

Costs Decision

Hearing Held on 22 September 2020

Site visit made on 23 September 2020

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 October 2020

Costs application in relation to Appeal Ref: APP/T2350/W/20/3248156 Land at Wiswell Lane, Whalley

- 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 V H Land Partnerships Ltd for a partial award of costs against Ribble Valley Borough Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for the erection of up to 125 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point from A671. All matters reserved except for means of access.
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Decision

1. The application for award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that parties in appeal proceedings normally meet their own costs, but 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.
3. The applicant made an application for partial costs in writing prior to the hearing. The applicant submits that Ribble Valley Borough Council (the Council) has demonstrated the following unreasonable behaviour, with reference to paragraph 049 of the PPG:
 - failure to produce evidence to substantiate each reason for refusal on appeal;
 - persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable; and
 - not determining similar cases in a consistent manner.
4. The Council's response was provided orally, and resists the application on the basis that the alleged inconsistency arises from just two recent decisions, whereas there is a legacy of cases over a lengthy period of time to support its position in the current appeal.
5. The applicant contends that the Council failed to substantiate its reason for refusal relating to the first part of policy DMG2, specifically that its argument ignored the definitions of consolidation and expansion provided in the glossary of the Ribble Valley Borough Council Core Strategy (2014)(CS). In doing so,

the Council should have understood the policy wording of 'in' settlements as meaning 'at'. The Council is also alleged to have incorrectly applied the test for local housing needs, due to its misinterpretation of defined settlement areas. Furthermore, when presented with the appellant's case by exchange of email, RVBC failed to grapple with these arguments.

6. In response, the Council consider that it has correctly interpreted the relevant sections of policy. For the hearing, the Council produced a detailed Statement of Case and provided oral evidence setting out its position in this respect. In doing so, the authority considered that policy DMG2 is two-fold in its approach whereby the first part of DMG2 is engaged when within the settlement boundary, and the second part when outside the settlement boundary, such that the policy contains explicit locational triggers. It will be seen from my appeal decision that I have agreed with the position that the Council have taken in respect of both the first part of policy DMG2 and the application of the test for local need. It therefore follows that I am satisfied that the Council was able to substantiate its reason for refusal, notwithstanding any failure to engage in discussion on the matter.
7. The applicant has cited two recent appeal decisions at Henthorn Road and Chatburn Old Road¹ as demonstrating the correct approach to be taken with regard to interpreting the disputed policy DMG2. The Council's approach to those cases is said to be inconsistent with its approach to the current appeal. The Council replied at the hearing that the Henthorn Road decision arose out of unique circumstances; that tenuous housing supply at that time led to an officer recommendation to grant permission to avert loss of supply; and this was overturned by elected members, with reasons for refusal given that provided no licence to defend policy DMG2 at appeal.
8. In my appeal decision I have already found the Inspector's conclusion in the Henthorn Road appeal decision was made in the context of the Council conceding on this point in that case. The main parties had agreed on the interpretation of this policy, and the Inspector concluded he had no other evidence or reasons to disagree with that view. Similarly, my appeal decision also finds that, at the Chatburn Old Road hearing, the policy position of DMG2 was not defended in respect of the settlement boundary.
9. As a consequence, neither of the cited appeal decisions dealt with the detailed and specific matter of dispute regarding the interpretation of policy DMG2 that has arisen in the current appeal. As such, I find that the Council did not, in the current appeal, persist in objections to elements of a scheme which Inspectors had previously indicated to be acceptable, as those matters had not been subject to detailed consideration.
10. The appellant is concerned that the Council conceded on this point at two separate appeals, then inconsistently determined to defend the matter in the current appeal. The Council's reply that weight was given to the housing land supply position at the time is rebutted by the applicant on the basis that the interpretation of policy has nothing to do with the housing supply position.
11. Whilst the Council's approach to defending the policy position at appeal could appear on the face of it to be inconsistent, in respect of the current s78 appeal the Council are entitled to consider that the starting point in decision making is

¹ Appeal decisions APP/T2350/W/19/3221189 and APP/T2350/W/19/3223816 respectively.

plan-led. It will be seen that I agree with the Council's interpretation of the development plan, regardless of the land supply position and, furthermore, the cited earlier decisions can be sufficiently distinguished from the current appeal. On that basis, I find that the Council has not unreasonably failed to determine similar cases in a consistent manner.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Patrick Hanna

INSPECTOR