



Ministry of Housing,
Communities &
Local Government

15 March 2021

Guy Wakefield
Ridge and Partners LLP

Our Ref: APP/W1850/W/20/3244410

Dear Sir

**LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 and 320
APPEAL MADE BY BLOOR HOMES WESTERN AT LAND NORTH OF VIADUCT,
ADJACENT TO ORCHARD BUSINESS PARK, LEDBURY
APPLICATION REF: 171532**

APPLICATION FOR AN AWARD OF COSTS

1. I am directed by the Secretary of State to refer to the enclosed letter notifying you of his decision on the above named appeal.
2. This letter deals with Bloor Homes Western's application for a full award of costs against Herefordshire Council and Ledbury Town Council. The application as submitted and the response of the Herefordshire Council and Ledbury Town Council are recorded in the Inspector's Costs Report (CR), a copy of which is enclosed.
3. In planning inquiries, the parties are normally expected to meet their own expenses, and costs are awarded only on grounds of unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process. The application for costs has been considered in the light of the Planning Practice Guidance, the Inspector's Costs Report, the parties' submissions on costs, the inquiry papers and all the relevant circumstances.
4. The Inspector's conclusions and recommendation with respect to the application are stated at paragraphs CR72-74. The Inspector recommended that a partial award of costs is justified on the basis that Herefordshire Council behaved

Andrew Lynch, Decision Officer
Planning Casework Unit
Ministry of Housing, Communities & Local Government
3rd Floor, Fry Building
2 Marsham Street
London, SW1P 4DF

Tel 0303 444 3594
Email: PCC@communities.gov.uk

unreasonably in refusing the application (CR63) and that Ledbury Town Council behaved unreasonably in pursuing an objection to a pedestrian route that it specifically requested to be provided and therefore gave rise to unnecessary and wasted expense (CR71).

5. Having considered all the available evidence, and having particular regard to the Planning Practice Guidance, the Secretary of State agrees with the Inspector's conclusions in his report and accepts his recommendations. Accordingly, he has decided that a partial award of costs, as specified by the Inspector at paragraph CR74 is warranted on grounds of unreasonable behaviour on the parts of Herefordshire Council and Ledbury Town Council
6. Accordingly, the Secretary of State, in exercise of his powers under section 250(5) of the Local Government Act 1972 and sections 78 and 320 of the Town and Country Planning Act 1990, HEREBY ORDERS that Herefordshire Council and Ledbury Town Council shall pay to Bloor Homes Western its partial costs of the inquiry proceedings, limited solely to the unnecessary or wasted expense incurred in respect of, for Herefordshire Council, these costs should be limited to those incurred up to the point where it withdrew its reasons for refusal and for the time spent at the inquiry discussing the planning obligations and the draft conditions and for Ledbury Town Council, these costs should be limited to paragraphs 3.1.6- 3.1.11 of Mr Millington's Rebuttal Proof and the time spent discussing this matter at the Inquiry, such costs to be taxed in default of agreement as to the amount thereof.
7. You are invited to submit to Herefordshire Council and Ledbury Town Council details of those costs, with a view to reaching agreement on the amount. Guidance on how the amount is to be settled where the parties cannot agree on a sum is at paragraph 44 of the Planning Practice Guidance on appeals, at <http://tinyurl.com/ja46o7n>

Right to challenge the decision

8. This decision on your application for an award of costs can be challenged under section 288 of the Town and Country Planning Act 1990 if permission of the High Court is granted. The procedure to follow is identical to that for challenging the substantive decision on this case and any such application must be made within six weeks from the day after the date of the Costs decision.
9. A copy of this letter has been sent to Herefordshire Council and Ledbury Town Council.

Yours faithfully,

Andrew Lynch

Andrew Lynch

This decision was made by the Secretary of State and signed on his behalf.



