

Report of	Meeting	Date
Corporate Director (Business)	Development Control Committee	22 July 08

APPEAL AGAINST REFUSAL OF PLANNING PERMISSION FOR ERECTION OF 16 DWELLINGS AT 54 LANCASTER LANE.

PURPOSE OF REPORT

- To highlight advice provided by the Council's barrister regarding the Council's case and the likely success at appeal including the potential for incurring costs. There has been change to the material considerations as a result of the appeal decision on a smaller site at Lancaster Lane.

RECOMMENDATION(S)

- That the Council's case at appeal is that the Council would have recommended approval of the application on the basis of the change in circumstances resulting from the appeal being allowed.

REASONS FOR RECOMMENDATION(S)

(If the recommendations are accepted)

The Council must reconsider its position in light of the recent appeal decision and the award of costs against the Council. Failure to assess the risk of continuing with the appeal would increase the liability and an award of costs against the Council from fighting the appeal based on the members concerns and the reasons for refusal.

CORPORATE PRIORITIES

- This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region	√	Develop local solutions to climate change.	
Improving equality of opportunity and life chances	√	Develop the Character and feel of Chorley as a good place to live	√
Involving people in their communities	√	Ensure Chorley Borough Council is a performing organization	√

BACKGROUND

6. Following the submission of the appeal against the refusal of planning permission Giles Cannock was instructed to provide the Council with advice on the Council's case and the implications of maintaining its opposition to the appeal proposal. At the previous appeal an award of costs was made against the Council and Giles Cannock's advice was also sought regarding the likelihood of cost being awarded on the current appeal.
7. The advice from Giles Cannock is copied below in full.

ADVICE

1. On 20th December 2007, Wainhomes Developments Limited ("the Appellant") made an application for **demolition of 54 Lancaster Lane and the erection of 19 new dwellings including associated infrastructure on land to the rear of 46 to 60 Lancaster Lane**. In a notice, dated 14th March 2008, Chorley Borough Council ("the LPA") refused planning permission. The Applicant has appealed. The Planning Inquiry to determine the appeal is listed for 2 days from 25th September 2008.
2. I am asked to advise the LPA on the presentation of its evidence at the Public Inquiry.
3. I have had sight of:
 - (i) Decision letter dated 23rd June 2008 (Application Ref: 07/00685/FUL);
 - (ii) Appeal Questionnaire (Application Ref: 07/01423/FULMHA).

Factual Background

4. On 5th June 2007, Wainhomes Developments Limited ("the Applicant") made an application to the LPA for **the erection of 5 detached houses and 2 bungalows at 54 Lancaster Lane, Clayton-le-Woods, Leyland** ("Application 1").
5. In a notice, dated 13th September 2007, the LPA refused planning permission for the first application (contrary to Officer Recommendation) for the following reason:

"The proposal would constitute over development of the site and would be out of character with the surrounding area. In particular the surrounding area is characterised by residential properties with large garden areas. As such the proposal is considered to be contrary to Policy HS4 of the Adopted Chorley Borough Local Plan Review and Government advice contained in PPS3: Housing."
6. On 20th December 2007, Wainhomes Developments Limited made an application for **demolition of 54 Lancaster Lane and the erection of 19 new dwellings including associated infrastructure on land to the rear of 46 to 60 Lancaster Lane** ("Application 2").
7. In a notice dated 14th March 2008, the LPA refused planning permission for the following reason:

"The layout and density of the proposal would be inappropriate in the context of the area. It is not considered that the proposal relates well to its surroundings which is characterised by residential properties with large

garden areas. As such the proposal is considered to be contrary to Policy HS4 of the Adopted Chorley Borough Local Plan Review and Government advice contained in PPS1, which states that new residential schemes should respond to their local context and reinforce local distinctiveness, and PPS3, which states that new residential schemes should be well integrated with and complement the neighbouring buildings and the local area in terms of scale, density, layout and access.”

8. The Applicant has appealed both refusals.
9. A Planning Inquiry was held on 4th April 2008 to determine the appeal on Application 1. In a Decision Letter, dated 23rd June 2008, the Inspector granted conditional planning permission, subject to a Section 106 agreement. The main issue in the appeal was “the effect on the character and appearance of the area”¹.
10. In the Decision Letter, the Inspector writes:

