



Costs Report to the Secretary of State for Levelling Up, Housing and Communities

by Patrick Hanna MSc MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Date 9 February 2023

TOWN AND COUNTRY PLANNING ACT 1990

SOUTH RIBBLE BOROUGH COUNCIL

APPEAL BY TAYLOR WIMPEY AND HOMES ENGLAND

RESIDENTIAL-LED MIXED-USE DEVELOPMENT OF UP TO 920 DWELLINGS (USE CLASSES C3 AND C2), A LOCAL CENTRE INCLUDING RETAIL, EMPLOYMENT AND COMMUNITY USES (USE CLASSES E AND SUI GENERIS), A TWO FORM ENTRY PRIMARY SCHOOL (USE CLASS F), GREEN INFRASTRUCTURE, AND ASSOCIATED INFRASTRUCTURE FOLLOWING THE DEMOLITION OF CERTAIN EXISTING BUILDINGS

AND

RESIDENTIAL DEVELOPMENT OF UP TO 180 DWELLINGS (USE CLASSES C3 AND C2), GREEN INFRASTRUCTURE AND ASSOCIATED INFRASTRUCTURE

AT

PICKERING'S FARM SITE, FLAG LANE, PENWORTHAM, LANCASHIRE PR1 9TP

Inquiry Held on 23 August to 9 September 2022

Site visited on 25 August 2022

File Refs: APP/F2360/W/22/3295498 & APP/F2360/W/22/3295502

File A Ref: APP/F2360/W/22/3295498

Pickering's Farm Site, Flag Lane, Penwortham, Lancashire PR1 9TP

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Taylor Wimpey and Homes England 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 a residential-led mixed-use development of up to 920 dwellings (Use Classes C3 and C2), a local centre including retail, employment and community uses (Use Classes E and Sui Generis), a two form entry primary school (Use Class F), green infrastructure, and associated infrastructure following the demolition of certain existing buildings.

Summary of Recommendation: That the application for an award of costs be refused.

File B Ref: APP/F2360/W/22/3295502

Pickering's Farm Site, Flag Lane, Penwortham, Lancashire PR1 9TP

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Taylor Wimpey and Homes England 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 a residential development of up to 180 dwellings (Use Classes C3 and C2), green infrastructure and associated infrastructure.

Summary of Recommendation: That the application for an award of costs be refused.

Preliminary Matters

1. The application was made in writing at the inquiry and relates to both appeals. The response and reply were submitted in writing after the close of the inquiry. These are appended to this report, and no further oral submissions were made.

The application by Taylor Wimpey and Homes England

2. The application is in respect of reasons for refusals 4, 5, 6, 7, 8, 10 and 11. South Ribble Borough Council (SRBC) has; failed to present full and detailed evidence to support its case on masterplanning, planning and viability; acted contrary to, or not followed, well-established case law; and relied on reasons for refusal which do not stand up to scrutiny on the planning merits of the case. These actions led to unnecessary and wasted expense by the appellants, who had to call an expert witness to address masterplanning and to prepare a case in response.
3. As a matter of law, supporting text cannot impose requirements, as set out in *Cherkley*.¹ SRBC has exhibited this conduct in its handling of the case.

Masterplanning

4. SRBC has failed to produce evidence to substantiate reason for refusal 5, which states that the "*masterplan has not been formally agreed by [the] Council*" and

¹ R (Cherkley Campaign Ltd) v Mole Valley DC [2014] EWCA Civ 567).

that the masterplan "*does not meet the policy requirements*". As confirmed by SRBC, this referred to policy C1 of the South Ribble Local Plan (2015)(LP). Its requirements are met because, as SRBC confirmed: the masterplan includes the allocated and safeguarded land and makes provision for a range of land uses.

5. Policy C1 does not require a single planning application for the land which requires the masterplan. The only points of detail raised relate to the timing of the local centre and a parking strategy. The s106 provides for delivery of an interim and full local centre at an earlier phase. A parking strategy can be secured by condition. An amended building heights parameter plan has been agreed.
6. Reason for refusal 6 draws on policy C1 that requires a phasing and infrastructure delivery schedule and an agreed programme of implementation. The appellants have submitted a schedule and programme to meet these requirements. In any event an obligation can require a fuller delivery strategy to be submitted and approved. No concerns were raised about the draft schedule other than the timing of the local centre. Requiring more by referring to the explanatory text would be contrary to well established case law in *Cherkley*. If SRBC had reviewed its case, it would have realised that reasons for refusal 5 and 6 do not stand up to scrutiny.

