The Planning Inspectorate

# Costs Decision

Inquiry Held on 16 - 19 March 2021
Site visit made on 25 March 2021

**by Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24th June 2021**

**Costs application in relation to Appeal Ref: APP/F2360/W/19/3234070**
**Land to the South of Chain House Lane, Whitestake, Preston**

- 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 Wainhomes (North West) Ltd 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 Outline Planning Permission for up to 100 dwellings with access and associated works.
- This decision supersedes that issued on 13 December 2019. That decision on the appeal was quashed by order of the High Court.

## Decision

1. The application for an award of costs is refused.

## Procedural Matters

2. I have taken into account the Government's Planning Practice Guidance (PPG), in reaching my decision.

3. For clarity, in my reasons I shall refer to the previous decision relating to the fourth bullet point of the above header as the quashed decision, and to the High Court order as the HC Judgement.

## The submissions for Wainhomes (North West) Ltd

4. The aims of the costs regime include –

   i) to encourage all those in the appeal process to behave in a reasonable way and follow good practice in the presentation of full and detailed evidence to support their case, and

   ii) to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through avoidable delay – NPPG 16-028.

5. The application for costs and the relevant guidance must be considered with these important aims in mind. The local planning authority (LPA) in this case has failed in each respect to comply with these underlying aims.

6. The NPPG provides examples of unreasonable behaviour. It is important to keep in mind that these are merely examples, it is not necessary to come within any particular example in order for an award of costs to be merited, it remains important to consider any application against the underlying aims of the regime.

7. Costs awards can be for the full costs of an appeal, or can be partial awards of costs. PPG 16-040 and 16-041 provide guidance on this issue.

8. There are two outstanding reasons for refusal to be considered at the appeal. The first reason is that "The application site is allocated as safeguarded land through policy G3 of the South Ribble Local Plan. The proposal by virtue of its nature, scale and degree of permanence would be contrary to policy G3 of the South Ribble Local Plan as the Council can demonstrate a 5 year housing land supply". The reason for refusal is predicated upon the council being able to demonstrate a 5 year housing land supply.

9. It is common ground at the forthcoming appeal that the relevant strategic housing policy is Central Lancashire Core Strategy Policy 4 which was the subject of a review in 2017 and found not to require updating. It is furthermore common ground that the Council is unable to demonstrate a 5 years housing supply if the figures from that policy are used.

10. The same policy applies in the neighbouring areas of Preston City Council and Chorley Borough Council. The question of whether the figures from the Core Strategy should continue to be used for the purposes of calculating 5 years housing land supply was central to and fully argued at the recent appeal at Cardwell Farm. Having heard the arguments the Inspector came to a very clear decision that Core Strategy Policy 4 should be used for the purposes of assessing whether there is a 5 years supply of housing land (decision letter (DL) 40). Following that decision Chorley Borough Council has confirmed that its position is that Core Strategy Policy 4 should be used for the purposes of assessing 5 years housing land supply[1].

11. A major part of the Council's case has been the importance of determining cases on a consistent basis, and the Council's evidence highlighted the significance of the anticipated decision on the Cardwell Farm appeal[2]. In the light of the decision in that appeal it is clear that Core Strategy Policy 4 should be used for the calculation of 5 years housing land supply and that accordingly the Council is unable to identify a 5 years supply of housing land. This is further emphasised by the importance attached by the Council in taking a consistent approach throughout Central Lancashire[3].

12. In the circumstances the Council's position on its first reason for refusal is unsustainable. This was brought to the Council's attention in a letter dated 15th March 2021 and the Council was invited to concede on these issues in order to save inquiry and unnecessary expense[4].

13. The Council has not identified any reasonable grounds for maintaining its position in the light of the Cardwell Farm decision. Its reliance upon a misinterpretation of the judgment of Dove J does not assist (if anything it

[1] Additional Document (AD) 11.2 paragraph 1.3
[2] See for example Nick Ireland (NI) Proof of Evidence paragraphs 1.14 and 5.106
[3] See for example NI paragraph 5.106
[4] Document AD 11.1

exacerbates its position). The Council's position with respect to MOU2 is the same as that of Preston City Council (it maintains MOU2 is no longer in place[5]). The document AD 10 does not materially advance the Council's case. It is not a meaningful review and did not involve a robust process – indeed it appears to have been rushed through for the purposes of this inquiry.

