
Costs Report to the Secretary of State for Communities and Local Government

by Martin Whitehead LLB BSc(Hons) CEng MICE

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

Date: 31 August 2017

Town and Country Planning Act 1990

Tewkesbury Borough Council

Appeals by

Robert Hitchins Limited

Application made by Tewkesbury Borough Council

Inquiry opened on 20 June 2017

Land at Twigworth and Land at Innsworth, Gloucester, Gloucestershire

File Ref(s): APP/G1630/W/16/3154464 and APP/G1630/W/16/3164033

Appeal A Ref: APP/G1630/W/16/3154464

Land at Twigworth, Gloucester, Gloucestershire

Appeal B Ref: APP/G1630/W/16/3164033

Land at Innsworth, Innsworth Lane, Gloucester, Gloucestershire GL3 1DU

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Tewkesbury Borough Council for a partial award of costs against Robert Hitchins Limited.
- The Inquiry was in connection with an appeal against the refusal of outline planning permission for a mixed use development comprising demolition of existing buildings; up to 725 dwellings and a local centre of 0.33 ha (A1, A2, A3, A4, A5, D1, D2 uses); primary school, open space, landscaping, parking and supporting infrastructure and utilities; and the creation of a new vehicular access from the A38 Tewkesbury Road (Appeal A) and against the failure of Tewkesbury Borough Council to issue a notice of its decision within the prescribed period on an application for outline planning permission for a mixed use development comprising demolition of existing buildings; up to 1,300 dwellings and 8.31 hectares of land for employment generating uses comprising a neighbourhood centre of 4.23 ha (A1, A2, A3, A4, A5, D1, D2, B1), office park of 1.31 ha (B1) and business park of 2.77 ha (B1 and B8 uses): primary school, open space, landscaping, parking and supporting infrastructure and utilities; and the creation of new vehicular accesses from the A40 Gloucester Northern Bypass, Innsworth Lane and Frogfurlong Lane (Appeal B).

Summary of Recommendation: That the application for a partial award of costs be refused.

Preamble

1. The application is made based on the guidance given in the National Planning Practice Guidance (NPPG). References to Documents are those listed in Appendix B to the separate Report on the Appeals.

The Submissions for Tewkesbury Borough Council¹ (the Council)

2. The application for costs is based on the following two grounds.
3. Firstly, the appellant has maintained a detailed, strained and apparently entirely unnecessary case on the Council's five-year housing land supply. In doing so, the appellant has failed to understand the relevant law. The basic premise of the appellant's argument did not turn on the specific five-year housing land supply figures, which were meticulously analysed, nor the supply calculation period for the Council, nor the Sedgefield or Liverpool calculations, which were all extraneous to the basic point that the appellant apparently sought to put forward, which was a mere shortfall in housing.
4. The appellant's ultimately simple proposition, as it appeared during the course of the Inquiry, was not at all clear from its Statement of Case or the Statement of Common Ground or Proofs of Evidence. The appellant has incurred a significant waste of time and cost in the way in which it has approached this part of the case, as an argument about paragraph 49 of the National Planning Policy Framework (Framework) would have necessitated a calculation of the five-year housing land supply down to a fine point but no such precision is required in arguing a basic case about housing shortage.

¹ Document N47

5. It was unreasonable for the appellant to have wasted time to have tried to persuade the Inquiry to go against settled law. The appellant's arguments on this issue with regard to re-categorising local planning authority areas as 'policy' areas against which to measure the five-year housing land supply have elongated and confused the Inquiry process and its approach to the five-year housing land supply calculations has been tortuous, idiosyncratic and unsustainable. This created a great deal of work in dealing with such arguments, which have no precedent. It is a waste of time and expenditure.
6. The second ground is regarding Grampian conditions. In this respect, the Council declined to accept the appellant's note² but responded with its own correct interpretation of the law³. The caselaw presented by Highways England (HE)⁴ supports the Council's interpretation of the law on Grampian conditions. The appellant appears to have submitted to the Inquiry that the Council's case on Grampian conditions is different from that which it has set out, being that the imposition of Grampian conditions is a matter for the discretion of the decision maker.
7. The Council did not adduce evidence of 'no prospects' in the appeals because it had not been presented with any Grampian conditions to consider. It has not said that a 'reasonable prospects' test must be applied as a matter of law, as alleged by the appellant. The appellant has wasted time and expense by setting up a false argument and purporting to defeat it and by misinterpreting the law.
8. There has been a lack of cooperation in discussing the case on five-year housing land supply and explaining the proper basis of it, which could have averted a significant amount of work, and in failing to read and understand the Council's position on Grampian conditions⁵, which would have averted a misconceived argument. The appellant's approach to five-year housing land supply has resulted in expense that ought not have been necessary and achieved nothing. The position should have been capable of sensible agreement, as should have been the law on Grampian conditions.

