IN THE MATTER OF

LAND AT PEAR TREE LANE,
EUXTON,
CHORLEY

FINAL REPLY TO THE RESPONSE FROM THE COUNCIL TO THE COSTS APPLICATION MADE ON BEHALF OF THE APPELLANT GLADMAN DEVELOPMENTS LIMITED

Introduction

1. The Council divides their response into two parts:

   (i) A claim that the Appellant's application for costs has been made late; and
   (ii) A claim that the Council's redistribution of its housing requirement is actually the standard method.

2. Both are wrong to the point of being perverse and would expose a refusal of permission to allow costs to judicial review (the route taken when legally challenging a cost decision).

3. In paragraph 1 of the Response, the Council highlight Manchester City Council v SSE & Mercury Communications Limited [1998] JPL 774 to suggest that costs should only be awarded when a Council cannot support its decision by any substantial evidence. But substantial here does not mean substantial in the sense of submitted a large volume of evidence. It means evidence with substance. In fact, the main point the Court was really making was that the word unreasonable should be given its ordinary meaning. In that context it is no answer to submit evidence which is not credible. To be reasonable evidence it must be credible. It is unreasonable to rely on evidence which is not credible. It is no answer, to a charge of unreasonableness, to call a witness who seeks to argue black is white and to argue the exact contrary position to that set out very clearly in national policy and national guidance, as the Council has done here with Mr. Ireland's evidence.

Reply to the Accusation the Appellant has made a Late Application for Costs

4. The application is not late at all. The application was made on time. The Planning Practice Guidance (PPG16-035) requires that an application should be made before the end of the inquiry. It was. It is therefore seriously misleading to

characterize it as late, most especially in terms of the attempt to suggest that there is a need to show good reason why it is late. It is not late at all. It is on time.

5. The Practice Guidance encourages the early indication of costs. That is understandable as it allows inspectors to plan the inquiry timetable accordingly, if such matters are dealt with orally at the inquiry (which was not the case here). It is also understandable for the many appeals where the parties are not legally represented or even professionally represented and who may be unfamiliar with the concept of cost and may need assistance and guidance in how to make and respond to a costs application. None of which applies here.

6. The Inspector's direction at the Case Management Conference cannot redefine the Practice directions definition of late.

7. Added to which, it would be completely perverse to image that a party cannot, upon hearing the Council's evidence, not then make a costs application. The same applies to the submission of new evidence at the inquiry, which in this case revealed that the three council's now assert they do not rely on the Memorandum of Understanding for the purpose of development management decisions, which goes to the very heart of the main issue in this case (as set out in Preston City Council's Summary Grounds of Resistance to the Judicial Review claim to its adoption of the MOU2, proceedings which Chorley wish to join adopting the same defence).

8. Despite the fact the Appellant's costs application is not late, it has sought to explain the timing issue, as a courtesy to the Inspector and the Council. Clarity was obtained over the Council's absurd position during the inquiry. It was revealed in the approach adopted (which was to actually argue it had adopted the Standard Method despite plainly not doing so, and to claim the MOU2 was not a material consideration for decision making) and its approach to the MOU2 as revealed in the JR claim (which was to argue the MOU2 is not meant to be used for development management decisions). The Council says in its

Response at paragraph 8 that the Council's reliance on MOU2 is explained in detail in the evidence (proof and rebuttal). But it was only when the Summary Grounds of Resistance to the JR were obtained did it become clear the LPAs in this area actually argue the MOU2 is not to be relied upon for the purpose of decision making.

9. To bar a costs application made before the close of the inquiry, would expose the decision to a Judicial Review.

10. Crucially, the Council can point to no prejudice whatsoever in respect of the timing of the costs application. It has been afforded ample time to reply by virtue of the very fair procedure adopted by the Inspector, giving the Council a week to prepare its reply, to what is a very simple and straightforward application for costs. That the Council has been able to reply in full is demonstrated by its own reply, irrespective of its content.