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

by Lesley Coffey BA Hons BTP MRTPI

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

Date 14 December 2020

TOWN & COUNTRY PLANNING ACT 1990

HEREFORDSHIRE COUNCIL

APPEAL BY BLOOR HOMES WESTERN

PROPOSED DEVELOPMENT AT

LAND NORTH OF VIADUCT,

ADJACENT TO ORCHARD BUSINESS PARK, LEDBURY

Inquiry Held on 13-17 July and 22-25 September 2020

Land North of Viaduct, Adjacent to Orchard Business Park, Ledbury

File Ref: APP/W1850/W/20/3244410

File Ref: APP/W1850/W/20/3244410

Land North of Viaduct , Adjacent to Orchard Business Park, Ledbury

- 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 Bloor Homes Western for a full award of costs against Herefordshire Council & Ledbury Town Council.
- The inquiry was in connection with an appeal against the refusal of the Council to grant subject to conditions planning permission for a mixed use development including the erection of up to 625 new homes (including affordable housing), up to 2.9 hectares of B1 employment land, a canal corridor, public open space (including a linear park), access, drainage and ground modelling works and other associated works.
- The proposal is for outline planning permission with all matters reserved for future consideration with the exception of access. Only the means of access into the site is sought as part of this outline application, not the internal site access arrangements (i.e. they are not formally form part of the application). Vehicular access is proposed off the Bromyard Road.

Summary of Recommendation: The application for an award of costs against Hereford Council and Ledbury Town Council is allowed in the terms set out below.

The Submissions for The Applicant

1. This is an application for a full award of costs against Herefordshire Council and Ledbury Town Council who are jointly and severally liable for the Applicant's full costs of the appeal. It is not for the Applicant to have to decipher precisely which party is responsible for each item.
2. The Applicant seeks a substantive award of costs against Herefordshire Council and Ledbury Town Council. Procedural costs are also sought against Ledbury Town Council. The Applicant refers to the relevant paragraphs in Planning Practice Guidance (PPG)¹.
3. The proposals plainly comply with the Development Plan when read as a whole and, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 11(c) of the National Planning Policy Framework (The Framework), should be approved. That was the conclusion of the professional Planning Officers of the Council and more latterly the Council itself.
4. The appeal site is an allocated strategic site by way of Policy LB2 of the Herefordshire Core Strategy. Bloor Homes landowners and their agents engaged fully in the whole development plan process which led to the allocation.
5. Herefordshire Council is the party primarily responsible for the Applicant's costs since they were responsible for the decision-making in this case. The Council refused the application on highway grounds without the evidence to do so. Although it quickly appreciated its error and withdrew any objection to the proposal, it is the decision to refuse the application which has triggered the need for this appeal.

¹ Paragraph: 049 Reference ID: 16-049-20140306

6. The costs decision for Bloor Homes and Hallam Land's appeal at Crowmarsh Gifford, Oxfordshire illustrates why the costs of an appeal arising from a refusal fall squarely on a Local Planning Authority.²
7. The whole refusal was focused on the desire to provide a second road access into the site under the Listed Victorian railway viaduct. Yet Network Rail made clear in their letter before the application was determined that they would not allow this due to very obvious and very serious safety and operational concerns.
8. The Town Council has continued to pursue a case on a wide variety of matters, none of which have any merit. In respect of the highway matters, Bloor Homes have incurred repeated expense in the points taken by Ledbury Town Council, many of which have been subsequently dropped. The remaining highway objections from Ledbury Town Council are wholly unreasonable.
9. The planning, heritage and landscape case against this proposal, on a site allocated for the same amount of development in a recently adopted development plan are hopeless.
10. If it is considered necessary for the Applicant to have to decide at this stage who pays for what, it is suggested that Herefordshire Council should pay 70% of the Applicant's costs and Ledbury Town Council should pay 30%.

The Response by Herefordshire Council

11. If it is found that the appeal scheme should not have been permitted, then no award for costs should be made in this matter against the Council, since the grant of permission has not been unreasonably delayed.
12. If it is found that planning permission should clearly have been granted, then any award of costs has to consider the respective conduct of the Council and Ledbury Town Council, as well as whether all the Applicant's costs were reasonably incurred in any event.
13. The unnecessary costs caused by the Council should be limited to the Applicant's costs up to the time that Ledbury Town Council became a Rule 6 party and adopted the reasons for refusal which the Council had withdrawn. In addition, the Applicant's costs relating to the separate witnesses on housing land supply and affordable housing should not be recovered.
14. PPG does not indicate that withdrawing reasons for refusal in itself justifies the award of costs. Rather, a judgement must be reached. The logical way in which to approach the Applicant's costs application is to consider the costs application made against Ledbury Town Council first. The Town Council adopted, and in some respects supplemented, the reasons for refusal that the Council withdrew.
15. If the matters raised by Ledbury Town Council in support of the reasons for refusal are concluded to show properly arguable points, or points that acted to show that this was not a scheme that should clearly have been permitted, then it must follow that the Council's actions in refusing planning permission do not fall within the terms of the guidance in the PPG.