14. The Council's refusal to accede to the invitation to concede on the issue of 5 years housing land supply has required detailed consideration of these issues which has resulted in the unnecessary prolongation of this inquiry. The majority of the time taken at the inquiry involved consideration of the issue of 5 years housing land supply which has been decisively determined by the Cardwell Farm appeal. Maintenance of the first reason for refusal and the need to consider these issues was clearly unreasonable in the light of the decision at the Cardwell Farm inquiry. PPG 16-049 makes it clear that examples of unreasonable conduct leading to an award of costs include persisting with objections contrary to a previous decision of an Inspector and failing to determine matters in a consistent manner.

15. In the circumstances the Appellant seeks a partial award of costs to cover the costs incurred in addressing the first reason for refusal. This includes the costs of calling Mr Pycroft and the increase in costs arising from the prolongation of the inquiry to address the issue of 5 years housing land supply.

**The response by South Ribble Borough Council**

16. The Appellant has made a partial application for its costs from 15th March 2021, in respect of the costs of addressing RFR 1 at the Public Inquiry (see Appellant's Cost Application (ACA) 12).

17. The application relies on a single point. It is claimed that it was unreasonable (in the terms of the NPPG) for the LPA not to withdraw RFR 1, upon receipt of the Inspector's decision at Cardwell Farm (see especially ACA 7, 8, 10 and 11).

18. The LPA submit that the application is hopeless. It should not have been made. The LPA defend the application in full and submit that it should be summarily refused.

THE NATIONAL PLANNING PRACTICE GUIDANCE (NPPG)

19. This application is made with reference to the guidance contained in the NPPG (Appeals). The NPPG provides updated guidance on the award of costs and is designed to improve the efficiency and effectiveness of the planning appeals system. All paragraph references are to the NPPG (Appeals) unless otherwise stated.

General Principles

20. In planning appeals, the parties involved normally meet their own expenses. However, the cost awards' regime seeks to increase the discipline of parties when taking action within the planning system, through financial consequences for those parties who have behaved unreasonably and have caused unnecessary or wasted expense in the process. The LPA do not accept there has been any "lack of discipline". On the contrary, their case has been carefully

[5] Document AD 10 paragraph 26

considered at each step of the Appeal process. Indeed, it was upheld in the first Appeal and should be upheld again.

21. The costs regime is aimed at ensuring as far as possible that (so far as relevant):[6]

- All those involved in the appeal process behave in an acceptable way and are encouraged to follow good practice in the presentation of full and detailed evidence to support their case;
- LPAs properly exercise their development management responsibilities, relying only on reasons for refusal which stand up to scrutiny on the planning merits of the case.

Conditions for an Award

22. The Planning Inspector has an unfettered discretion on whether to make an award of costs. The Courts will not interfere except on public law grounds e.g. where the grant/refusal of an application is *Wednesbury* unreasonable.

23. Costs "may" be awarded where:[7]

- The party against whom the award is sought has acted unreasonably; and
- The unreasonable behaviour has caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

24. The word "unreasonable" is used in its ordinary meaning as established by the Courts in *Manchester City Council v. SoSE & Mercury Communications Ltd* [1998] JPL 774.[8] This application relates to the substance of the LPA's case on RFR 1 (rather than the procedure).[9]

25. Further explanation (together with non-exhaustive examples) of unreasonable behaviour by a LPA is set out in the NPPG. The following examples are relevant (see paragraph 49):

- 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 SoS or an Inspector has previously indicated to be acceptable;
- not determining similar cases in a consistent manner

26. The key test will be whether evidence is produced on appeal which provides a respectable basis for the authority's stance, in the light of a *R v. SSE ex parte North Norfolk DC* [1994] 2 PLR 78.

THE LPA'S SUBMISSIONS

27. The essence of the Appellant's claim is that the LPA has failed to produce on appeal evidence which provides a respectable basis for RFR 1, contrary to the NPPG and *R v. SSE ex parte North Norfolk DC* [1994] 2 PLR 78.

[6] See para 028

[7] Paragraph 31

[8] See para 32

[9] *ibid*

28. The LPA submit it is unanswerable that they have produced a respectable basis for RFR 1. Indeed, the Appeal should be dismissed on the basis of RFR 1 (as well as RFR 2).

29. The central issue in RFR 1, as Ben Pycroft (BP) expressly conceded, is whether Policy 4(a) is out of date for the purposes of the 5YHLS calculation. That requires the exercise of a planning judgment. In the light of the case law (see *Bloor Homes*), that proposition is unanswerably correct.