11. Therefore, the complaint gets the Council nowhere, other than to perhaps highlight the fact it wishes to complain about the timing to deflect attention away for the main issue here which is the Council's decision to try and evade the Standard Method.

Reply to the Council's Reply on the Substance of the Claim for Costs

12. The Appellant has a cast iron case on costs. The Council have both misinterpreted and misapplied national planning policy and national planning policy guidance on the standard method. And it has done it deliberately.

13. The reason it is deliberate is because the Council must know its position is wrong. The Council argues not that they have adopted an alternative approach to the calculation of its housing need, nor that there are exceptional circumstances for doing so. Instead, the Council argues that it has followed the

Standard Method. This is despite the fact that it has introduced an additional stage into the Standard Method, which does not exist.

14. There is a simple way to test this. There can only be one Standard Method. Otherwise it is not a method which is standard.

15. The Appellant has adopted the Standard Method, and at no point did the Council seek to suggest or explain that the Appellant had not adopted what could properly be described as the Standard Method.

16. What the Council have done is add in an additional stage to the Standard Method to create an alternative approach. That is precisely what it has done.

17. Yet , and this is the crucial point, the Council's experts know full well that it cannot possibly argue for the adoption of an alternative approach at this stage, as the revised wording of the NPPF in the 2019 version, now expressly states in the definition of local housing need, that deviation from the Standard Method (which is to rely on exceptional circumstance to justify an alternative approach) is only permitted <u>in the context of plan making</u> rather than decision taking. Mindful of the wording of local housing needs in the NPPF, the Council are forced to argue their approach is the Standard Method, when it plainly is not. Hence the Council are arguing black is white and that is why its position is unreasonable.

18. If there was any room for doubt, which there is not, that is also made abundantly clear in the PPG at paragraph 02a-016.

19. The attempt by the Council to argue that PPG 2a-013 is part of the Standard Method as set out in PPG 2a-004 is a painfully inappropriate misreading of the PPG. As is plain on its face, the PPG 2a-013 is concerned <u>with plan making</u>. And 2a-016 puts that beyond doubt, when it then makes it abundantly clear what should be done in the context of decision taking as here.

19. Further, brief specific responses to the points made (adopting the Council's paragraph numbering):

11. It is plainly the case that a costs application can refer to the closing submissions (which summarise the evidence from the inquiry) to avoid repetition, That is part of the reason costs claims are heard after the closing submissions. The Council are well able to deal with a costs application which refers for more detail to the closing submissions, having been given a whole week outside of the inquiry to respond to the costs claim. And of course, the Council can cite its own closing submissions in its own reply to the costs claim.

12. The Council's approach to the weight to give to the delivery of new affordable housing is implausible. It is part of the evidence showing the Council's behaviour has been unreasonable in this case. And the Council has replied to the substance of it in paragraphs 25 and 26 of its Response to the costs claim.

14. The Council defends itself by repeating its error in seeking to rely on paragraph 2a-013 of the PPG in the context of decision taking. The Council compounds its error because that approach is plainly wrong. And the Council's continued reliance on it is as clear a case of unreasonableness as an Appellant is ever likely to be able to show.

15. The Council begin this paragraph with reference to a quote from PPG 2a-013 "where plans cover more than one area". Exactly. Where plans cover more than one area. The paragraph refers to plan-making. Nothing stops the Council from pursuing this approach in the context of plan-making. But this appeal is about decision-taking, which is not plan making. The Council say it is not helpful that the costs application does not reflect the evidence. Mr. Donagh's evidence could not be more clear: he says all of this redistribution can be done through the new local plan

process. But of course, the Council do need to get on with that. The Council have never had an NPPF compliant development plan. In fact, what is not helpful is when the Council misinterpret national policy and guidance and pretends to itself and the Inspector that 2a-013 relates to decision taking.