² APP/Q3115/W/17/3186858

16. So far as whether any of the costs would be attributable to Ledbury Town Council, the Council makes the following points:

- From the time of Ledbury Town Council becoming involved as a Rule 6 Party, it has in effect adopted the reasons for refusal relied on previously by the Council but which it withdrew;
- But for Ledbury Town Council becoming a Rule 6 Party, it can be reasonably assumed that the appeal in this matter would have taken far less time and involved significantly less costs in terms of preparation for the inquiry and the inquiry itself;
- The whole of the first week of the inquiry, was taken up with highways evidence, which can reasonably be assumed to have taken a very small comparative amount of appeal time if it had not been contested by Ledbury Town Council in the way it was;
- If the Council were to share any costs of the inquiry, this should be limited to time at the inquiry relating to conditions and the s.106 agreement. It was Ledbury Town Council that led to evidence submitted in respect of the other matters at the inquiry.

17. For the avoidance of doubt, the Council rejects the Applicant's submission that the Council and Ledbury Town Council can be jointly and severally liable for the Applicant's full costs. This wrongly assumes that we are in a "*costs follow the event*" regime (as in general civil litigation), as opposed to a regime which requires identification of unreasonable behaviour which directly causes unnecessary or wasted expense. That is, because what is necessary is identifying how particular behaviour directly caused unnecessary or wasted expense, it is wrong to say that all costs must be paid one way or the other. Costs are only payable if they can be justified in accordance with the guidance.

18. The Council also rejects the Applicant's suggestion that it has withdrawn its reasons for refusal in order to somehow hide behind Ledbury Town Council making the same points. This is a pejorative suggestion, unsupported by evidence, and not able to even begin to establish unreasonable behaviour by the Council.

The Response by Ledbury Town Council

19. Whilst the Applicant has made numerous (and unwarranted) derogatory remarks about Ledbury Town Council's case throughout the inquiry (and in its closing submissions), Ledbury Town Council responds only to the matters raised in the cost application and on the basis it has been made.

20. In this respect, it is suggested that both substantive and procedural costs are sought against Ledbury Town Council.³ However, no procedural unreasonableness is pleaded in the costs application (or set out in sufficient detail that Ledbury Town Council is in a position to adequately respond). In particular, none of the factors set out appear relevant here (or the relevance is not adequately explained in the costs application).⁴

³ Costs Application paragraph 6

⁴ Costs Application paragraph 9

21. As for substantive unreasonable behaviour, at no point in the inquiry did the Applicant suggest that Ledbury Town Council's reasons for objecting to the development can be addressed through planning conditions. It is suggested that "some" of Ledbury Town Council's highways points are more appropriately addressed at the section 278 stage.⁵ In fact, there is only one point made by Ledbury Town Council that the Applicant suggests in its highway closing is a section 278 matter – the right turn lane storage capacity. The reason why this is not appropriate for the section 278 stage is addressed in Ledbury Town Council's Closing Submissions.⁶
22. The question of whether or not the application complies with the development plan turns on a number of considerations, including whether the access arrangements are satisfactory or not. The Town Council's highways case has been supported by expert evidence, and fully justified. The evidence on that point is highly detailed and contested. It is not "clear" and/or "obvious".
23. Mr. Wakefield accepted that if the access arrangements were unsatisfactory, the development would not comply with Policy LB2; and also, that this was the most important policy in the development plan so far as the application was concerned. In those circumstances, it cannot be said that this is a development which is obviously policy compliant. This to a large extent pivots on the highways evidence – expert evidence which is heavily contested.
24. The reliance on the North Worcestershire Golf Club appeal is misguided.⁷ It is clear from the Inspector's report (paras. 20-23 and 31-50) that in that case the Council (i) proceeded on a complete misinterpretation of one policy in the development plan; (ii) the misinterpretation was plain/obvious; (iii) the Council had taken an inconsistent approach on the interpretation of that one policy; and (iv) that without that policy misinterpretation, the Council's case evaporated.
25. Even if it were true that a second access is not possible, that is not an answer to Ledbury Town Council's case, for the reasons set out in Ledbury Town Council's closing at para. 130. The dispute on the base traffic data did not turn on the half-term point, for the reasons set out in Ledbury Town Council's Closing Submissions.⁸ There are reasonable grounds for suggesting that the crossing would be called every cycle, for the reasons set out in Ledbury Town Council's Closing Submissions.⁹ The fact that the 120 cycle will only occur during peak hours does not mean that this point was taken unreasonably. The Town Council's concern about a cycle time of this length is a safety concern, and therefore it is immaterial that these cycle times will only occur in peak hours – see Ledbury Town Council's Closing Submissions.¹⁰ The Town Council has taken into account and given weight to the existing safety issues at the junction.
26. In reaching a judgment on whether or not the impact on the highway network was severe, Ledbury Town Council took into account a range of factors, including

