Application for Costs made by Ribble Valley Borough Council
against the Appellant in relation to the appeal
for the erection of one dwelling at
Ellerslie House Ribchester Road, Clayton-le-Dale.

Planning Inspectorate Reference: APP/T2350/W/16/3153754
LPA Reference: 3/2016/0393

WRITTEN REPRESENTATIONS SUBMITTED ON BEHALF OF
THE LOCAL PLANNING AUTHORITY
1. APPLICATION

1.1 The Local Planning Authority is aware that in most cases each party should meet their own costs in relation to works on planning appeals. However, in this instance the Local Planning Authority consider this to be a frivolous appeal that is clearly contrary to the recently adopted Core Strategy and recent appeal decisions in relation to residential developments outside of the defined settlement boundaries. As such there is considered to be unreasonable behaviour by the appellant that has resulted in considerable work for the local authority at a time when resources are limited.

1.2 Paragraph 051 of the “Appeals” section contained within the National Planning Policy Guidance states:

‘Awards against appellants may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal’.

1.3 Paragraph 053 of the National Planning Policy Guidance states:

‘An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding. This may occur when:

- The development is clearly not in accordance with the development plan, and no other material considerations such as National Planning Policy are advanced that indicate that decisions should have been made otherwise, or where other material considerations are advances, there is adequate supporting evidence;

- the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period’

1.4 It has been demonstrated in the Council’s appeal statement that the proposal is clearly not in accordance with the development plan and given its recent adoption (February 2015) there is no consideration to justify any deviation from the plan. The LPA are therefore of the opinion bullet point 1 of paragraph 053 in the NPPG is relevant.
1.5 In respect of bullet point 2 of paragraph 53 in the NPPG, the LPA has recently been subject to a number of unsuccessful appeals for residential developments located outside of the defined settlement boundaries, but most specifically an appeal was dismissed for residential development on Mayfield, Ribchester Road (appeal ref: APP/T2350/W16/3146494) which is situated directly opposite the current appeal site. The appeal at Mayfield was dismissed in July 2016 on the grounds that the principal of residential development in this location is contrary to the aims of recently adopted Ribble Valley Core Strategy. Additionally, this neighbouring appeal at Mayfield was submitted by the same agent (HDPA) as the current appeal at Ellerslie House and clearly this appeal decision (along with a number of other recent appeal decisions for residential developments outside the settlement boundaries) has not been taken into account when lodging this appeal. Therefore, in terms of the guidance within the NPPG, this adjacent appeal site is considered to be "very similar" to the current appeal in terms of the proposal for residential development, and given that it is located directly opposite the current appeal site, and therefore an equal distance from the nearest settlement boundary of Wilsphere, this appeal is "substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period", in terms of assessing the principle of the residential development in this location.

1.6 The LPA accept that the current appeal may have been lodged at a similar time to the issuing of the decision for the adjacent site at Mayfield, and with this in mind on 5th August 2016 the LPA wrote to the appellant’s agent (appendix 1) to inform them of the LPA’s decision to apply for costs given the recent appeal decisions in respect of residential developments outside of the settlement boundaries, and in particular in light of the very recent appeal decision at Mayfield for which HDPA also acted as the agent. The LPA were clear in the correspondence that should the appeal be withdrawn within a reasonable timescale, an application for costs would not be sought for the work the LPA had already undertaken in respect of the appeal. However, in response to this correspondence the appellant’s agent has informed the LPA that they wish to continue with the appeal in spite of the LPA’s decision to apply for costs.

1.7 In addition to the above, prior to submission of the formal planning application, the LPA provided the applicant with detailed pre-application advice in February 2016 (appendix 2), within which the LPA made it clear that any application for residential development of this site would not be acceptable on the grounds that it was contrary
to the aims and objectives of the Core Strategy. The appellant chose to ignore this advice and submit a planning application, as is their prerogative, and this application was consequently refused in line with the advice given within the pre-application response.

