
Costs Decisions

Inquiry Held on 11-13 and 17-19 July 2018

Site visit made on 10 and 18 July 2018

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 6th September 2018

Costs application A in relation to Appeal Ref: APP/P0119/W/17/3191477 Land east of Park Lane, Coalpit Heath, South Gloucestershire BS36 1AT

- 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 Barratt Homes (Bristol) Limited and David Wilson Homes (South West) Ltd for a full award of costs against South Gloucestershire Council.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the construction of up to 215 homes, public open space and associated infrastructure with all matters reserved except access.
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Costs application B in relation to Appeal Ref: APP/P0119/W/17/3191477 Land east of Park Lane, Coalpit Heath, South Gloucestershire BS36 1AT

- 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 South Gloucestershire Council against Barratt Homes (Bristol) Limited and David Wilson Homes (South West) Ltd for a partial award of costs.
 - The inquiry was in connection with an appeal against the refusal of outline planning permission for the construction of up to 215 homes, public open space and associated infrastructure with all matters reserved except access.
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Decisions

1. Both applications for an award of costs are refused.

Application A

The submissions for the developers

2. The application relates to the substance of the Council's case. The applicants argue, for all the reasons presented in evidence, that permission clearly should have been granted because the Council's case was entirely without substance and the benefits of the proposed development were overwhelming. It has consequently unreasonably delayed development and put the applicants to the costs of mounting the appeal, which should be paid by the Council.

The response by the Council

3. The appellants' application is without merit. They accept that it conflicts with the development plan (DP). The absence of a five year supply of housing sites (5YHLS) does not mean permission must be granted. There are site specific landscape and accessibility objections in this case, which make it different from other cases and which are therefore irrelevant. The accessibility issue was admitted to be 'finely balanced' in the Officer Report (OR) and the applicants'

Landscape and Visual Impact Assessment suffered from serious flaws as presented in the Council's evidence. The Policies, Sites and Places Plan has been adopted since the refusal and so its policies are relevant to the determination of this appeal because they form part of the DP. The Council's case at appeal was supported by professional witnesses giving their professional opinions, which was entirely reasonable, irrespective of the fact that its members did not agree with the OR.

Reasons

4. Planning Practice Guidance (PPG) 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.
5. The Council presented clearly reasoned arguments to back up its refusal of the planning application and I have found that harm would be caused to the local landscape and in terms of loss of agricultural including Best and Most Versatile land. The fact that, in terms of the overall planning balance, I have chosen to allow the appeal does not mean that it was unreasonable in pursuing its grounds of objection. It reasonably provided detailed substantive evidence on each relevant issue at contention.
6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Application B

The submissions for the Council

7. The Council's partial costs application is made on the basis that the appellants have acted unreasonably by presenting evidence on an alternative housing need figure to the Council's adopted requirement in its Core Strategy in circumstances where the Council accepts that it does not have a 5YHLS. It also argues that the appellants have acted inconsistently because in the recent Charfield housing appeal¹, where the appellants were the same, they did not present such evidence and agreed in that case that it was unnecessary to do so.

The response by the Appellants

8. The appellants were quite entitled to submit evidence on the housing requirement in the absence of a requirement that reflects Objectively Assessed Need (OAN) and judicial authority on the weight to be given to that, because the extent of the shortfall of HLS below five years is relevant to consideration of the planning balance.

Reasons

9. I accept the appellants' reasoning above because, dependent on the weight that I chose to apply to any finding of harm, the extent of the HLS shortfall could well have been important. The appellants consequently had to assume the worst harm and are quite entitled to attempt to compensate for that by arguing their own requirement and supply figures in the absence of an up-to-date assessment of OAN. The fact that I do not see the need in my decision to

¹ APP/P0119/W/17/3179643

arrive at a figure or even range of figures in terms of HLS does not mean that the appellants were unreasonable in providing evidence on this matter, because they did not know what I would conclude.

10. I have sympathy with the Council's frustrations in regard to the appellants' inconsistency in adducing evidence in this appeal but not at the Charfield Inquiry, which finished only the previous week to this Inquiry. However, in answer to my question on this issue during the Inquiry, the appellants' advocate pointed out that he considered such evidence should be raised here and that he had not represented them at the Charfield Inquiry. Given that he was appointed by the applicants' team to present their best case at appeal, in light of judicial authority, I cannot criticise him for persuading them that OAN evidence should be submitted.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Nick Fagan

INSPECTOR