⁵ Costs Application paragraph 30

⁶ Paragraph 41(3)

⁷ Costs Application paragraph 14 & Appeal Ref: APP/P4605/W/18/3192918

⁸ Paragraphs 20-24

⁹ Paragraphs 47-51

¹⁰ Paragraphs 52-61

queues (see Town Council's Closing Submissions).¹¹ Previous appeal decisions (including recovered appeal decisions) have focussed on the peak hours, and queuing at this time, when reaching a judgment on highways impact

27. Finally, it is said that "the claims about an unacceptable traffic impact on the Area of Outstanding Natural Beauty (AONB) are hopeless." The only explanation given on what was hopeless about the case put forward on AONB is "as to the argument which evolved about the traffic not using a second access impact on the setting of the AONB". This sentence is not particularly coherent, and in any event does not even begin to explain why Ledbury Town Council's AONB case is unreasonable. For a start the argument did not "evolve" – the argument set out in closing is based on the evidence of Ms. Tinkler in her Proof of Evidence, which in turn was derived from Ledbury Town Council's Statement of Case (and in turn from concerns of the AONB unit). In any event, the Applicant does not explain what is unreasonable about the AONB case.
28. Finally, that the "*planning, heritage and landscape case*" are "*hopeless*". It is impossible to respond to this. It is totally unreasonable to submit a costs application that just lazily describes large parts of a parties' case as "*hopeless*" without even bothering to explain why.
29. Either way, Ledbury Town Council's case is supported by expert evidence and proceeds on a correct understanding of national and local planning policy and the law. It is not unreasonable. The Applicant may disagree with it – but that is not the basis for a costs application. The costs application is totally without merit and should be refused.

The Response to Herefordshire Council

30. Herefordshire Council caused the appeal. It makes no attempt to suggest the Applicant should have re-applied for permission.
31. In withdrawing any objection and presenting no evidence against the proposal, Herefordshire Council recognised the proposal should have been granted planning permission since it is entirely consistent with the development plan. See Bloor Homes full award of costs at North Worcestershire Golf Course in 2019.¹²
32. The Council's only point seems to be that it should pay very little costs because most of the expense has been derived from the action of Ledbury Town Council. The Council suggest the costs Bloor should pay are limited to one afternoon session of the inquiry. Once a refusal has been issued, then the Council must accept the consequences of their actions
33. The Applicant has to act diligently and appropriately for both itself and on behalf of the landowners for whom it has a serious responsibility and duty of care. It will self-evidently have to call evidence from relevant experts. It is also entirely foreseeable that once an appeal has been triggered that local residents will wish to appear, either on their own or as a Rule 6 party represented by witnesses and of course the Applicant will have to deal with all that. That is why the Inspector who awarded Bloor Homes and Hallam Land its costs in the Crowmarsh Gifford

¹¹ Paragraphs 62-70

¹² APP/P4605/W/18/3192918

case had no time for South Oxfordshire District Council's submission that its exposure to costs ended when it withdrew all its evidence in that case.

34. It was also foreseeable that the Secretary of State would wish to recover the appeal, and in so doing the Applicant has to explore every consequence and permutation, including the 5 year land supply, because the Inspector is not the decisionmaker and the Secretary of State may place more weight on a greater shortfall – there is simply no way of knowing, unlike situations where the Inspector is making the decision and can make an indication at the Case Management Conference.
35. The Applicant simply suggests Ledbury Town Council should pay 30% of the total given the enormous amount of work its position has required PJA to carry out. But for the avoidance of any doubt, if it is necessary to nominate one party upon whom all the costs should land, then it is Herefordshire Council.