Viability

7. There is no requirement under policies A1 or C1 for the appellants to provide the full CBLR. The appellants have complied with the policy requirements and safeguarded the land in question. There was no requirement to submit viability evidence under planning policy and the appellants have done all they are required to do in terms of infrastructure delivery. SRBC confirmed that it is not asking the appellants for a further contribution. In any event, SRBC will have around £7.6m in CIL receipts. If SRBC had reviewed their case promptly, they would have realised that reason for refusal 11 does not stand up to scrutiny. SRBC has failed to produce evidence to substantiate this reason for refusal.

Wider planning case

8. SRBC's case stands or falls with the question of development plan compliance. If the Secretary of State finds that the proposals comply with the development plan, SRBC does not contend that the appeal should be dismissed nonetheless because of material considerations. Reason for refusal 10 does not add anything substantive to the other reasons for refusal. Policy A2 is the Cross Borough Link Road (CBLR) policy. It only requires that land is protected from physical development for the delivery of the road. The appellants have done this as a matter of fact.
9. Reasons for refusal 8 relating to air quality was entirely capable of resolution by way of agreed approach under a s106 obligation. SRBC have failed to produce evidence to substantiate their case, namely that there is a breach of development plan policy under reasons for refusal 4, 5, 6, 7, 10 and 11. The appellants tried to meet with SRBC to narrow the issues,² and proactively asked SRBC to review its position and clarify its case. It either did not respond substantively or failed to respond at all.

² See the schedule attached to the appellants' costs application.

The response by South Ribble Borough Council

10. Although not clear from the application, it is understood that each of the appellants' allegations is advanced in respect of each of the three subject areas and the 7 reasons for refusal that are the subject of the application.
11. The dispute is whether the LP requires the Pickering's Farm allocation to deliver the completion of the CBLR.³ That issue is at the heart of each of the three subject areas. SRBC maintains that the LP does require the allocation to deliver the remaining CBLR. This is clearly supported by evidence, as summarised in its closing submissions. SRBC's position with regard to the requirements of the LP accords with the legal principle contained in *Cherkley* and is entirely reasonable.

Masterplanning

12. SRBC contends that the appeal schemes are in conflict with policy C1 in that; the masterplan has not been formally agreed by the Council and does not meet the policy requirements; the submitted documentation provides insufficient detail on how the site will be delivered; no detailed phasing plan has been submitted; and no programme of implementation has been agreed. Each point has merit, is supported by evidence and stands up to scrutiny.
13. Policy C1 requires a masterplan to be agreed, which must include the safeguarded land extending to Coote Lane and contain a specified range of land uses. That is not an exhaustive list of matters to be satisfactorily addressed. Other considerations are relevant including the provision of infrastructure in accordance with the development plan and the adequacy of connections across the sites.
14. In those respects, the masterplan fails. It does not provide for the completion of the CBLR including a crossing of the railway and it promotes inadequate east/west connections. Each of those failings is addressed in and supported by SRBC's evidence. SRBC's approach to identifying those requirements, in order for a masterplan to be agreed, is legitimate. These failings are reflected in an inadequate infrastructure delivery schedule⁴ that similarly fails to make provision for the delivery of the remaining section of the CBLR as part and parcel of the development of the Pickering's Farm allocation.
15. SRBC's evidence did refer to other failings of the masterplan. Whilst SRBC accepted that those failings are capable of being overcome through reserved matters applications, albeit with the risk of delay to development, the central failings of the masterplan remain. Accordingly, SRBC properly advanced its reasons for refusal, and supported those objections in its evidence.

Viability

16. The appellants' approach fails to deliver the remaining section of the CBLR, puts at risk its delivery, and puts at risk the completion of the development of the Pickering's Farm allocation. SRBC's concern is a reasonable one. Suggestions that CIL payments could be applied to the completion of the CBLR do not overcome the failure of the masterplan and infrastructure delivery schedule to deliver

³ This has arisen relatively recently in the history of the appellants' involvement at the sites.

