



## Costs Decision

Inquiry opened on 14 August 2018

Site visit made on 16 August 2018

**by Martin Whitehead LLB BSc(Hons) CEng MICE**

an Inspector appointed by the Secretary of State

**Decision date: 31<sup>st</sup> August 2018**

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### **Costs application in relation to Appeal Ref: APP/F2360/W/3198822 Land off Brindle Road, Bamber Bridge, Preston, PR5 6AG**

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Bellway Homes Limited (Manchester Division) for a partial award of costs against South Ribble Borough Council.
  - The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of existing buildings and the erection of up to 193 dwellings with associated private gardens, parking, public open space, landscaping and vehicular access from Brindle Road.
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### **Decision**

1. The application for a partial award of costs is refused.

### **The submissions for Bellway Homes Limited (Manchester Division)**

2. The application is for a partial award of costs relating to the Council's persistence in maintaining reliance upon Reason for Refusal No 2 up to and throughout the Public Inquiry. The Reason relates to the effect of existing levels of noise and air pollution on the health and well-being of future residents of the proposed development. In terms of the Planning Practice Guidance (PPG), local planning authorities should follow good practice in the presentation of full and detailed evidence to support their case; they should be encouraged to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case; they should produce evidence to substantiate each reason for refusal and not rely on vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; and they should determine similar cases in a consistent manner.
3. Prior to determination of the planning application the Council had been provided with comprehensive noise and air quality impact assessment reports from reputable and independent consultants. The Council's Environmental Health Officer (EHO) took no issue with the reports and raised no objection to the proposals. The Case Officer recommended approval of the proposals. Council members rejected that advice and Reason for Refusal No 2 was promulgated. On 25 April 2018 the Planning Committee was formally asked by Officers not to contest Reason for Refusal No 2 at the Public Inquiry. The report noted that the Council could not call on in-house expertise to defend it given the previously expressed views of the EHO.

4. As a result of the Council's insistence on maintaining Reason for Refusal No 2, the appellant has been forced to call evidence on air quality and noise issues. The application seeks to recover all costs directly and incidentally incurred by the appellant in addressing Reason for Refusal No 2 regarding air quality and/or noise issues post-refusal.
5. The Council has wholly failed to engage with the conclusions of an Air Quality Assessment submitted with the planning application or negate them in any objective way. Instead, a proof has been filed by Councillor Michael Nelson who possesses no specialist qualification at all in respect of air quality issues. He complains that no on-site air quality monitoring was undertaken, but such was never requested by the Council because it is not necessary as the detailed dispersion modelling provides, in accordance with standard practice, predicted concentrations across the whole site. He fails to demonstrate that air quality objective values as set by the European Union and enshrined in UK law are likely to be exceeded at any point on or off the site or that the submitted air quality work is in any way defective or outwith good practice guidance. As such, his evidence fails to substantiate Reason for Refusal No 2 in respect of air quality.
6. There is no technical guidance that requires on-site monitoring of NO<sub>2</sub> levels. The appellant's predictions followed Defra guidance and no one has suggested that it did not apply or follow it properly. The Council has failed to call evidence to demonstrate that there would be a real risk of harm as a result of air quality. With regard to there being no prediction of the 24 hour mean for NO<sub>2</sub> levels, the Defra guidance indicates that if the annual mean level would be below the objective level, it would be highly unlikely that the 24 hour mean objective level would be exceeded. The test is not that there should be no risk of poor air quality.
7. The noise report submitted with the planning application finds no significant problems due to noise and some significant reductions in exterior noise levels as a result of the proposals. Councillor Barry Yates gives evidence in respect of noise, albeit that he has no professional qualifications in respect of acoustic issues. He asserts that the noise mitigation is an 'afterthought'. However, the layout by reference to noise issues was extensively discussed with Council Officers. At no point has he substantiated Reason for Refusal No 2 by demonstrating, on a balance of probabilities, that the noise levels of any part of the site would be unacceptable by reference to recognised objective criteria and at no point has he demonstrated any real prospect of adverse health impacts.
8. There is no policy or technical advice that suggests that the 55 dB upper guideline value cannot be exceeded. It is the Council who should produce substantive evidence to show the likelihood of harm and it has not provided any such evidence. The Council has not demonstrated that there would be a likelihood of significant adverse effects on health.
9. For the above reasons, a partial award of costs is claimed.

### **The response on behalf of South Ribble Borough Council**

10. In resisting the application for a partial award of costs, the Council considers that its second reason for refusal is not vague, generalised or inaccurate. The reason for refusal specifies a harmful impact with regard to specific dwellings

within the development and the nature of the impact, namely, to the health and well-being of future residents.

