

CHAIN HOUSE LANE

COSTS APPLICATION ON BEHALF OF WAINHOMES (NORTH WEST) LTD

1. 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.
2. The application for costs and the relevant guidance must be considered with these important aims in mind. The LPA in this case has failed in each respect to comply with these underlying aims.
3. 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.
4. 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.
5. 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.

6. 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.
7. 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 (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 supply¹.
8. 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 appeal². 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 Lancashire³.
9. 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 expense⁴.
10. 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 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 place⁵). The document AD 10 takes not materially advance the Council's case.

¹ Document AD 11.2 paragraph 1.3

² See for example NI paragraphs 1.14 and 5.106

³ See for example NI paragraph 5.106

⁴ Document AD 11.1

⁵ Document AD 10 paragraph 26

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.

11. 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.
12. 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.

VINCENT FRASER QC

19th March 2021

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