1.8 In view of the above, the LPA have been consistent in its views and responses that the residential development of this site, outside of any settlement boundary and therefore within the open countryside, is clearly contrary to the aims and objectives of the Development Strategy contained within the recently adopted Core Strategy, and recent appeal decisions, particularly the appeal decision at Mayfield, directly opposite the current appeal site, have reiterated that such developments are contrary to planning policy.

2. CONCLUSION

2.1 It is clear to the Local Planning Authority that the appellant has given little (if any) regard the pre-application advice given in February 2016, to the relevant Planning Policies contained within the Core Strategy nor to the recent appeal decisions in relation to residential development outside of the settlement boundaries, but more specifically the recent appeal decision at Mayfield for which the appellant's agent was also the agent. The LPA had the courtesy to contact the appellant's agent to inform them of its intention to apply for costs should the appeal not be withdrawn within a reasonable timescale, however the appellant has confirmed their intention to continue with an appeal that is clearly contrary to the recently adopted Core Strategy with no evidence being put forward to justify why this development should be considered to be an exception to the relevant planning policies and relevant appeal decisions for similar developments. It is therefore the LPA's view that the appellant has acted in an unreasonable manner in accordance with Paragraph 53 of the "Appeals" section of the NPPG and for that reason full costs should be awarded to the Local Planning Authority.

2. The Inspector is respectfully asked to grant an application for costs against the appellant.
Appendix 1

(Correspondence between LPA and agent)
Robert Major

From: Steven Hartley <donna.hartley2@btinternet.com>
Sent: 08 August 2016 12:20
To: Robert Major
Cc: andrew Milligan
Subject: Re: Appeal at Ellerslie House, Ribchester Road

Robert

Appeal at Ellerslie House, Ribchester Road

I have forwarded your email to my client who, having considered the matter, intends to carry on with the appeal.

regards

Steven Hartley
Hartley Planning and Development Assocs
Swallow Barn
Lower Chapel Hill
Hurst Lane
Rawtenstall BB4 8TB

From: Robert Major
Sent: Friday, August 5, 2016 10:54 AM
To: Steven Hartley
Subject: Appeal at Ellerslie House, Ribchester Road

Morning Steven,

As discussed on the phone, the Council has recently received a number of appeals for new houses (residential uses) located outside of the of the settlement boundaries (within the open countryside), which have been dismissed by the Inspectorate on the grounds that the proposals would harm the development strategy for the borough and not give rise to sustainable development. Most relevant to the current appeal is the recently dismissed appeal for residential development on Mayfield, directly opposite Ellerslie House, for which HPDA acted on behalf of the appellant.

Given the number of appeals that have been dismissed for houses outside of the settlement boundaries, and given one of these is located directly opposite Ellerslie House, it has been decided that the LPA will seek an award of costs in relation to this appeal. I am therefore, as a matter of courtesy, making you aware of this and this is obviously something you may want to discuss with your client, before the LPA undertake any further works in relation to the appeal.

Whilst the LPA have undertaken the administration works in relation to the appeal, at this present time I have not yet written the LPA’s appeal statement and therefore, if the appeal is withdrawn by the end of 9th August 2016, the LPA will not seek costs for the work it has so far undertaken. However, if the appeal is not withdrawn, or is withdrawn after the above mentioned date (9/08/16), the LPA will be seeking an award of costs for all the work it has undertaken in relation to this appeal.

If you have any queries please do not hesitate to contact me.
Regards

Robert Major
Principal Planning Officer
Ribble Valley Borough Council

Tel: 01200 414516
e-mail: robert.major@ribblevalley.gov.uk

Tops for resident satisfaction – 94% of residents are satisfied with Ribble Valley as a place to live (Perception Survey 2016)

Happiest residents in the UK – Ribble Valley has a ‘happiness rating’ of 8.2 compared to a UK average of 7.5 (Halifax Rural Quality of Life Survey 2016)