The Response to Ledbury Town Council

36. The starting point has to be Ledbury Town Council's case on walking and cycling accessibility and access to facilities and services. Whilst claiming not to question the principle of development, Ledbury Town Council proceeded to do so by questioning its very location. The Town Council might have been able to legitimately question the application if there was no pedestrian and cycle access from the site to the Hereford Road. But of course, there is such access, granted with the permission of Network Rail. So to pursue these points on an allocated site, with exactly the pedestrian and cycle access that is set out in the development plan is utterly hopeless. It would require the decisionmaker to ignore an up-to-date development plan.
37. There seems to be virtually no recognition from Ledbury Town Council of the fact the site is allocated for precisely what the planning application proposed. The Town Council has pursued their case as if the allocation can be questioned. It is well documented that Ledbury Town Council did not want the site allocated.¹³ Much of this case seems to be an attempt to now try and delay a permission which plainly should have been granted.
38. It is important to make clear that for Ledbury Town Council's evidence on junction capacity to be accepted it needs the base traffic to be higher; the pedestrian crossing to be called every time; and the cycle time to be set at 90 seconds. It also needs the junction to be designed as if it were a new junction and with no regard to the wholly unsatisfactory existing junction arrangements. These are fundamental inputs into Ledbury Town Council's model and case against the Applicant.
39. That Ledbury Town Council's assumptions are unreasonable is revealed from the evidence itself. But that unreasonableness can also be verified by the fact that Herefordshire Council, their own consultants and Ledbury Town Council's own consultant TPA all accepted the modelling assumptions made by PJA.
40. Moreover, Ledbury Town Council have never suggested the Bromyard Road access was unacceptable. It accepts the legitimacy of that access, but simply argues for a second access under the Viaduct. Yet at no stage did Ledbury Town

¹³ CD11.1 Ledbury Neighbourhood Plan page 22, first paragraph

Council ever address its mind to what it felt was the acceptable level of traffic using the single access. No attempt was ever made to identify where the limit was in terms of what was acceptable even on their own evidence of capacity.

41. The case against the Applicant in respect of rat-running traffic through the AONB and traffic through the Town is equally misjudged and unreasonable. Again, in presenting its case Ledbury Town Council has sought to rely on its own traffic modelling, which is deeply flawed.
42. The Town Council try to make a virtue out of the points it raised and dropped. But they were not dropped until the Applicant had been put to considerable expense in investigating each of these points. The same is true for the new points which were not in its statement of case. Yet any conceivable point which could be raised was raised, without any regard to how minor it was, or how inconsequential it was to the question of whether there is a severe impact or a genuine safety concern.
43. It is not enough to just call an expert witness on a matter. Witnesses need to be reasonable in the evidence they give and behave reasonably in the points they are pursuing on behalf of their client.

Conclusions

44. The application is for a full award of costs. A procedural award is sought against Ledbury Town Council and a substantive award against both parties.
45. The 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.

Procedural Award

46. PPG states that an application for costs 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 other proceedings or only for part of the process.¹⁴
47. The Applicant has provided no details of the behaviour that is alleged to have given rise to the claim for a procedural award of costs or why such behaviour resulted in unnecessary or wasted expense.
48. It is acknowledged that during the period leading up to the inquiry LTC failed to meet the deadline for the submission of its Statement of Case, on more than one occasion, such that the pre-inquiry programme needed to be amended. Whilst this undoubtedly caused delay and inconvenience to other parties, no evidence has been submitted to indicate that this gave rise to unnecessary or wasted expense. Therefore I conclude that an award of costs in relation to procedural matters is not justified.

Substantive Costs

49. The claim for substantive costs is based on the decision of the Council to refuse planning permission for development that ought to have been permitted. The

¹⁴ Paragraph: 032 Reference ID: 16-032-20140306

Applicant's position is that the Council and Ledbury Town Council are together responsible for the wasted expense of defending the case at inquiry.

50. I have found the proposal to be acceptable and in accordance with the Development Plan. However, since an award of costs does not necessarily follow the decision, this in itself, does not mean that the Council's behaviour was unreasonable.
51. PPG¹⁵ provides examples as to when a substantive award of costs may be made against a Local Planning Authority. These include 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; and, not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.
52. All of the professional advice before the Council, including the comments of Ledbury Town Council's previous highways consultants, found the proposal to be acceptable in highway terms, and that there was a consensus that the modelling used was appropriate. The Council refused permission, contrary to the advice of its Officers and the Highway Authority. There appeared to be no substantive evidence to support their decision, which they were advised would be difficult to defend at appeal.
53. I conclude that Herefordshire Council's actions prevented or delayed development which should clearly be permitted, and accorded with the development plan, and national planning policy.
54. The evidence strongly suggests that the Council reviewed its case promptly following receipt of the appeal. Indeed, this is acknowledged within the Applicant's costs claim. The Council's letter dated 18 February confirmed that it withdrew the reasons for refusal, whilst acknowledging that the appeal would need to proceed.¹⁶ A Statement of Common Ground dated 25 February 2020 stated that :
- "In light of the fact that the Council has now withdrawn the three reasons for refusal, there is no longer disagreement between the Applicant and the Council. The appeal should be allowed, subject to the satisfactory use of planning conditions and planning obligations."*¹⁷
55. The first Case Management Conference (CMC) was held on 26 February 2020. Following the CMC it was confirmed that the Inquiry would last 2-3 days. At the time of the CMC Ledbury Town Council was not a Rule 6 party.
56. The Inquiry was deferred due to Covid-19 and sat for 9 days. It undoubtedly took longer due to the constraints of a virtual event. Much of the first week was occupied hearing evidence from local residents and other interested parties and the evidence in relation to highway matters. The second week considered other issues, including the submitted Planning Agreement and the planning conditions.

