The Planning Inspectorate

Costs Decision

Hearing Held on 8 October 2019
Site visit made on 8 October 2019

by Graeme Robbie BA(Hons) BPl MRTPI

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

Decision date: 23 January 2020

Costs application in relation to Appeal Ref: APP/T2350/W/19/3223816 land to south of Chatburn Old Road, Chatburn, Clitheroe, Lancashire
Easting: 376585 Northing: 443959

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Rod Townsend (Nest Housing) for a full award of costs against the Ribble Valley Borough Council.
- The hearing was in connection with an appeal against the refusal of permission in principle for residential development of up to 9 dwellings.

Decision

1. The application for an award of costs is allowed partially, in the terms set out below.

Reasons

2. Planning Policy Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and the unreasonable behaviour has direct caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. Applications for an award of costs against a local planning authority may be substantive, relating to the planning merits of the appeal, or procedural, relating to the appeal process. The appellant's claim is made on substantive grounds in that the Council prevented or delayed development which should clearly be permitted, having regard to the development plan, national planning policy and other material considerations and that the Council had not determined similar cases in a consistent manner.

4. The applicant has provided a timeline setting out key dates in relation to the appeal proposal, a subsequent resubmission of the application for permission in principle and the examination of the 'Housing and Economic Development' Development Plan Document (HEDDPD). The Council do not contest the dates set out or indeed the content of the wider timeline, but instead state that steps had been taken to clarify the Inspector's decision in response to the Henthorn Road appeal decision[1].

5. I do not have any details of what steps might have been taken by the Council in this respect. But, on the basis of the timeline provided, whilst it is clear that the Council's approach to Core Strategy (CS) policy DMG2 as set out during

[1] APP/T2350/W/3221189 – Henthorn Road, Clitheroe

examination into the HEDDPD post-dated their consideration of the appeal proposal, that approach was further explored during the Henthorn Road appeal, at which point the Council conceded the revised approach to CS policy DMG2.

6. Although I accept that the Council ultimately set out a clarified position regarding CS policy DMG2[2] this came at a relatively late stage in the appeal process. Whilst there does not appear to be an extended period of inactivity in the exchanges of submissions between the main parties, the Council nonetheless had apparent opportunity to confirm to the appellant its shift in position regarding interpretation of CS policy DMG2 and the key terms therein.

7. It did not do so, and the appellant sought to rebut the Council's approach to this matter as a consequence. The SPS was an attempt to clarify matters but it came too late in the process to avoid the appellant's need to rebut the Council's statement, which clearly set out an alternative position to that which it had previously taken in relation to these other matters. Although the Council's attempt to clarify this matter should be noted and welcomed, coming as it did late in the appeal process it was a matter which the appellant felt could not be avoided and which required discussion at the hearing. An earlier clarification, which on the evidence could have been possible, may have avoided this matter.

8. The evidence leads me to conclude that the Council's late clarification of this matter, which had been considered on two separate occasions and for which the Henthorn Road Inspector provided additional guidance, amounted to unreasonable behaviour which entailed unnecessary expense by the appellant. However, putting aside the Council's approach to the 'consolidation, expansion or rounding off' of principal and tier 1 settlements as set out by CS policy DMG2, that policy also requires proposals to be closely related to the main built up areas of those settlements. The Council's subsequent shift towards reliance on this strand of DMG2 was not unreasonable and, as it requires a judgement to be made, a conclusion can be made either way provided justification can be made. I disagree with the Council for the reasons I have set out in my decision in this respect, nor am I persuaded that there were significant material differences between Henthorn Road circumstances and those of the appeal site, but I am satisfied that sufficient justification for the Council's conclusion was provided.

9. Although I have concluded that the proposed development would be sufficiently closely related to the settlement, I do not consider that the Council acted unreasonably in reaching the conclusion that they did. Nor, having regard to the provisions of CS policy DMH3, which was also referred to in the reason for refusal, did they act unreasonably in assessing the proposal against the relevant 'open countryside' criteria set out in that policy. As in relation to CS policy DMG2, I have reached a different conclusion, but that does not render the Council's approach or assessment in this respect unreasonable. It cannot therefore follow that the appellant has incurred unnecessary.

10. It is a well established approach that each and every planning application must be considered on its own merits. I do not therefore consider that the Council acted unreasonably in terms of 'not determining similar cases in a consistent manner. Although in my decision I have not found in favour of the Council's case, I am satisfied that in relation to CS policy DMH3 and DMG2 insofar as it

[2] Supplementary Planning Statement 20.07.19 (SPS)

relates to assessment of the degree to which the appeal site is closely related to the settlement, the Council have not acted unreasonably and prevented development which should clearly have been permitted. However, the clarification of key terms set out in CS policy DMG2 was not made as early as it could have been in the appeal process. From the evidence this amounted to unreasonable behaviour on the Council's part and entailed unnecessary expense for the appellant. For these reasons a partial award of costs in relation to the appellant's expense incurred in relation to the implications of the late clarification of these key terms is justified.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Ribble Valley District Council shall pay to Mr Rod Townsend (Nest Housing), the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred as a consequence of the Council's late clarification of key terms of CS policy DMG2.

12. The applicant is now invited to submit to Ribble Valley District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

13.

Graeme Robbie

INSPECTOR