
Costs Decision

Inquiry Held on 8 – 10 May 2019

Site visit made on 10 May 2019

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 19th June 2019

Costs application in relation to Appeal Ref: APP/T2350/W/19/3221189 Henthorn Road, Clitheroe, BB7 2QF

- 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 Gladman Developments Limited for a full award of costs against Ribble Valley Borough Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to 110 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from Henthorn Road.
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Decision

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

Reasons

2. Planning Practice Guidance (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. The PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal.

The submissions for Gladman Developments Limited

3. The appellant's submissions were made in writing at the Inquiry. The basis of the claim for costs is that the Council acted unreasonably by failing to provide evidence to substantiate the matters referred to in the reason for refusal and not having regard to an appeal decision for residential development on land immediately to the north east of the appeal site (Ref APP/T2350/A/11/2161186) with access off Henthorn Road which considered matters relating to sustainability and accessibility.
4. In particular, the appellant considers that there was no attempt to in the appeal to justify conflict with Policy DMG2 of the Core Strategy 2008-2028 - A Local Plan for Ribble Valley (Core Strategy). This policy relates to development outside the settlement limits of Clitheroe. At the Inquiry the Council accepted that there would be no conflict with the provisions of this policy.
5. The Council also accepted that the concerns identified in the reason for the refusal of outline planning permission regarding access to the town centre by

- cycling are unevidenced. The Council's sole case related to a view about a lack of accessibility by walking and by bus, with the latter not being identified in the reason for refusal of outline planning permission. The appellant considers that the Council has placed an over-reliance on arbitrary figures regarding acceptable walking distances. It also failed to take appropriate account of the content of the submitted planning obligation that secures the continuation of the bus service until 2026.
6. The appellant also considers that the Council's case on accessibility did not cogently explain 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 the other by the Council.
 7. As a consequence of the above, the appellant considers that the failure of the Council to even try to defend aspects of the reason for refusal and the failure to provide substantive evidence on some matters it still pursued, including explaining why the appeal site is different from the neighbouring site, is unreasonable conduct. Such unreasonable conduct is considered by the appellant to have caused the incurrence of unnecessary expense. Furthermore, if the abandoned points had not been cited as part of the reason for refusal and the insubstantial case on the remaining points had not been pursued, taking into account similar adjacent case, then an appeal would not have been necessary. As such, the appellant considers that a full award of costs is justified.

The response by Ribble Valley Borough Council

8. The Council provided a handwritten response to the cost claim which was supplemented orally during the Inquiry. It is acknowledged that Policy DMG2 was not pursued but considers that the Development Plan had to be considered as a whole in addressing this matter. Therefore, this did not result in additional expense. The Council also accepts that cycling accessibility was also not pursued. However, Key Statement DMI2 of the Core Strategy was pursued with reference to walking and, as such, constitutes the policy basis for the consideration of accessibility issues. In considering Key Statement DMI2 as a whole, the Council considers that it would have been inconceivable for the appellant not to have addressed cycling in the assessment of all matters of accessibility.
9. The Council considers that the preferred walking distances as set out in the Chartered Institute of Highways and Transportation document 'Guidelines for Providing for Journeys on Foot' are not arbitrary and are well recognised as material considerations. In addition, Lancashire County Council, in its capacity as highway authority saw the proposed development as being at the 'extreme end' of accessibility for walking purposes.
10. With regard to the bus service, the Council considers that the planning obligation only guarantees the provision of the service until 2026 and it cannot be concluded that the appeal site will have access to a regular bus service beyond that date. Furthermore, with regard to the neighbouring site granted on appeal, the Inspector envisaged a 'high quality' bus halt on Lune Road which has not been provided, nor has the lighting of the route to the Leisure Centre which would be used by the prospective residents of the appeal site.

Reasons

11. Despite conflict with Policy DMG2 being identified in the reason for the refusal of outline planning permission there was no attempt by the Council in the appeal to justify conflict with this policy. Although the proposed development lies outside of the settlement limits of Clitheroe, the Council advised that this policy is permissive of development that adjoins the settlement boundary as this constitutes consolidation and expansion of the settlement.
12. Taking into account the Council's views at the Inquiry that there would be no breach of this policy, I can see no reasonable justification for its inclusion in the reason for refusal. Consequently, I consider that the reference to a breach of Policy DMG2 constitutes unreasonable conduct that caused the appellant to incur unnecessary expense in providing evidence to demonstrate that there was no such breach.
13. The reason for refusal specifically mentioned that the site had a lack of cycling access to the town centre. Notwithstanding the Council's view that Key Statement DMI2 needed to be considered holistically, there was a clear emphasis within the reason for refusal that cycling access was inadequate. Consequently, there was an understandable requirement for the appellant to address cycling issues in depth in the Inquiry.
14. With regard to cycling, the Council only identified that there were inadequate cycle parking facilities in the town centre. This matter was not referred to in the reason for refusal. No evidence was provided to substantiate the assertion in the reason for refusal that the site has a lack of cycling access to the town centre. In respect of the Council's only concern regarding a lack of facilities, the submitted planning obligation provides for a financial contribution to the cost of providing additional cycle parking facilities. This appropriately addresses the Council's only identified concern on this matter.
15. However, no evidence whatsoever was provided to justify the Council's position regarding a lack of cycling access from the site to the town centre as set out in the reason for refusal. Consequently, I consider that the unjustified reference to inadequate cycling access to the town centre constitutes unreasonable conduct that caused the appellant to incur unnecessary expense in providing evidence to demonstrate that cycling accessibility was adequate.
16. With regard to the bus service, this was not a matter specifically identified in the reason for refusal but was raised in evidence at the Inquiry. The Council's concerns relate to the fact that the 'quality bus stop' had not been provided and that service may not continue beyond 2026. No evidence was provided to suggest that there was any breach of the planning obligation attached to the permission for the site to the north east that was granted on appeal and which provided for the 'quality bus stop'.
17. The appellant identified that it was a matter for the highway authority to determine what they considered to be an adequate bus stop and no other evidence was provided that would enable me to take a contrary view. Whilst I was led to believe that a post and sign is shortly to be provided there were no plans by the highway authority to install a shelter. No evidence was provided by the highway authority to suggest that the form of bus stop currently provided is inadequate.