16. The Council produced evidence from Mr Ireland. But it flies in the face of the NPPF and the PPG. The PPG at 16-028 makes clear that the costs regime seeks to encourage LPA to properly exercise their development management responsibility, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay,

17. PPG 2a-013 is a clear statement – of the fact that such redistribution can be done in the context of plan making, as is plain in the title.

18. The three Central Lancashire authorities can indeed undertake a redistribution exercise. But not through the MOU2. That is unlawful as it is a clear breach of the Local Plan Regulations, as explained fully in the Judicial Review claim. The Council defence to that is to argue that MOU2 is not being used for determining planning applications. It plainly is. Unfortunately, the Council have got themselves in a complete pickle over this. But what the Summary Grounds of Resistance reveal is that the three Councils must now be acutely aware that their reliance on the MOU2 is unlawful, hence attempting to again argue that black is white this time over their purported non-reliance on the MOU2 for decision making, when that is of course precisely what they are doing, never more clearly than in this appeal.

19. If the Council is genuinely following the SM (by adding in fourth stage which allows LPAs to redistribute their housing requirement) then I am

surely a Dutchman. I honestly do not know what else to say: the Council could not be more wrong on this point. It is 100% wrong.

20. The Council argue that paragraph 2a-013 is not specifically addressed to plan making. Even though the title of this section specifically refers and relates to development plans.

21. The Council concede in the first in the first sentence that it is using MOU2 for decision-making. And plainly that is right. The continued reliance on the High Court Judgment in St Modwen (in respect of the housing requirement) is painfully inappropriate when the Court was expressly dealing with a very different version of the NPPF which was completely different in terms of the way in which housing requirements should be calculated, i.e. the HMA, as per para 47 of NPPF(2012) and a completely different version of the accompanying guidance in the PPG.

22. The very fact the Council invite the Inspector to give full weight to the MOU2, reveals the lie that is the attempt to argue the exact opposite in Preston City Council's Summary Grounds of Resistance.

23. It is plainly a material consideration. But the Council's planning witness denies as much. It is utterly perplexing. And a lack of clarity is usually indicative of a position which is simply wrong.

24. The Council's must surely know it is wrong, but sets itself the threshold of producing evidence which must be credible. The Appellant agrees. And that is the Appellant's main point, because the Council's evidence simply is not credible.

25 The Council rely on its past delivery of AH (which failed to meet its own target). But that is not the point. The houses on this site will meet not a past need but a future need. And it is that forward supply of AH which Mr

Stacey's evidence reveals has collapsed. And why has it collapsed? Because the Council have adopted a wholly unreasonable annual housing requirement, which is unrelated to the affordability issues in the Borough, and which will need to be thoroughly tested, most especially on this point, in the emerging local plan EIP. The Council's housing land supply is the problem. The Council allege "[t]here was limited evidence Ms Whiteside could refer to concerning how the Council would address the future need identified by Mr Stacey." That is not her fault. It is the fact the Council have adopted a housing requirement which is half what it should be under the SM. The suggestion there is a risk of local oversupply has no planning policy foundation. The Council can no doubt explain that at the EIP, and also to the hundreds of households on the housing waiting list both in Chorley and the wider "sub-region" as the Council term it.

26. The detailed evidence of Mr Stacey explains precisely why it is simply not credible to argue that only limited weight should be given to the delivery of 52 units of affordable housing to help 52 households in the Borough unable to meet their housing needs.

27. The role reversal works perfectly. The SM is the SM. That is what is to be followed until the Local Plan is adopted. Whether more housing is needed in Preston and South Ribble because of the City Deal is nothing to the point at this stage. But equally nothing stops the Council from progressing a development plan to address the City Deal. What that needs however is for the Councils to finally progress a NPPF complaint strategic development plan, which is something which has never yet happened in this area.

20. The Cost claim should be allowed. To do otherwise will only encourage more of this type of behaviour, which is inappropriate in the extreme and a huge waste of resources.

15 July 2020

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