

AN APPEAL RELATING TO THE PROPOSED DEVELOPMENT OF UP TO 110

DWELLINGS ON LAND AT HENTHORN ROAD, CLITHEROE, BB7 2PL

COSTS APPLICATION BY THE APPELLANT

1. The Appellant's application is for a full award of costs, with an application for a partial award of costs if that primary contention should fail.
2. The Council has behaved unreasonably as regards the substance of the case and that unreasonable conduct has caused the Appellant to incur expense unnecessarily. The Appellant says that the following examples in PPG ID ref 16-049-20140306 of unreasonable conduct are particularly pertinent to this case:
3. Preventing development which should clearly be permitted;
4. Failing to provide evidence to substantiate each reason for refusal (and, by analogy, discrete elements of a single reason for refusal);
5. Persisting in objections to development which an Inspector has previously indicated to be acceptable;
6. Not determining similar cases in a consistent manner (and, by analogy, not treating an application consistently with a similar decision made on appeal); and

7. Not reviewing the merits of a case promptly after the lodging of an appeal.

8. The grounds of the application for a full award of costs are that the Council has behaved unreasonably by not producing evidence to substantiate its case and the reason for refusal. The application should be considered in the light of the detailed arguments on the merits set out in the Appellant's closing, which are not repeated here. In short:

- a. There was never an attempt to justify the contention that the proposal was in breach of policy DMG2 by being located outside of the settlement limit of Clitheroe, despite that point being set out in the reason for refusal and spelt out in detail in the Statement of Case;
- b. The Council does not contend that residents of the appeal site would "wholly reliant" upon the private car, contrary to the reason for refusal;
- c. The Council accepts that the concerns about access by cycle are unevidenced;
- d. The Council's sole case now comes down to an allegation about a lack of accessibility on foot and by bus, the latter point being a recent addition to the reason for refusal. The Council's case on these issues has no merit for the reasons set out in closing. The case on walking is an over-reliance on arbitrary figures. The bus service would be secured for a considerable period additional to that secured by the scheme on the neighbouring site. But the key pointer towards the Council's unreasonable conduct in failing to provide a substantial

case on accessibility is that it has never cogently explained why the appeal site is different from the neighbouring two sites where development has recently taken place and which were permitted in one case on appeal and in another by the LPA. Again, the reasons for that are set out in full in closing.

9. The Council has produced a respectable case on five year supply, but that does not assist them in resisting the costs application. That is because the Council accepts that if the site is accessible, permission should be granted even if there is a five year supply. The Council's entire case hinges on the limited remaining aspects of accessibility. As there is no substantial case on those issues, permission ought not to have been refused, whatever conclusion is drawn from the evidence on housing supply.
10. The Council's failure to even try to defend aspects of the reason for refusal and the failure to provide substantial evidence on the points it does still pursue (including explaining why the appeal site is different from the neighbouring sites) is unreasonable conduct.
11. That unreasonable conduct has caused the Appellant to incur expense unnecessarily. If the abandoned points had not been taken and the insubstantial case on the remaining points had not been pursued and similarly cases treated consistently, then permission would never have been refused and the Appellant need not have appealed. Therefore a full award of costs is justified.
12. If, contrary to that primary contention, it is concluded that the Council has produced sufficient evidence on the points about bus and pedestrian access, then the Appellant seeks a partial award of costs. Raising points in the reason for refusal and Statement of Case and

then not pursuing them is unreasonable conduct. The Appellant knew nothing of the change of approach in relation to DMG2 until Mr Plowman's evidence was received. Until then, it was justified in preparing to respond to the case in the reason for refusal and Statement of Case. It ought not to have been necessary for the Appellant to engage with the issues about policy DMG2 which were contained in the reason for refusal and fleshed out in the Statement of Case if the Council had reviewed its position early and communicated its change of mind at an appropriately early stage. The same is true of the points about cycling. Both Messrs Helme and Lewis have had to deal with those points in their written evidence and so wasted expense has been caused. The Appellant therefore seeks, in the event that the full application fails, a partial award reflecting the Council's unreasonable raising of those issues and the wasted expense to which the Appellant has been put in dealing with them.

MARTIN CARTER

Counsel for the Appellant

10th May 2019

Kings Chambers

Leeds – Manchester – Birmingham.