30. Accordingly, the central dispute concerns the exercise of a planning judgment on whether Policy 4(a) is out of date. That is a matter on which different judgments may reasonably be reached by different people. Indeed, that cannot reasonably be argued because it is *precisely* what Dove J held in *Wainhomes Ltd v SoS HCLG and South Ribble BC* [2020] EWHC 2294 (Admin) [CD 7.1], in a passage which is expressly relied upon by both parties:

    *45. … I am satisfied that the conclusion the Inspector reached in paragraph 37(iii), that there had been a significant change pursuant to the PPG arising from the introduction of the standard method, was a planning judgment reasonably open to her based upon a correct interpretation of the PPG (albeit other conclusions might reasonably be reached by other Inspectors), and therefore she was entitled to conclude that Core Strategy Policy 4(a) was out of date.*

31. At the heart of RFR 1, there is a difference of planning judgment on whether Policy 4(a) is out of date. That is a disagreement on which different conclusions might reasonably be reached. There is, therefore, no conceivable basis for an adverse award of costs. It is noteworthy that the Appellant has failed (again) to draw the Inspector's attention to relevant parts of the *Wainhomes* judgment, when it knew (or ought to know) that it is relevant to this application.

32. In particular, the LPA submit (in light of the above):

    (i) It is not unreasonable for the LPA to exercise a different planning judgment to the Cardwell Farm Inspector on the issue of whether Policy 4(a) is out of date;

    (ii) It is not unreasonable for the Inspector (in this case) to exercise a different planning judgment to the Cardwell Farm Inspector on this issue;

    (iii) It is not, therefore, even arguably unreasonable for the LPA to seek to persuade this Inspector to reach a different planning judgment to the Cardwell Farm Inspector, especially given the multiple flaws in that decision, which is to be challenged by Preston City Council in the Planning Court;

    (iv) Indeed, the Appellant is seeking to persuade the Inspector to reach a different planning judgment to the first Inspector. The first Decision Letter remains a material consideration (*R (Davison) v Elmbridge* [2019] EWHC 1409 (Admin)). It is to that issue which para 45 of the judgment is directed i.e. a subsequent Inspector can reasonably reach a different planning judgment to a previous Inspector.

33. The Appellant does not suggest that there was not a respectable basis for RFR 1. Rather, the sole issue is that the LPA's position became unreasonable

once the Cardwell Farm DL was issued i.e. at that point there was no longer any respectable basis for RFR 1. For the reasons set out above, that simply cannot succeed. The decision maker can reach a different planning judgment on whether Policy 4(a) is out of date (as Dove J has expressly held). This application must, therefore, fail on this basis alone.

The Key Point

34. BP agreed there were two key issues under RFR 1:

    (i) Whether the Inspector can lawfully consider whether policy 4 is out of date, given the terms of NPPF 73 and fn 37?

    (ii) If he can consider it: whether policy 4 is out of date, as a matter of planning judgment?

35. The Appellant has sought to resile from the concession but it was clear and unqualified. It is also correct. The Appellant's case is contained in point (i). The LPA's case is point (ii). The concession merely confirms this unanswerable proposition.

36. Point (i) is not in fact addressed or answered by the Cardwell Farm Inspector. The LPA's case is simple: even if there has been a review, the Inspector can lawfully exercise a planning judgment to consider whether Policy 4(a) remains up to date, as a result of material changes in circumstances since 2017, including the change to national policy and the consequent changes on the ground. That proposition is entirely consistent with Lindblom J in *Bloor Homes*.

37. It is also consistent with Dove J at paras 42 and 43. In particular:

    *Moreover, the question of whether or not any change in circumstances is significant is one which has to be taken on the basis of not only the salient facts of the case, but also other national and local planning policy considerations which may be involved. In short, in my view, the language of the PPG and its proper interpretation did not constrain the Inspector and preclude her from reaching the conclusion that she did, namely that the significant difference between the housing requirement in Core Strategy Policy 4(a) and that generated by the standard method was capable of amounting to a significant change rendering Core Strategy Policy 4(a) out of date.*

38. The LPA strongly submit that the Inspector is lawfully entitled to exercise a planning judgment on whether Policy 4(a) is out of date, as a result of changes in circumstance since the review. It is submitted that this is an unanswerable and elementary planning principle. It is not precluded by the wording of NPPF 73 and fn 37 as BP expressly conceded (the LPA's notes on this are clear).

