

Caulmert Limited

Engineering, Environmental & Planning
Consultancy Services

Thorncroft, Lower Hague, New Mills, SK22 3AP

Mr & Mrs K Povah

**Demolition of existing outbuilding and erection of a single self build dwelling
with associated landscaping works (LPA Ref: HPK/2024/0495)**

Costs Application on behalf of the Appellant

Town & Country Planning Act 1990 (as amended)

Planning and Compulsory Purchase Act 2004

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Costs Application on behalf of the Appellant

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1.0 INTRODUCTION

- 1.1.1 This is an application for a full award of costs made against High Peak Borough Council (the “Local Authority”) in accordance with the Planning Practice Guidance (‘the PPG’) on planning appeals and the award of costs in respect of an appeal against the refusal by High Peak Borough Council (the “Local Authority”) of planning application reference: HPK/2024/0495 (the “application”).

2.0 RELEVANT GUIDANCE

- 2.1.1 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. The PPG defines 'unreasonable' as being used in its ordinary meaning, as established by the courts in *Manchester City Council v SSE & Mercury Communications Limited* [1988] JPL 7745. It may be either procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
- 2.1.2 An application will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or only for part of the process. Costs may include, for example, time spent preparing for an appeal, including the use of consultants to provide detailed technical advice. Costs applications may relate to events before the appeal was brought. Though costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether costs should be awarded.
- 2.1.3 Insofar as procedural costs, the PPG sets out a non-exhaustive list as to when an award of costs may be made against a local planning authority.
- 2.1.4 The PPG also sets out a non-exhaustive list as to when a substantive award of costs may be made against a local planning authority, noting that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or by unreasonably defending appeals¹⁰. Relevant to this matter, the list includes:
- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - failure to produce evidence to substantiate each reason for refusal on appeal; and
 - vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
- 2.1.5 A full award of appeal costs means the party's whole costs for the statutory process, including the preparation of the appeal statement and supporting documentation, and the expense of making the costs application. A partial award of costs may result from an application for either a full or a partial award, and may apply where, for example, costs relate to one or some of the grounds of refusal but not all of them.

3.0 SUBMISSIONS

3.1 The Substance of the RfRs

3.1.1 RfR 1 states that:

The proposed dwelling lies within an area of countryside, whereby Policies EQ3 and H1 apply. The dwelling would not meet any of the exceptions listed in Policy EQ3 for the provision of a new residential dwelling and would not meet Policy H1 in that it does not adjoin the built-up area boundary or have reasonable access to local services and facilities by foot cycle or public transport. As such the principle of development is considered to be unacceptable, resulting in an unsustainable form of development, contrary to Policies EQ3 and H1 of the High Peak Local Plan 2016 and the National Planning Policy Framework

3.1.2 The Application was dealt with by delegated powers and an analysis of the Officer's reasonings is set out in detail in the Appellant's submitted Statement of Case.

3.1.3 Within the Officer Report it concludes that that the proposal would accord with the provisions of Paragraph 154 g) of the NPPF, which sets out that the redevelopment of previously developed land would not be inappropriate development in the Green Belt, providing that the proposal would "not have a greater impact on the openness of the Green Belt than the existing development".

3.1.4 The Officer Report also confirms that the proposed replacement dwelling would be of the same size, scale and massing of the currently sited outbuilding and it is considered that the proposals would not have a greater impact upon the openness of the Green Belt and the proposals are in accordance with the exception noted in Paragraph 154 g) of the NPPF and do not constitute inappropriate development in the Green Belt and comply with Local Plan Policy EQ4. Consequently in regard to Green Belt policy the Council found the proposals to be acceptable and do not advance any Green Belt policy in the RfR.

3.1.5 In regard to Policy EQ3 which is included within the RfR this seeks to restrict new residential development in the countryside in order to protect the landscape's intrinsic character and distinctiveness unless it accords with one of a limited number of exceptions. One exception is the re use of redundant and disused buildings and/or the redevelopment of a previously developed site, where it does not have an adverse impact on the character and appearance of the countryside.

3.1.6 Therefore, give the Council's conclusions in regard to Green Belt and compliance with Policy EQ 4 the site is considered to be previously developed land and would therefore fall within an exception within Policy EQ 3 in regard to residential development.

3.1.7 However, the Officer Report in its assessment of the proposals against Policy EQ 3 concludes that the development would not constitute "Infill Development" as the site is neither located within a village (as per the NPPF exception at paragraph 154) nor would it constitute "limited

infilling of a small gap capable of accommodating no more than 2 dwellings of a similar size and scale to the surrounding dwellings in an otherwise continuously built frontage.

- 3.1.8 However, the proposal is not advanced as an “infill development” exception but as the redevelopment of a previously developed site. The Council accept in the Officer Report that the site constitutes previously developed land and that the proposals are in accordance with the exception noted in bullet point (g) of Para. 154 of the NPPF and do not constitute inappropriate development in the Green Belt.
- 3.1.9 It therefore follows that the proposals constitute the exception of redevelopment of a previously developed site within Polic EQ 3.
- 3.1.10 RfR 1 is also advanced on the basis that the proposals would be in conflict with Policy H1 as the site does not adjoin the built-up area boundary or have reasonable access to local services and facilities or public transport networks.
- 3.1.11 However, Policy EQ 3 allows for new residential development within the countryside and/or Green Belt if accords with accords with one of a limited number of exceptions. As set out above one of these is the redevelopment of a previously developed site.
- 3.1.12 It is noted that another exception with Policy EQ 3 is Development in accordance with Policy H1, however Policy EQ 3 does not require compliance with one of the listed exceptions and to be in accordance with Policy H1, rather the policy is phrased in a way that development which does not accord within an EQ 3 exception could be acceptable if it accords with Policy H1 including by adjoining the built-up area boundary.
- 3.1.13 Therefore in regard to Policy EQ 3, and subsequently Policy H1, the Council have failed to assess the proposals correctly against their own Local Plan policies and appear to contradict their earlier conclusions in regard to Green Belt policy.

4.0 CONCLUSION

- 4.1.1 The Council, through refusing the application in the first place, has sought to prevent and delay development which should clearly have been permitted, having regard to its accordance with the Development Plan, national policy and other material considerations.
- 4.1.2 The Appellant should not have to pay for the costs of bringing and engaging in an appeal and accordingly, a full award of costs should be granted against the Council.

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