18. The submitted planning obligation would enable the continuation of the bus service until 2026. The provision of 5 years initial funding to enable the establishment of public transport patronage is reasonable and is not uncommon. The obligation effectively means that by 2026 a bus service serving the area in the vicinity of the appeal site would have been secured for 10 years (from 2016 to 2026). Whilst I accept that there can be no guarantee that the service would be sustained beyond 2026, the 10 year period that it would be in operation is more than adequate for public transport travel patterns and bus patronage to be established.
19. Consequently, I consider that the Council failed to appropriately substantiate its concerns regarding bus service provisions and did not appropriately take into account the provisions of the planning obligation that secured its provision until 2026. The view that bus service would be inadequate, the possible discontinuation of the bus service after 2026 and the fact that the bus stop provided was not a 'quality stop', despite no breach of any planning obligation being identified, are not substantive matters on which to conclude that accessibility by public transport was poor. Moreover, no reference to any inadequacy in public transport provision was identified in the reason for refusal.
20. As such, I consider that the lack of justification in alleging inadequate bus service provision constitutes unreasonable conduct. This caused the appellant to incur unnecessary expense in providing evidence to demonstrate that the bus service provision was adequate.
21. Turning to the matter of walking, both parties referred to guidance documents that provided various distances as to what constitute an appropriate walking distance. These documents predominantly refer to preferred distances. I consider that there is some subjectivity as to the distances that people may prefer to walk. Consequently, I consider that the distances set out in various documents are a guide only and cannot be applied prescriptively. The highway authority considered that the site was on the limit of accessibility. It lies approximately 2km from the town centre. As such, it was not unreasonable for the Council to raise concerns regarding walking accessibility in the reason for refusal.
22. The views of the Council regarding walking accessibility were relevant to the provisions of Key Statement DMI2 of the Core Strategy and were substantiated in the evidence provided in the appeal. I consider that the Council had reasonable concerns about the accessibility of the appeal site to the town centre by means of walking which partly led to the decision to refuse the application. Accordingly, I do not find that the Council failed to properly consider the merits of the scheme with regard to walking accessibility and therefore the appeal could not have been avoided in this regard.
23. The Council identified in the response to the cost claim that street lighting had not been provided to pedestrian route to the Leisure Centre from the adjacent Blakewater Road development to the north east of the appeal site. However, no breach of any planning conditions or obligation was identified. In my view this matter has little relevance in my consideration of the application for an award of costs. I have therefore attached no weight to these concerns in my consideration of this costs application.
24. With regard to the appeal decision on the neighbouring site (Ref APP/T2350/A/11/2161186) it is an established planning principle that each

planning application has to be considered on its own individual merits. However, there are clearly some similarities in the locational circumstances of that site and the appeal site in that distances and routes to the town centre are substantially the same. I recognise the appellant's concerns regarding this matter.

25. However, I have found above that the Council's concerns regarding walking accessibility were founded on a reasonable basis. I concur with the views of the highway authority that the site is at the extreme limit of walking accessibility. As such, I do not consider that the Council failed to take into account the appeal decision on the adjacent site in respect of walking.
26. It is clear from the evidence provided that the consideration of the relevance of other appeal decisions can be subjective. Just because I have found differently from the Council regarding walking distances does not mean to say that the Council's concerns had no basis. Accordingly, I do not find that the existence of the appeal decision on the adjacent site suggests that the Council failed to properly consider the merits of the scheme before me.
27. Finally, the appellant suggested that the Council could not demonstrate a five year supply of land for housing (HLS). Both main parties produced substantial evidence with regard to this matter. The dispute with regard to HLS was raised at the discretion of the appellant to which the Council produced adequate evidence to substantiate its position. Consequently, there is no basis for any award of costs in relation to this matter.

Conclusion

28. The Council's reason for refusing planning permission, as set out in its Decision Notice, specifically referred to matters of cycling and walking accessibility and identified conflict with a planning policy relating to the location of development outside of settlements limits. In providing no substantive evidence to support that part of the reason for refusal relating to cycling and in respect of a perceived conflict with Policy DMG2, I find that the Council behaved unreasonably in reaching its decision.
29. The Council partly relied on a deficiency in bus service provision which was not specifically identified in the reason for refusal in the same way that concerns regarding cycling and walking were. The bus service is already operational and would continue to be subsidised for a further five years under the terms of the submitted planning obligation. In respect of this matter, I consider that the Council acted unreasonably by failing to appropriately take into account the provisions of the obligation and the benefits that it would provide in securing public transport provision up to 2026.
30. I do not consider that any award of costs is justified with regard to matters relating housing land supply or accessibility by means of walking. Consequently, a full award of costs is not justified.
31. However, I conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting those parts of the Council's reasons for refusal and case relating to conflict with Policy DMG2, cycling and bus accessibility is justified

Costs Order

32. 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 Gladman Developments Limited the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's reasons for refusal, which concerned alleged conflict with Policy DMG2 and matters relating to cycling and bus service provision in relation to Key Statement DMI2 of the Core Strategy.
33. The applicant is now invited to submit to the 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 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.

Stephen Normington

INSPECTOR