⁴ Albeit the infrastructure delivery schedule on which the appellants now rely was not presented to SRBC until receipt of Mr Alsbury's POE, over 7 months after the refusals.

completion of the CBLR through the development of the allocation as required by the LP, and the risk to delivery of the CBLR given the unknown costs.⁵

17. Nor does the absence of a request from SRBC for a contribution towards the completion of the CBLR address those concerns. The division of financial responsibility for that project is not for SRBC or the LP. It lies with the various landowning and developer interests across the allocation. SRBC's viability concern about the allocation as a whole is well-founded and supported by evidence.

Wider planning case

18. The key question is whether or not SRBC has supported its objections with evidence. It did so. Reasons for refusal 5, 6 and 11 and the evidence adduced to support them are addressed above. SRBC has also adduced evidence to support the policy requirement for the CBLR as addressed by reasons 4, 7 and 10. SRBC's evidence demonstrates that the delivery of a completed CBLR is absent from proposals and the masterplan and that the appeal schemes risk its delivery.
19. SRBC's eighth reason for refusal in respect of air quality was ultimately addressed through a modification to the draft s106. That draft was first provided to SRBC less than 2 weeks before the start of the inquiry. The amendment was agreed on 6 September, so it was not until towards the end of the inquiry that SRBC's concern was overcome. There is no basis to suggest SRBC behaved unreasonably.

The reply by Taylor Wimpey and Homes England

20. SRBC identifies as the central point of contention whether the LP requires the *allocation* to deliver the completion of the CBLR. This immediately demonstrates the misunderstanding and unreasonableness which underpins SRBC's reasons for refusal 4-7, 10 & 11. These are reasons for refusal of two planning *applications* which would bring forward some 67% but not all of the allocation. The point is whether the LP requires these *applications* to deliver the completion of the CBLR.
21. Applying *Cherkley*, it is unreasonable for SRBC to have refused these applications on the basis that they should secure the completion of the CBLR, as opposed to the delivery of the part of the link road which falls within the appeal sites. The masterplan includes and safeguards the route of the whole CBLR and there is no basis in the LP to demand it does more than that. Nor did SRBC substantiate that the *applications* are required by the LP to deliver the completion of the CBLR.
22. Discussion on resolving reason for refusal 8 began in April 2022 when a first draft planning obligation was issued. Discussions continued after that and, in May 2022, the appellants' air quality expert corresponded with SRBC's environmental health officer, who agreed a s106 would be an acceptable way of dealing with mitigation. From May 2022, the appellants were expecting that reason 8 would be resolved. SRBC refused to withdraw, and produced evidence on the matter, forcing the appellants to do the same. None of this was heard at the inquiry as it was ultimately resolved by way of a s106. The draft heads of terms (including full drafting for this issue) were issued to SRBC in June 2022, not August. From June at the latest, it was unreasonable for SRBC to maintain its objection.

⁵ Listed in Mr Lloyd's Appendix 7

Inspector's conclusions

- 23.Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
- 24.This guidance further explains that the aim of the costs regime is to, amongst other things; encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence; and 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.
- 25.Examples of when local authorities are at risk of an award of costs include:
- failure to produce evidence to substantiate each reason for refusal on appeal;
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead;
 - refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal; and
 - not reviewing their case promptly following the lodging of an appeal against refusal of planning permission, or an application to remove or vary one or more conditions, as part of sensible on-going case management.

Masterplanning

- 26.In assessing the suitability of the masterplan, compliance with policy C1 is the primary consideration. To this end, the proposed masterplan includes the safeguarded land identified as site S2 and also makes provision for a range of uses. However, those considerations are not the only ones. A masterplan for the comprehensive development of the site should also address a broad range of constraints, issues and opportunities, as explained in the glossary to the LP.
- 27.In this respect, SRBC's two key objections related to the provision of infrastructure in accordance with the development plan and the adequacy of connections. SRBC provided detailed evidence to the inquiry to substantiate its specific concerns, principally based on the evidence of the masterplanning and highways witnesses, as set out in the appeal report. In short, SRBC maintain that the LP requires the allocated site to deliver the remaining section of the CBLR and that the masterplan fails to provide for the completion of the CBLR. SRBC argue that, in not doing so, the masterplan fails.
- 28.It will be seen from the appeal report that I do not agree with that position. Instead, I concluded that the proposals, including the masterplan, would be suitable in terms of housing and masterplanning policies, and would make adequate provision for highways improvements. Nonetheless, as SRBC's position on these points form part of the broader range of issues falling to be considered by a masterplan, they were not unreasonable concerns to have. SRBC was

entitled to not agree the masterplan on that basis, notwithstanding that policy C1 does not require a single application to be brought forward for the masterplan site. Even though I do not agree with SRBC, the assertions were supported by reasonable and objective analysis.

