

Michael Joyce
The Planning Inspectorate
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By post and email to: North2@planninginspectorate.gov.uk

9 July 2019

EP ref: 18-406

Ben Pycroft
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Dear Mr Joyce

Re: APP/T2350/W/19/322816 - Land to the south of Chatburn Old Road, Chatburn

Thank you for sending us a copy of the LPA's appeal statement and the comments made by third parties. Please find enclosed a statement in response to these documents.

Request for the review of the appeal procedure

You will recall that when we submitted the appeal, we requested it be dealt with by way of a hearing for the following reasons:

- Firstly, because the Inspector will need to test the evidence in relation to the application of Core Strategy policies DMG2 and DMH3 by questioning or to clarify matters;
- Secondly, because the Inspector will need to test the evidence in relation to Chatburn's housing requirement and supply by questioning or to clarify matters; and
- Thirdly, because the case has generated a level of local interest such as to warrant a hearing.

On 21st May 2019, you wrote to us to explain that the appeal will be dealt with by written representations because it was considered the Inspector can reach a properly informed decision without the need to ask questions.



On 24th May 2019, we wrote to you to respectfully ask that the procedure be reviewed once the LPA's appeal statement has been received. The LPA's statement has now been received and asserts that the proposed development is contrary to policies DMG2 and DMH3 of the Core Strategy because it is located outside of the settlement boundary of Chatburn. This was **not** the LPA's case at the examination of the Housing and Economic Development DPD in January 2019, or in the officer's report for the resubmitted PiP application at the appeal site or at a recent public inquiry into an appeal for 110 dwellings on land at Henthorn Road, Clitheroe (PINS ref: 3221189). We therefore maintain that before s/he could accept the case advanced by the LPA, the Inspector will need to test evidence in relation to the application of these policies by questioning or clarifying matters.

The LPA's statement does not address the detailed points we made in our appeal statement about there being a shortfall of 13 dwellings against Chatburn's minimum housing requirement set out in the Core Strategy. The LPA's statement simply states that only one dwelling is required. Consequently, we maintain that the Inspector will need to test the evidence in relation to Chatburn's housing requirement and supply by questioning or to clarify matters.

Consequently, in light of the LPA's statement, we respectfully request that as the Inspector will need to test the LPA's changed position in the context of our costs claim, the procedure be reviewed. For the reasons given above, a hearing is necessary to dispose of this appeal fairly and properly.

Application for costs

The Appellant wishes to make a full application for costs against the Local Planning Authority because the LPA has behaved unreasonably and the unreasonable behaviour has directly caused the Appellant to incur unnecessary and wasted expense in the appeal process. This is for the reasons set out below.

As the Inspector will be aware, the scope of permission in principle is limited to location, land use and amount of development. If the appeal is successful and permission in principle is granted, other matters would then be considered at the technical details consent stage. The fact that 'permission in principle' has been granted, does not mean that an implementable planning consent cannot be refused where 'technical details' indicate that it is the appropriate outcome.

In September 2018 the appeal application was refused for one reason, which alleged that the principle of residential development at the appeal site would be contrary to policies DMG2 and DMH3 of the Core Strategy.

In October 2018, the appeal application was resubmitted to give the LPA an opportunity to reconsider the application before an appeal was made. The resubmitted application was accompanied by a planning statement by Emery Planning, which explained why the proposals were in accordance with policies DMG2 and DMH3. Unlike their recommendation for the appeal application, the officers of the LPA considered that the resubmitted application should be approved because they agreed the proposal is in accordance with policies DMG2 and DMH3 (i.e. the same two policies referred to in the reason for refusal).