This transmission is intended for the named addressee(s) only and may contain sensitive, protectively marked or restricted material, and should be handled accordingly. Unless you are the named addressee (or authorised to receive it for the addressee) you may not copy, use, or disclose it to anyone else. If you have received this transmission in error, notify the sender immediately. All GCSX traffic may be subject to recording and/or monitoring in accordance with relevant legislation. This e-mail is issued subject to Ribble Valley Borough Council’s e-mail disclaimer which you are taken to have read and accepted.
Appendix 2

(pre-app response)
Dear Judith,

I write in response to your client’s pre-application enquiry regarding the proposal of a new dwelling on land associated with Ellerslie House, Clayton Le Dale.

Key Statement DS1 of the Core Strategy seeks to direct the main focus of new house building to the Strategic Sites and the Principal Settlements of Clitheroe, Longridge and Whalley and then through to Tier 1 Villages which are considered the more sustainable of the 32 defined settlements. In this case, the site of this development is located outside of the settlement boundary of Wilpshire and therefore would not be acceptable in principle.

I note within your Planning Statement that you consider the defined settlements to be ‘out of date’ and whilst work has commenced on updating settlement boundaries, having discussed this proposal with the Council’s Planning Policy Team, it is not envisaged that the Wilpshire settlement boundary will be redrawn to include the application site. In any case, advice can only be given in line with current policies, and the potential future change of settlement boundaries is not a consideration at this stage.

Additionally, as the proposed dwelling would be sited outside of a defined settlement boundary and within the Open Countryside, Policy DMH3 is also relevant. The Borough currently has a five year supply of housing and subsequently only in very exceptional circumstances would new housing in the Open Countryside be supported. The principle of residential development on this site is therefore contrary to Policies DS1, DMG2 and DMH3 of the Core Strategy.

As this proposal is contrary to several policies, irrespective of other material considerations, an application would not be considered acceptable in principle and therefore would be refused.
General Observations

As there are no relevant plans I cannot give any advice on the design, or scaling of the proposal.

For information, as this proposal is contradictory to above policies, I have not consulted with Lancashire County Council with regards to access from the existing highway. However, please be advised that Lancashire County Council Highways department will no longer be supplying Pre-Application advice at this time and they are currently considering charging for such advice. If you require any additional information with regards to Highway issues, you will be expected to request this information through your own initiative and contact LCC direct for further advice. Nevertheless, I suggest you submit visibility splays/sight lines for an officer to consider, should a formal application come forward.

Conclusions

To summarise, the principle of residential development within the Open Countryside and outside of the Principal Settlements, and the nine Tier 1 Village Settlements, is not acceptable, as it would result in the approval of a dwelling in an unsustainable location without specific justification. As the Council currently has a five year housing land supply I cannot see any case to be argued in favour of the proposal and even if there was a less than five year housing supply the proposal is situated in an unsustainable location and there are more sustainable locations within the Borough which would be more suitable for residential development. The proposal would therefore be contrary to the aims and objectives of the Development Strategy contained within the recently adopted Core Strategy. For the above reasons, I cannot offer any support to this application.

I note within your application that you requested a meeting to discuss the proposal. However as the LPA do not support the principle of residential development on this site it is my opinion that this would not be an efficient use of time or resources, for either the LPA, yourself or your client, as a meeting is not going to alter the fundamental view point that the LPA would not support the residential development of this site. Notwithstanding the above, if you would still like to meet to discuss the proposal please feel free to contact me.

Please be mindful of the fact that the above advice has been given on the basis of the level of information submitted as part of the pre-planning enquiry. I trust that you find the above observations of use and stress that they represent officer opinion only, at the time of writing, given without prejudice to the final determination of any application submitted.

Submission Requirements
If you wish to submit an application irrespective of my advice please ensure that the following documents are submitted:

- Planning Statement
- Proposed, scaled elevations of the dwellings and site plan
- Scaled Location Plan
- Tree Survey / Arboricultural Impact Assessment

Yours sincerely

Victoria Walmsley

Pre-Planning Advice Officer