39. For the purposes of this application, the LPA therefore submit:

    (i) This is *not* an issue addressed (transparently or at all) by the Cardwell Farm Inspector, who provides no answer to key point (i);

    (ii) Accordingly, there is a contested legal proposition at the heart of point (i).

40. The LPA submits that the Appellant's legal submissions are flawed. The LPA has not even arguably misunderstood the judgment of Dove J (ACA 10). Reading paras 42, 43 and 45 together, it is clear that a planning judgment can be made

and is (in fact) required in this case given the LPA's evidence. This cannot reasonably be contested by the Appellant. There is, therefore, a respectable (if not unanswerable) basis for the LPA's RFR 1.

41. The second point concerns a planning judgment on which reasonable disagreement may occur. This cannot be grounds for a cost application.

Previous Decisions

42. The Application is made on the basis that it was unreasonable for the LPA to continue with RFR 1, once the Cardwell Farm decision was issued. That proposition fails to establish and (then) engage with the relevant legal principles concerning previous decisions.

43. This appeal (as a matter of law) falls to be determined on its own merits (not in accordance with the decision in Cardwell Farm). Applying s.38(6), the appeal falls to be determined in accordance with the Development Plan, unless material considerations indicate otherwise. A previous decision letter is capable of being a material consideration because of the principle of consistency of administrative decision-making. However, the Cardwell Farm decision is emphatically not binding on this Inspector. There is no rule that like cases must be decided alike. On the contrary, a Planning Inspector must always exercise his/her own judgment and is therefore free to disagree with the planning judgment of another. However, an Inspector ought to give reasons for departing with a previous decision, unless it concerns a matter of judgment, in which case you can simply say: "*I disagree*" (see *North Wiltshire DC v SoSE* [1992] 65 P&CR 34). That is also the basis of Dove J's decision (*ibid*).

44. Indeed, the Cardwell Farm Inspector has disagreed with the Pear Tree Lane Inspector and the First Chain House Lane Inspector as a matter of judgment and has provided reasons for doing so. It is not even arguably unreasonable for the LPA to invite this Inspector to do the same.

45. It follows that the Cardwell Farm does not conclusively address the issue of whether Policy 4(a) is out of date, such that it is unreasonable for the LPA to present a respectable case on it. The Appellant's application is legally flawed. It should fail on this point alone.

The Cardwell Farm DL (AD 1)

46. For the avoidance of doubt, it is not accepted that: "*A major part of the Council's case has been the importance of determining cases on a consistent basis*".[10] That is a forensic mischaracterisation of the LPA's case, which has been made to support its misplaced allegation of unreasonable conduct. Rather, the major part of the LPA's case has been that a planning judgment must be exercised on the issue of whether Policy 4(a) is out of date as a matter of planning judgment.

47. The LPA drew the Inspector's attention to this Appeal in its written evidence, as it is bound to do. The LPA drew the Inspector's attention to it, when it was published (see AD 1). This is not (even arguably) unreasonable conduct – quite the opposite.

[10] ACA 8

48. Thereafter, the LPA has presented evidence to explain why it (reasonably) disagrees with the decision in Cardwell Farm and has provided reasons for this disagreement (per *Wainhomes* and *North Wilts DC supra*). This has been addressed in the Closing Submission of the LPA (see paragraph 95 - 100). In essence:

    (i) SRBC did not appear at that Inquiry and did not provide evidence/submissions to it;

    (ii) The Cardwell Farm Inquiry evidence is not before this Inspector. It can be provided if necessary but such evidence is materially different. The submissions were also materially different;

    (iii) There are significant flaws in the decision letter. Having identified that Preston CC argued that there had been a significant change since the review in 2017 (DL 32), the Inspector fails to answer it and fails to reach a planning judgment on whether Policy 4(a) is out of date as a result. Reading the decision letter fairly and in full, that judgment is not addressed;

    (iv) The Decision Letter is to be challenged by PCC. SRBC agree that it is legally flawed because *inter alia* (a) it fails to address whether there has been a significant change in circumstances which renders Policy 4(a) out of date; and/or (ii) whilst it addresses Ground 1 of *Wainhomes*, it fails to take Ground 3 into account and/or address it (see DL 38, 40 and 41);

    (v) If, which is not accepted, such issues have been addressed and taken into consideration, the reasoning is unlawfully absent. It is simply not clear what conclusion was reached on this issue and why. It is therefore unlawful;

    (vi) Rather, the Inspector asks (DL 33) and answers (DL 33-40) the *different* question of whether there has been a review of a review. There is, however, no statutory/policy or guidance requirement for there to be a review of a review before a planning judgment can be exercised on whether Policy 4(a) is out of date. Policies are routinely concluded to be out of date without "a robust process" or a review of a review (DL 33). All that is required is a planning judgment (on which different conclusions can reasonably be reached).