There are two reasons why the officers agreed that the proposal is in accordance with the Core Strategy policies:

- 1 – Because they agreed with our planning statement that the proposed development complies with the definition of "expansion" as set out in the Glossary of the Core Strategy, which is allowed beyond the settlement boundaries of Tier 1 Villages such as Chatburn under policy DMG2 of the Core Strategy; and
- 2 – Because in January 2019, the Council presented a case to the Inspector examining the emerging Housing and Economic Development DPD that no further sites for housing need to be allocated in the plan to meet the housing requirement to 2028, because Core Strategy policies DMG2 and DMH3 are permissive of residential development beyond the settlement boundaries. In doing so, the LPA had provided the HED DPD Inspector with a list of sites where it had approved planning permission for residential development beyond the

settlement boundaries even though it claimed at that time it could demonstrate a five year housing land supply.

At the meeting on 7th February 2019, members were however minded to refuse the resubmitted application contrary to the recommendation of their officers. The appeal against the original application was then made on 1st March 2019 before the deadline for appealing (i.e. 7th March 2019).

On 14th March 2019, the resubmitted application was again presented to the Planning Committee where it was again recommended it be approved. However, members voted against the recommendation and the resubmitted application was refused for the same reason as the appeal application on 15th March 2019. This was clearly contrary to the position that the Council had advanced at the HED DPD examination, i.e. policies DMG2 and DMH3 are permissive of residential development beyond the settlement boundaries.

Since the appeal was lodged, an appeal against the Council's decision to refuse to grant outline planning permission for 110 dwellings at land at Henthorn Road, Clitheroe was made (PINS ref: 3221189). That appeal was dealt with by way of a public inquiry, which took place on 8th, 9th and 10th May. The Henthorn Road appeal site is located outside of but adjacent to the settlement boundary of Clitheroe. Whilst conflict with policy DMG2 of the Core Strategy was identified as a reason for refusal of planning permission for that proposal, during the public inquiry the Council accepted that the policy is permissive of development outside the settlement boundary of Clitheroe. This is because the glossary to the Core Strategy explains that "consolidation" and "expansion" of development are not confined to being within the settlement boundaries. Clitheroe is one of three principal settlements. However, the part of policy DMG2 which allows "expansion" and "consolidation" also applies to Tier 1 settlements such as Chatburn. It is not surprising that this was the LPA's case at the Henthorn Road public inquiry because this was also the position that it had presented to the HED DPD Inspector earlier in the year about the application of policy DMG2.

Notwithstanding the above, the LPA's statement of case now claims that policy DMG2 of the Core Strategy does not allow development beyond the settlement boundaries. It claims that reference to "expansion" and "consolidation" is only allowed within the settlement boundaries. This is contrary to the definitions given in the Core Strategy, the LPA's position at the HED DPD examination and the LPA's position at the Henthorn Road inquiry. As above, the HED DPD examination took place in January 2019 and the public inquiry for the Henthorn Road appeal took place at the beginning of May. The LPA was therefore clearly well aware of the case it had presented to recent Planning Inspectors in relation to how it considers policies DMG2 and DMH3 of the Core Strategy should be applied long before it submitted its statement of case.

The LPA has behaved unreasonably. It refused to approve the resubmitted application by referring to the same policies that it had previously informed the HED DPD Inspector allowed development beyond settlement boundaries in settlements such as Chatburn. As a result, the appeal was made. Furthermore, whilst at the Henthorn Road public inquiry, the LPA conceded that policies DMG2 and DMH3 were permissive of development beyond settlement boundaries, it now claims at this appeal this is not the case.

Paragraph 16-049 of the PPG¹ includes a non-exhaustive list of the type of behaviour that may give rise to a substantive award of costs against an LPA. This includes:

- "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations"; and
- "not determining similar cases in a consistent manner".

Both of these points apply and therefore, we respectfully request that a full award of costs against the LPA is granted.

¹ Paragraph: 049 Reference ID: 16-049-20140306: "What type of behaviour may give rise to a substantive award against a local planning authority?"

Site visit

When the Inspector visits the site, he or she is welcome to park at the compound for the adjoining building site.

Should you require any further information, please do not hesitate to contact me.

Yours sincerely
Emery Planning

Ben Pycroft

Ben Pycroft BA (Hons), DIP TP, MRTPI
Associate Director