

Costs Decision

Site visit made on 11 August 2020

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

**Costs application in relation to Appeal Ref: APP/T2350/W/20/3253310
land at Chatburn Road and Pimlico Link Road, Clitheroe
Easting: 375365 Northing: 443101**

- 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 Oakmere Homes (NW) Ltd for a full award of costs against Ribble Valley Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of 39 dwellings with landscaping and associated works, and access from adjacent development site.
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Decision

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

Reasons

2. Planning Practice 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 thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Applications for an award of costs may be made on procedural or substantive grounds. The Guidance is clear in setting out the circumstances in which a Council could be vulnerable to an award of costs against it. This application for an award of costs is made on substantive grounds.
4. The Guidance cites examples of substantive grounds on which a Council could be vulnerable to costs against it. These include if a Council prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, failed to produce evidence to substantiate each reason for refusal on appeal and not determining similar cases in a consistent manner.
5. The Council's approach to Core Strategy (CS) policy DMG2 in the current instance is clearly at odds with that previously conceded and agreed by the Council in respect of this policy in two recent appeals¹. It was not unreasonable for the appellant to expect that the Council should approach the current appeal proposal in the manner that they had agreed to in these appeals, particularly given their relative and respective timings. The examples

¹ APP/T2350/W/19/3221189 and APP/T2350/W/19/3223816

subsequently cited by the Council² largely, but not completely, pre-date those two appeals and so do not provide compelling justification for adopting a different approach in the current instance

6. Where one of the cited appeal decisions postdates the approach adopted by the Council at Henthorn Road and Chatburn Old Road and adopts a revised position, it is also clear to me that there are other differentiating factors between the two. As such and from the evidence, I have concluded that it does not provide a directly comparable set of circumstances and should not therefore be relied upon to justify an alternative stance to that previously adopted by the Council on more than one occasion.
7. However, the Council were not incorrect in considering the proposal as development in an open countryside location. CS policy DMH3 applies similar provisions as CS policy DMG2 in respect of meeting locally identified housing need and so this matter would always need to be considered, even if the Council's approach to CS policy DMG2 itself contradicts the approach they had previously agreed to and adopted at appeal elsewhere within the borough.
8. Setting aside the provisions of CS policy DMG2, I am satisfied that the Council did not act unreasonably in reaching the conclusion that they did in respect of CS policy DMH3. However, my conclusions on the planning merits of the proposal as set out elsewhere differ from those reached by the Council. I conclude that, on the planning balance, material considerations including the provision of affordable housing and the site's close physical, visual and contextual relationship with the main built area of Clitheroe outweigh the absence of an identified local need to justify housing in the open countryside, as required by CS policy DMH3. My reading of CS policy DMG2 provides further support to my conclusions in these respects.
9. The Council have drawn on other appeal decisions which both pre- and post-date the examples referred to by the appellant, but neither do so on the evidence in sufficiently and comparably direct terms to justify a significant departure from the previously accepted approach to this particular CS policy. Furthermore, the example that post-dates those cases was only introduced at a late state in the appeal process and was not therefore capable of being cited as part of the appeal proposal's initial assessment by the Council.
10. Thus, although I disagree with the Council on the planning balance, the Council's approach to CS policy DMG2 has been contradictory, for which insufficient evidence has been submitted to justify that approach. As such, the Council has provided insufficient evidence to explain why similar cases have not been determined in a consistent manner. This amounts to unreasonable behaviour which has resulted in the appellant incurring unnecessary expense in the preparation of a case regarding CS policy DMG2. The award of costs therefore is a partial one in the terms set out.

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 Borough Council shall pay to Oakmere Homes (NW) Ltd the costs

² APP/T2350/W/20/3248156; APP/T2350/W/17/3186969; APP/T2350/W/17/3174924; APP/T2350/W/17/3185445; APP/T2350/W/19/3235162 and APP/T2350/W/18/3202044

of the appeal proceedings described in the heading of this decision, limited to those costs incurred in making the appeal in respect of that element of the Council's refusal reason that relates to Core Strategy policy DMG2; such costs to be assessed in the Senior Courts Costs Office if not agreed.

12. The applicant is now invited to submit to Ribble Valley Borough 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.

Graeme Robbie

INSPECTOR