    (vii) The Cardwell Farm DL does not, therefore, provide a complete answer to the LPA's evidence and submissions at this Inquiry. On the contrary it is deeply flawed and reasons have been provided why it should be followed.

49. Therefore, the LPA has provided a "respectable basis" for reaching a different planning judgment on the issue of whether Policy 4(a) is out of date. In all the circumstances, that is not arguably unreasonable. On the contrary, the LPA has set out robustly and persuasively why this Appeal should fail on RFR 1.

    <u>The LPA's Second Review</u>

50. Further or alternatively, since the Pear Tree Lane Inquiry and in the light of evidence at this Inquiry and Cardwell Farm, the LPA has undertaken a further review and concluded that the 5 year supply should be calculated using the

LHN (see AD 10). In cross-examination, BP conceded the position was materially different. This Appellant is bound by the answers of its professional witness and the concession was express and clear. The LPA's notes are all consistent on this point. Further, the concession is unanswerably correct. As a matter of fact, PCC have not undertaken such a second review. The decision required in this Appeal *is* materially different. It is not, therefore, close to unreasonable to defend RFR 1. This alone is a complete answer to the cost application.

51. Of course, the Appellant disputes that this is a "review". However, that makes the LPA's point for it. This is a matter on which there is contested professional evidence and on which another planning judgment is required. The LPA's position (see Closing at para 106) is correct. It is not arguably unreasonable.

52. Indeed, the application (again) departs from its own evidence. BP conceded that the decision had been robust as a process (cf ACA 10). He nonetheless argued that it was not a review. That concession cannot reasonably be disputed as it was read back to the witness. Again, the LPA's notes are all consistent on that point. Given that it is common ground that there are no formal requirements (no formal process requirements), the concession is the only rational position to adopt. The remaining issue is whether it constitutes a "review". Again, given the absence of requirements for the review, the Appellant cannot reasonably argue that it wasn't a "robust process" because the LPA have such a wide measure of discretion in what constitutes its review.

53. In essence, the LPA exercised a planning judgment on the process of the review (see AD 10 10, 22 and 23). There are no procedural requirements for that planning judgment, save that it must be proportionate (which is not contested). There has unanswerably been a review. That is abundantly clear from AD 10. The Appellant has sought to pick flaws in the review. However, even at their highest they do not demonstrate that the decision cannot reasonably be characterised as a review. On that basis, consent should be refused on RFR 1. Further, the Appellant's evidence therefore comes nowhere near demonstrating that the LPA's reliance on the second review is unreasonable because of the Cardwell Farm DL. That is an unreasonable evidential *non-sequitur*.

54. Finally, Cardwell Farm is based on a claimed lack of clarity over what basis should found a 5YHLS calculation, as an alternative to MOU 2 (DL 39). There is no such ambiguity in SRBC. The position is different.

CONCLUSION

55. In all the circumstances, this application is hopeless and must fail.

**Further submissions for Wainhomes (North West) Ltd in reply to Council response**

56. The Council's response to the costs application repeats various arguments raised in its closing. These matters have been addressed in the Appellant's closing statement and the additional comments made in closing. That response is relied upon and not repeated here. The Council's response does not provide grounds for resisting the costs application.

57. The first reason for refusal raises the issue of how the 5 years housing land supply is to be calculated in accordance with NPPF paragraph 73. Given that it

is accepted that there was a review of the relevant development plan policy in 2017 when it was found to be up to date it is clear from the terms of NPPF paragraph 73 and footnote 37 that the development plan policy is to be used for the purposes of calculating the 5 years housing land supply. This is a simple issue of proper interpretation of the policy which does not involve any exercise of planning judgment as contended by the Council.

58. There were never any reasonable grounds for doubt on this issue, but if there had been they were removed by the decision on the Cardwell Farm appeal. That appeal decision confirms that the 5 years housing land supply should be calculated in accordance with the clear guidance in NPPF paragraph 73 and footnote 37. Importantly that decision involves the same development plan policy and considered the various events since the review in 2017. The findings in that decision were very clear.

