the NPPG:

> **What is the relationship between the register and the Strategic Housing Market Assessment?**
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> Local planning authorities should use the demand data from the registers in their area, supported as necessary by additional data from secondary sources (as outlined in the housing and economic development needs guidance), when preparing their Strategic Housing Market Assessment to understand and consider future need for this type of housing in their area. Plan-makers will need to make reasonable assumptions using the data on their register to avoid double-counting households.
>
> Paragraph: 011 Reference ID: 57-011-20160401
>
> Revision date: 01 04 2016

14. From the foregoing it is apparent that the Council must rely upon the register as its measure of need. It is allowed, under the guidance, to carry out secondary research 'as necessary' but such licence as granted by the guidance is not sufficient to trump the requirement to rely upon the register and does not excuse the Council from failing to fulfil its duties under the 2015 Act whilst such research, if any is proposed, is pending.

15. Those instructing have proceeded on the basis that the proposal complies with the local plan under DMH3 as, in spite of seeking development in an area the Council contends to be open countryside, it is within the exception for the meeting of identified local need. The Council has not accepted that submission, in the officer report, as it is contended that self-build is not a local need for the purposes of the local plan.

16. In this, I think the Council has a serious risk of falling into error for the following reasons:

17. The Council has a statutory duty to provide development plots of those who wish to self build. It is a statutory duty which the 2015 Act imposes **into** planning functions.

18. I would note that this is in fact, arguably, a higher duty than for other forms of housing. The requirement to provide for other forms of housing is a prescription from national policy that local plans (which statute says should be followed) should provide for housing need of various kinds. That is, the duty to provide for housing need in general is the result of a duty articulated through guidance and then by the operation of s.38(6).

19. Here, the duty needs no such articulation, it is clear upon the face of the 2015 Act. From that it is a freestanding duty beyond the duty under s.38(6) to follow the local plan. Section 38(6) requires the local plan be followed unless material considerations indicate otherwise. One such material consideration would be an Act of Parliament imposing a specific planning duty to provide planning permission for this specialist form of housing. The weight for a material consideration is a matter for the decision maker but the weight of a duty imposed by a **primary piece of legislation from Parliament** must be significant verging, I would hazard, on overwhelming.

20. From the officer's report and telling comments that 'concerns have been conveyed verbally in respect of potential implications for the Local Authority resultant from the Self-Build Act' and that 'further work may need to be commissioned in respect of the

obligations the act places on the authority' and 'works have not commenced on such matters' (para.5.1.10) it would appear the Council has not considered the significant implication of this Act or if it has it is only just beginning but one senior officer (Head of Housing and Regeneration) has begun to recognise the impact of this duty.

21. I note that para.5.1.10 raise concerns over 'future implications given the timescales and obligation for granting a suitable number of self-build consent to match the level of demand which is reflected within the self-build register'. I would only observe that these are not future implications: it is a live statutory duty and there is a self-build application before the Council now. The duty is material under the planning acts and the 2015 Act reiterates that it must have regard to that demand in exercising its planning functions.

22. Further, even ignoring that the Council is now under a legal duty to provide plots for self-builders, I consider that the officer's local plan analysis is short sighted. There is a specialist form of housing need (self-build) which those instructing me submit falls within the terms of DMH3. If, as the report states, that analysis is not accepted what then does the current local plan have to say about self-build and addressing that need: where is the relevant policy?

23. The officer report relies upon no other provisions of the extant plan. Such a policy would be, if it existed, central to the consideration of this application. Rather, there is no specific policy. If this need has no policy provision and it does not fall within the terms of DMH3 then the local plan is 'silent' as per the second bullet point of the decision making provisions of para.14 of the NPPF and the tilted balance is the relevant decision making test:

> where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless:
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> —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.

24. The Report does not analyse the decision on the basis that it is either plan compliant with DMH3 (the submissions of those instructing me) or that the plan is silent on self-build and as such permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of doing so.

25. The adverse impacts are particularised in the reasons as development beyond a disputed development boundary and an alleged visually and morphologically anomalous development affecting the appearance and character of the area and landscape. Those adverse effects would have to outweigh significantly and demonstrably the Council comply with its legal duty under the 2015 Act to meet a specialised housing need along with the numerous benefits particularised in the planning statement that accompanied the application[1] and the context of a local planning authority with a marginal housing land supply.

26. Under either analysis the Report is legally wrong. I advise accordingly, if I can be of any further assistance please do not hesitate to contact me.

ANTHONY GILL

6th March 2018

KINGS CHAMBERS

MANCHESTER, LEEDS, AND BIRMINGHAM

[1] Para.7.4