11. With regard to evidence in support of the reason for refusal, the Council has relied upon the appellant's own analysis of predicted noise levels within the development in support of its evidence that the appeal scheme would generate unacceptable noise levels within the gardens of 8 specific dwellings. This undisputed evidence shows that the appropriate design criterion applied by the appellant in both its environmental noise study and the evidence to the Inquiry is 55 dB LAeq; design criterion is taken from BS8233:2014, which states that it is desirable for noise levels to be kept at 50 dB LAeq or below, but with an upper guideline value of 55 dB for noisier environments; the BS8233:2014 limits reflect the WHO Guidelines which are set at the lowest threshold level that produces an adverse effect, namely a critical health effect; and predicted noise levels in the rear gardens of the 8 properties identified as being of concern in the Council's reason for refusal are above the 55 dB LAeq level.
12. In light of the above undisputed evidence, the Council was justified in advancing a noise concern. The upper guideline value of 55 dB for noisier environments in both of the 2 relevant and well-established sources of guidance would be exceeded. That evidence justifies a finding on the part of the Council that both health and well-being of future residents would be harmed. It is relied upon by Councillor Barry Yates, the Council's witness at the Inquiry, and justifies his conclusion as to the unacceptability of the appeal scheme.
13. In terms of air quality, the evidence that the Council has relied upon shows that there has been no on-site monitoring of air quality at the appeal site; Defra predictions for air quality at the appeal site show predicted background levels of air pollution to be higher than at Station Road in Bamber Bridge, which is within a designated Air Quality Management Area; and measured results at Station Road are much higher than the Defra predictions for Station Road, meaning that the annual mean NO<sub>2</sub> level for the site could be at or approaching the limit of 40 µg/m<sup>3</sup>. Also, the analysis gives a prediction of an annual mean level for NO<sub>2</sub>, when the examples given by the appellant where the Air Quality Objectives apply show that a 24 hour mean should be used for residential gardens, which has not been given for the appeal site. Accordingly, the undisputed technical evidence demonstrates there to be a risk of poor air quality at the appeal site.
14. The Council's unchallenged evidence confirms that future residents would be discouraged from using their gardens and having windows open, which alone represents an unacceptable impact on health and well-being. Accordingly, and in light of the undisputed evidence, there is no basis upon which it can be said that the Council has behaved unreasonably. Its specific second reason for refusal is supported by evidence. The application for a partial award of costs should fail.

## **Reasons**

15. The PPG advises that costs may 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.

16. The Council's second reason for refusal is complete, precise, specific and relevant to the application and is supported by reference to a relevant development plan policy. Whilst the Council's EHOs have not objected on the basis of the Air Quality Assessment and the acoustic report submitted with the application together with a Supplementary Note, they have expressed some concerns. They have noted that the development would have a negative impact on air quality within the area and that future residents at 8 of the proposed properties would be subject to sound levels within garden areas equating to a significant adverse impact on their health. Their decision not to object was subject to the imposition of a number of planning conditions to secure measures to mitigate air quality and noise impacts.
17. I am satisfied that the interpretation of the air quality and noise assessments has raised sufficient uncertainty regarding the acceptability of the predicted noise and air pollution levels at the appeal site and the use of planning conditions to secure appropriate mitigation to justify a reason for refusal on the grounds of the health and well-being of the future residents. Although I have made my own judgment on the basis of the evidence provided that the noise and air quality levels would be acceptable in such an environment close to motorways and adjacent to built development, the Council has not acted unreasonably in questioning the impact of the development on health and well-being on the basis of the evidence provided at the time of its decision to refuse planning permission, given that some of the gardens have been predicted to experience noise levels above the 55 dB limit and the predicted background air quality levels indicate higher levels than those within an Air Quality Management Area.
18. In terms of the consistency of determining similar cases, at the Inquiry the Council identified that there are sufficient differences in circumstances between the other sites referred to by the appellant and those of the appeal site to support the different decisions made by the Council. The Council demonstrated why it had considered the site at Wesley Street, on which a similar scale development to that proposed has been granted planning permission, to be a different relative location in the existing built-up area than that of the appeal site. As such, I find that the Council has not acted unreasonably in the manner of its determination of similar cases.
19. The appellant has not suggested that the Council has acted unreasonably in refusing planning permission on the grounds given in reasons for refusal No 1 and No 3. As such, there is nothing before me to demonstrate that the Council has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The evidence that the appellant has produced on appeal to contest the second reason for refusal could well have been necessary to address the concerns of other parties objecting to the appeal proposal, particularly as the Brindle Road Action Group gave evidence at the Inquiry regarding noise impact. As such, I find that the appellant has not demonstrated that it has incurred unnecessary expense in relation to the air quality and noise evidence that it has produced at the appeal stage.
20. Although I have found in favour of the proposed development, for the reasons given above, I am satisfied that the Council has produced sufficient evidence on appeal, by relying upon its objective analysis of the appellant's air quality and noise assessments and reports, to substantiate its Reason for Refusal

No 2. Also, the appellant has failed to demonstrate that it would not have incurred the expense of producing evidence in relation to air quality and noise on appeal had Reason for Refusal No 2 not been pursued. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and that a partial award of costs is not justified.

*M J Whitehead*

INSPECTOR