59. The Council's response relies upon its continued misinterpretation and misapplication of the previous judicial challenge. As explained at the inquiry the judgment on Ground 3 was limited to consideration of whether the Inspector had misinterpreted PPG 61-062. The judgment did not address the application of this paragraph to any calculation of 5 years housing land supply under NPPF paragraph 73 because of the concession made (recorded at paragraph 39 of the judgment). The judgment does not suggest that PPG 61-062 is to be read as qualifying NPPF paragraph 73 or as introducing a further 2 requirement in identifying what figure to use for calculating 5 year housing land supply of considering whether there had been a significant change.

60. The grounds advanced by the Council for distinguishing the Cardwell Farm decision do not advance the matter any further. The claimed error in the Cardwell Farm decision relies upon the Council's misinterpretation of the previous judicial decision addressed above. The fact that the Council was not present at the Cardwell Farm inquiry is not relevant. The guidance with respect to previous decisions is not limited to decisions made between the same parties. The only claimed difference in circumstances is the claimed subsequent review (AD 10). It is not a meaningful review and did not involve a robust process – indeed it appears to have been rushed through for the purposes of this inquiry. It does not assist the Council.

61. In the circumstances the Council has no answer to the costs application.

**Reasons**

62. The Cardwell Farm decision was a material consideration in respect of this appeal. As I highlighted in my appeal decision, that other appeal was allowed, with the Inspector finding that policy 4(a) of the Core Strategy was not out of date.

63. The Council explained at the Inquiry that it had considered the Cardwell Farm decision and disagreed with the judgement of that Inspector, which it was entitled to do on the matter relating to whether or not policy 4(a) was out of date. This is particularly in light of the High Court (HC) Judgement concerning the quashed decision relating to this appeal which was not quashed on the grounds relating to whether or not policy 4(a) was out of date.

64. In this respect, Mr Justice Dove stated in paragraph 45 of the HC Judgement his satisfaction that the conclusion the Inspector reached in paragraph 37(iii),

that there had been a significant change pursuant to the PPG arising from the introduction of the standard method (SM), was a planning judgement reasonably open to her based upon a correct interpretation of the PPG (albeit other conclusions might reasonably be reached by other Inspectors), and therefore she was entitled to conclude that Core Strategy policy 4(a) was out of date. As such, just as much as other conclusions might reasonably be reached, the Council was entitled to maintain a case that the policy was out of date in this regard. In doing so, the Council explained at the Inquiry why it disagreed with the Cardwell Farm decision and also claimed there to be flaws in that decision.

65. Consistency in decision making is important. However, that does not prevent disagreement with a previous decision and differing planning judgements to be made where the matter is open for such, with explanation provided as to why that differing stance has been taken. Indeed, having considered all of the evidence before me, I found in my appeal decision that it is appropriate to calculate the housing requirement against local housing need (LHN) using the SM due to the significant difference between the LHN figure and that of policy 4(a) amounting to a significant change in circumstances which renders policy 4(a) out of date.

66. The Applicant also refers to the PPG making it clear that examples of unreasonable conduct leading to an award of costs include persisting with objections contrary to a previous decision of an Inspector. The Applicant also highlights that the PPG with respect to previous decisions is not limited to those made between the same parties. Although I have taken this concern into consideration, particularly as the list of examples of unreasonable conduct is not exhaustive, that list does nevertheless refer to the matter of persisting with objections in terms of those relating to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.

67. In this case, the appeal relates to a different site, scheme and Local Planning Authority area. Although the issue at hand, concerning whether policy 4(a) is out of date, was a common consideration, the Council was not persisting with a stance relating to the same site or proposal within its own area. Furthermore, the Council did not provide evidence or submissions in respect of the Cardwell Farm appeal, and the full evidence relating to that other Inquiry was not before this Inquiry.

68. The costs application submissions include reference to what the Council claims, for the purposes of paragraph 73 and footnote 37 of the Framework, to be a review of the figure to be used as the basis for calculating the Council's housing land supply when determining planning applications and appeals for housing schemes. This is in the form of a Record of Executive Member Decision taken under the Scheme of Delegation dated 8 March 2021 entitled Annual Housing Requirement. Regardless as to whether or not that document can be considered to represent such a review, it was a material consideration. It was therefore reasonable to hear evidence in respect of that document at the Inquiry.

69. In conclusion, for the above reasons, I find that the Council did not behave unreasonably in maintaining its position relating to its first reason for refusal and that, therefore, the Applicant's costs in pursuing the appeal were not

unnecessarily incurred or wasted. For this reason, neither a full or partial award of costs is justified.

*Andrew Dawe*

INSPECTOR