

Costs Decision

Inquiry held on 8, 9 and 10 November 2016

Site visit made on 10 November 2016

by R W Allen B.Sc PGDip MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 January 2017

Costs application in relation to Appeal Ref: APP/R3705/W/16/3149572 Land North of Nuthurst Crescent, Ansley, Warwickshire CV10 9PJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr C R Muller (Muller Property Group) for a full award of costs against North Warwickshire Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development proposed of up to 79 residential units and associated access.
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Decision

1. The application for an award of costs is refused.

The submissions for Mr C R Muller (Muller Property Group)

2. The appellant made an application for costs verbally at the inquiry, which I summarise below. The Council has adopted a dogged approach by refusing to accept substantial new evidence in the form of its 2015 Strategic Housing Market Assessment (SHMA), which directs an increase in housing requirement over that set out in policy NW4 of the North Warwickshire Local Plan Core Strategy 2014 (Core Strategy). Had they had done so, and also acknowledged that the Draft Site Allocations Plan and the Draft Development Management Plan had been abandoned, it would have led the Council to conclude that it could not demonstrate a five year supply of housing and paragraph 14 of the National Planning Policy Framework (the Framework) would have needed to have been engaged. It follows that a discussion on housing supply at the Inquiry would not have been necessary.
 3. The appellant also says that frequent requests were made for the Council to provide its housing supply figures. The appellant states that some weeks later, the Council had relied on radically different and unpublished housing supply figures which required at short notice, and at great expense, the appellant to undertake a rebuttal statement.
 4. The Council made vague, generalised and inaccurate assertions on the effect of the proposed development on the landscape character matters, citing a design policy to support this assertion where design is a reserved matter. While the Council is entitled to form a view on the effects in this regard, they have done so without producing any substantive evidence contrary to the landscape and visual assessment undertaken by the appellant. The Council's case is further flawed by the grant of planning permission on two other sites in the village with similar landscape characteristics to the appeal site. The Council failed to
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adequately engage with the appellant on this matter to try to resolve any difference of opinion between them.

5. Therefore the Council would not have arrived at its decision that landscape and visual harm significantly and demonstrably outweighed the benefits of the scheme. In not applying the balance required by paragraph 14 of the Framework, which it ought to have done, the Council wrongly refused the scheme. A full award of costs is justified. In the event that the landscape argument advanced by the Council is justified, a partial award of costs is justified on the housing land supply position.

The response by North Warwickshire Borough Council

6. The Council responded verbally at the inquiry that assessment of harm on landscape and visual effects are matters of professional judgement, and it was open to the Council to consider that the proposal gave rise to unacceptable impacts. The Council did engage proactively with the appellant on such matters. That it failed to agree with him is not an unreasonable position.
7. The Council's approach to rely on relatively recently adopted Core Strategy policy NW4 as the appropriate housing requirement was not an unreasonable position to take, as agreed by the appellant under cross-examination at the Inquiry. Furthermore, housing supply was never raised as an issue by the appellant until it was tabled in his rebuttal proof shortly before the opening of the Inquiry. The Council could have asked for an adjournment to properly respond, however opted to deal with matters orally in order not to delay the Inquiry. It is therefore 'a bit rich' of the appellant to accuse the Council of acting unreasonably in this regard. In any event, if the Council should have provided pre-exchange of proofs on this matter, the Council finds it doubtful that this gave rise to unnecessary expense, as the work would have had to be undertaken.
8. For these reasons, the Council has not acted unreasonably, and no award of costs should be made.

Reasons

9. The Planning Practice Guidance (the Guidance) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
10. As I set out in my decision, policy LP6 of the Council emerging North Warwickshire Local Plan (emerging Local Plan), underpinned by the 2015 SHMA, seeks to provide for a much higher housing requirement over that set out in Core Strategy policy NW4, and the Council confirmed at the Inquiry that no impediment exists for this higher requirement to be met in full. While the emerging Local Plan has not been subjected to external examination, I found it nonetheless inevitable that housing requirement will increase. It is only the level of increase that remains in question, but my judgement found that this increase will be significant. Having regard to the Framework's requirement to significantly boost the supply of housing, I found in my decision that the more up-to-date 2015 SHMA more accurately reflected housing need. Had the Council also had reached a similar conclusion as I did, it would have accepted

that it could not have demonstrated a five year supply of housing and the Inquiry could have avoided discussion on housing need.

11. In saying that, the evidence underpinning the 2015 SHMA will still need to be tested when it is subjected to the development plan examination; and ramifications for the emerging Local Plan policy LP6 may occur including, although very unlikely, a decrease in housing requirement. Furthermore, the Core Strategy is only two years old, and the SHMA underpinning its housing requirement policies only dates from 2013. Although I have made my decision on the evidence before me, I find that it was not unreasonable of the Council to rely on its recently adopted Core Strategy in justifying refusal of the scheme. The appellant acknowledged this much under cross examination.
12. As I set out in my decision, the Council's attribution of harm with the scheme lay less to do with its effect on the landscape character or visual receptors, and more to do with perceived harm to the character and appearance, and the settlement morphology of the village of Ansley itself. The Council therefore had no conflict with the findings in the appellant's landscape and visual assessment on such matters. Because of the size of the settlement of Ansley and the Council approach to sustainable development advocated by policies NW2 and NW5 of the Core Strategy, I find that the Council did not act unreasonably in concluding that the scale and location of the proposed scheme would be harmful in its effects. Ultimately, perception on effects to an area's character and appearance are matters of judgement. I am satisfied that the Council's reasons for mounting an objection in this regard were expressed clearly and logically in the officer's report and in its proof of evidence.
13. The Council stated at the Inquiry that even if it had applied the tilted balance required by bullet point 4(1) of paragraph 14 of the Framework, it would have concluded that the identified harm would significantly and demonstrably outweigh the mutually agreed benefits of the scheme. While I have found the level of harm would be considerably less than the Council finds, and thus not sufficient to outweigh the benefits, the sensitive nature of the site and the quantum of development involved relative to the size of Ansley justified the Council's consideration of the existence of substantial harm. While I note the appellant's assertions on the matter, no evidence is before me which suggests that the Council would obviously have arrived at a different conclusion had bullet point 4(1) of paragraph 14 been engaged.
14. Therefore, while I find the Council should have placed a greater reliance on the 2015 SHMA to determine its housing requirement more accurately, I am satisfied that the decision would unlikely to have changed, and pursuance of the appeal would have not been obviously avoided.
15. I do not have sufficient details of the discussion between the parties, or the site identified as 'ANS4' at the Inquiry to conclude with any degree of certainty whether the different approach taken on character and appearance and to approve development on this site amounts to unreasonable behaviour. Because I have already found that the tilted balance of paragraph 14 ought to have been engaged because of the absence of a five year housing supply, I do not need to find on the matter of the status of the development plan. The Council appeared to amend its housing data in its statement at a late stage in the Inquiry process and no sufficient reasons were advanced for it doing so. Nevertheless, whether the Council could demonstrate a housing supply was

pivotal to the appellant's case, such that I am not persuaded that these changes would have amounted to a significant issue and thus wasted costs for the appellant, who would likely have accumulated significant evidence to support their case in any event.

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

R Allen

INSPECTOR