The Response for Robert Hitchins Limited⁶

9. The application for costs fails to understand the structure of the planning argument in the appeal cases. One of the main issues cited by the Inspector at the Inquiry was the need to demonstrate Very Special Circumstances (VSC), which the appellant referred to in its opening. The Council referred to paragraphs 49 and 14 of the Framework in its opening.
10. Housing land supply is relevant to the question of weight in the planning balance requirement in paragraph 88 of the Framework with regard to VSC. The Council refused to agree that there was a deficient five-years housing land supply and the appellant therefore had no option but to call evidence to address the matter.
11. In terms of Grampian conditions, the appellant invited the Council to agree that it was wrong for the decision maker to apply a 'reasonable prospects' test before

² Document H14

³ Document H15

⁴ Documents N3a and N3b

⁵ Document H15

⁶ Document N53

imposing a Grampian condition. The Council initially refused to agree that basic position, making it essential for the appellant to address that question in evidence. The appellant provided the Inquiry with an extract from the NPPG dealing with the policy test for Grampian conditions, which the Council had not previously referred to.

12. Even if it is decided that the appellant has been unreasonable with regard to the Grampian condition, there is nothing to suggest that unreasonable behaviour, whatever it may be, has caused any wasted cost at the Inquiry. The decision whether to impose a Grampian condition is at the discretion of the decision maker. The worst that may be said is that the appellant has submitted the wrong test should be applied. This has not caused any wasted costs.

Conclusions

13. The NPPG advises that costs may 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.
14. In dealing with the two grounds that the Council has cited for the application of costs, I have taken account of my conclusions and recommendations on the appeals that they should both be allowed.
15. Whilst I have not agreed with the appellant's position on the five-year housing land supply, the evidence that has been provided in this regard has assisted in my assessment of whether VSC exist in terms of the Green Belt. Furthermore, I referred to the need to assess the five-year housing land supply position as an issue at the Pre-Inquiry Meeting, based on the evidence at that time. I have found that the question of whether or not a five-year housing land supply has been demonstrated in terms of paragraph 49 of the Framework has not been an important factor in reaching my conclusions and recommendations. However, I am satisfied that the evidence that has been submitted on this matter, including an agreed Statement of Common Ground, has assisted in the efficient running of the Inquiry and has not been a waste of time or expense. Therefore, in this respect, I do not consider that the appellant has acted unreasonably.
16. With regard to Grampian conditions, it appears to me that there has been a misunderstanding between the Council and appellant on the correct tests to be applied. Whilst the appellant has insisted on applying the 'no prospects' test and assumed that the Council was applying a 'reasonable prospects' test, the appellant has not taken account of the need for a planning judgment to be made. In this respect, I have concluded that some of the reasons for refusal would be able to be addressed by the imposition of Grampian conditions, having satisfied myself that acceptable solutions would be possible. I find that, even if the appellant acted unreasonably in not expecting that planning judgment to be applied, the Council has not demonstrated that this has resulted in unnecessary or wasted expense in the appeal process.
17. For the reasons given above, I have found that the appellant has not been unreasonable in its production of evidence with regard to the five-year housing land supply and, even if it had acted unreasonably in its stance with regard to the imposition of Grampian conditions, this has not resulted in unnecessary or wasted expense by the Council, particularly as I have found in favour of the appellant with regard to the outcome of the two appeals. I therefore conclude

that unreasonable behaviour resulting in unnecessary expense has not been demonstrated and that a partial award of costs is not justified.

Recommendation

18. I RECOMMEND that the application for a partial award of costs be refused.

M J Whitehead

INSPECTOR