29. Other minor concerns about the masterplan were set out in SRBC's evidence. In cross examination, SRBC accepted that these were capable of being overcome through conditions or obligations. Nonetheless, SRBC's main objections remained in dispute throughout the inquiry, and SRBC's witness conceded the minor points swiftly, such that inquiry time was not wasted to any measurable extent.
30. The phasing and infrastructure delivery schedule raises the same concerns from SRBC as the masterplan, and my conclusions apply equally. Although such a schedule could often be dealt with by way of an obligation, given SRBC's two key ongoing concerns, it was reasonable for SRBC to maintain its objection to the infrastructure schedule.
31. SRBC asserts that its case accords with *Cherkley*, on the basis that the policy contains a requirement for infrastructure and that the supporting text explains what those items of infrastructure are. In doing so, SRBC has provided substantial evidence to support its position. As such, this is not an unreasonable position to have taken, even though I have reached a different conclusion on the application of the LP policies.

Viability

32. As with the masterplanning issue above, SRBC's case is founded on the basis that the LP requires delivery of infrastructure. This led to SRBC concluding that the proposals would put at risk the completion of that infrastructure delivery and the development of the remaining parcels of land within the allocation. In advancing that case, evidence was presented by SRBC on local plan assessment and background context, along with assessment of CBLR costs, and options and indicative costs for improvements or replacement of the Bee Lane bridge. This evidence adequately substantiates SRBC's case on this matter. Consequently, it was not unreasonable for SRBC to have taken the position they did regarding the viability of the remaining allocated sites, even though I have concluded otherwise on this matter in the appeal report.

The wider planning case

33. Reasons for refusal 5, 6 and 11 are addressed earlier in this report. Reasons for refusal 4, 7 and 10 relate to the failure of the proposals to deliver the CBLR. Policy A2 only requires that land be protected from physical development for the delivery of the CBLR. However, SRBC's position that the proposals including the masterplan do not secure delivery of the CBLR is not unreasonable, as already set out above, even if reason 10 adds nothing further to the other reasons for refusal.
34. The appellants further argue that, applying *Cherkley*, it was unreasonable for SRBC to have refused the *applications* on the basis they should secure completion of the CBLR. Indeed, it goes without saying that the appellants cannot have been expected to deliver infrastructure on land that is outside of the application sites and not within their control. Even so, the masterplan and infrastructure schedule were being assessed for suitability by SRBC at the same time as the applications for planning permission. Given the absence of what SRBC considered to be a

suitable masterplan and infrastructure schedule, for reasons including non-compliance with the LP as described above, SRBC's refusal of the applications was not unreasonable. It therefore follows that the lack a second step in SRBC's case does not have any bearing on this finding.

35. Turning to reason for refusal 8, relating to air quality, SRBC's environmental health officer indicated that the matter could be dealt with by way of a s106 in May 2022. However, as can be seen from the appeal report, the main obstacle to achieving full agreement on the s106 at that time was the balancing payment amount, which relied on input parameters deriving from the parties' differing traffic data. Given the greater complexity of that secondary matter, as illustrated by the disputes in the transport witnesses' evidence, SRBC did not demonstrate unreasonable behaviour in this respect.

36. It is alleged that SRBC did not respond substantively to all the appellants' approaches to try and reach further agreement on the outstanding issues. However, given my above conclusions in respect of the reasonableness of SRBC's case, I am not convinced that such additional engagement would have necessarily materially narrowed the issues.

Conclusion

37. SRBC have presented reasonable and objective evidence to substantiate its case in respect of masterplanning, viability and the wider planning case. SRBC's assertion that its case accords with well established case law, for the reason that LP policy contains a requirement for infrastructure and that the supporting text explains what that infrastructure is, is not unreasonable. It will be seen from my appeal decision that it was not obvious that this was a development that should clearly be permitted. It therefore follows that the planning merits of SRBC's case are not unreasonable. Overall, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated and therefore an award of costs is not justified.

Recommendation

38. It is recommended that the application for an award of costs be refused.

Patrick Hanna

INSPECTOR