“The Council’s reason for refusing the planning application describes the proposal as an over development of the site, out of character with the area. The reason specifically refers to the area’s characteristic large gardens. However, the Council’s evidence to the Inquiry accepted that the large gardens are now an anomaly, and that the original ribbon development should not be preserved.”
11. Furthermore, the Inspector made the following points:
 - Any additional housing on the site would inevitably affect the density (paragraph 8);
 - The density of existing development should not dictate that of new housing by stifling change or requiring replication of existing style or form (paragraph 8);
 - The historic maps show that each wave of development of this area has opened up land in a slightly different way (paragraph 9);
 - It is neither surprising nor inappropriate for the development of the remaining back land to adopt a further variation (paragraph 9);
 - Maps showing that the plot depths, ratio of building to plot size and relationship of gardens would not be dissimilar to other plots nearby, particularly where access roads have been inserted (paragraph 10);
 - The Council is concerned that the proposal would replicate the form of neither the original ribbon nor the newer housing to the south and is inconsistent with Policy HS4 (paragraph 11);
 - Development of the site in accordance with the predominantly semi-detached form of housing in the New Town development would almost certainly result in a higher density than the appeal proposal, and hence also be seen as an over development (paragraph 12);
 - The form of development would reflect the earlier cul-de-sac pattern (paragraph 14).
12. Accordingly the Inspector concluded:

¹ See paragraph 4

“... I consider that the proposal would not be an over development of the site, out of character with the area, and would comply with LP Policy HS4 and with advice in PPS3.”

The Appeal Application

13. The Reason For Refusal in Application 2 is substantially the same as in Application 1. The Decision Letter in Application 1 is a material consideration of significant weight in the determination of Application 2.
14. It is clearly established that the previous appeal decision is capable of being a material consideration and that before departing from the relevant previous appeal decision, the Inspector should have regard to the merits of consistency and should give reasons for departing from it (***North Wiltshire DC v. SoSE*** [1993] 65 P&CR at 137). A previous appeal decision is capable of being material consideration because it is desirable, as a matter of policy, that there should be consistency in the appellate process.
15. The Application 1 development is the central part of Application 2. It follows from the Decision Letter, that the central part of Application 2 must now be considered acceptable. Given that conclusion, and that the density of the remainder is consistent with Application 1, there is no evidence before me on which to conclude that planning permission should be refused.
16. In such circumstances, the Circular Guidance in Circular 8/93: Costs in Planning is relevant. It states:

“Planning authorities are not bound to adopt, or include as part of their case, the professional or technical advice given by their own officers, or received from statutory bodies or consultees. But they will be expected to show that they had reasonable planning grounds for taking a decision contrary to such advice; and they were able to produce relevant evidence to support their decision in all respects ...²

Planning authorities are expected to consider the views of local residents when determining a planning application. Nevertheless, local opposition to a proposal is not, by itself, a reasonable ground for the refusal of a planning application unless opposition is founded on valid planning reasons which are supported by substantial evidence. While the planning authority will need to consider the substance of any local opposition to a proposal, their duty is to decide a case on its planning merits ...³

A planning authority are likely to be regarded as having acted unreasonably, in the event of a successful appeal against their refusal of planning permission, if it is clear from the relevant earlier appeal decision that the Secretary of State or a Planning Inspector would have no objection to a revised application in the form which was ultimately allowed, and circumstances have not changed materially meantime ...⁴”
17. Accordingly, the recent Decision Letter is a material consideration of significant weight that was not before the Planning Committee at the time of their determination of Application 2.
18. In my opinion, Application 2 should be reported back to the Committee, so that the Planning Committee can reconsider their position, in the light of the recent appeal decision.
19. In the light of the Decision Letter, in my opinion, if the appeal proceeded to determination, with the reason for refusal as drafted, planning permission would be granted. Furthermore,

² Annex 3, paragraph 9

³ Annex 3, paragraph 15

⁴ Annex 3, paragraph 16

on the balance of probabilities, an adverse award of costs would be made against the LPA. Furthermore, should the LPA wish to pass a different resolution (perhaps citing different reasons for refusal) the LPA would have to explain why they have changed their position (given the provisions of Article 22(1) GDPO (1995)). The LPA would also (see above) have to give reasons for disagreeing with the Inspector.

20. Should the Planning Committee decide not to contest the appeal, in the light of the Decision Letter, then:
 - (i) The Applicant could be persuaded to submit a new application and withdraw the appeal. If not:
 - (ii) an agreed case could be presented to the Inspector at the Planning Inquiry on 25th September 2008, given that he is now seized of the matter.
21. Withdrawing a reason for refusal itself has a risk of an adverse costs award. However, taking reasonable prompt action to minimise costs, whilst keeping the other side informed at all times, will minimise the risk of any adverse award of costs being made.
22. I advise accordingly. Please do not hesitate to contact me should anything further arise.

GILES CANNOCK

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2nd July 2008

Conclusion

With reference to the advice provided the material considerations in respect of this application have changed and the Council and the decision maker (DC Committee) must have regard to the change in circumstances. Legal cases do provide guidance that failure to take into account new information and a change in circumstances will be likely to be considered unreasonable behaviour and as such an application for an award of costs is likely and is likely to be granted.

To reduce the liability to the Council, the recommendation of Giles Cannock to make clear to the applicant and to the inspectorate that the Council would now support the scheme would assist in reducing the Councils liability in respect of a costs application.

The opposition of the Committee to the principle of development has been lost and as such the amended scheme that was refused and subject to appeal does provide an improved use of land, access by refuse vehicles and the provision of affordable housing.