¹⁵ Paragraph: 047 Reference ID: 16-047-20140306

¹⁶ The start date for the appeal was 17 January 2020

¹⁷ CD 4.1 SoCG 6.2

57. The Council co-operated throughout the Inquiry. The submitted Annual Housing Position Statement confirmed that it did not have a 5 year supply of housing land. Although the Council was clear that it did not agree with the Applicant's 5 year housing land supply figure, it did not submit any additional evidence in relation to this matter. It provided a CIL Compliance Statement and agreed a list of draft conditions with the Applicant. The only parts of the Inquiry the Council took an active part in were the roundtable discussions in relation to the planning agreement and conditions.
58. The Applicant submitted extensive evidence in relation to housing land supply and affordable housing to the inquiry. It was clear from the SoCG with the Council and Ledbury Town Council that the evidence in relation to housing land supply would be uncontested and that the housing and affordable housing benefits of the appeal scheme weigh in favour of the proposal. Therefore I do not consider that it was necessary for the Applicant to call two expert witnesses in relation to housing matters, or to prepare such substantial Proofs of Evidence.
59. There can be little doubt that had the Council not refused planning permission, contrary to the recommendation of its professional officers, that an appeal would have been unnecessary. To that extent I consider that the Council is liable for some of the costs of the appeal. Balanced against this the Council reviewed its decision at an early stage in the appeal process and took all reasonable steps to assist and limit the duration of the inquiry.
60. The Applicant's suggestion that the Council 'hid behind' Ledbury Town Council is not supported by the evidence.
61. In relation to the Council I therefore conclude that it behaved unreasonably in refusing planning permission for a development that ought to have been allowed and this gave rise to the expense of an appeal. However, the Council reviewed its case promptly and withdrew the reasons for refusal early in the process, before the Proofs of Evidence were prepared. It also agreed a Statement of Common Ground that accepted that planning permission should be granted. In this regard the Council's behaviour is not comparable with that in the Crowmarsh Gifford decision.
62. That the behaviour of the Council led to the need for an appeal is undisputed. However, to expect the Council to meet the costs of either the entire inquiry, or even 70% would not fairly reflect the efforts it made to limit the duration of the event and would run counter to the aims of the costs regime.
63. I conclude that the Council behaved unreasonably in refusing the application and should be liable for the Applicant's costs. These costs should be limited to those incurred up to the point where it withdrew its reasons for refusal and for the time spent at the inquiry discussing the planning obligations and the draft conditions.

Ledbury Town Council

64. PPG states that interested parties who choose to be recognised as Rule 6 parties under the inquiry procedure rules, may be liable to an award of costs if they behave unreasonably.
65. It was a main tenet of Ledbury Town Council's case that a second access under the viaduct should be provided. The fact that it was pursued although Network Rail were unwilling to allow such access is not in itself unreasonable. If I had

found the proposed access to be unsatisfactory, Network Rail's position would be a material consideration to be weighed in the balance but would not alter the conclusions as to whether the proposed development was acceptable in terms of access.

66. It is evident that Ledbury Town Council considered the access proposed to be unsatisfactory and they sought to appoint consultants to support that view. It represented the local population who strongly objected to the proposed access arrangements. The fact that the consultants representing Ledbury Town Council at the inquiry reached a different conclusion from their previous consultants does not amount to unreasonable behaviour.
67. The consultants at the inquiry went into a level of detail in relation to a number of matters that was not merited and ultimately would not make much difference to their case. A number of points pursued in relation to the junction were inconsequential and when taken together undoubtedly added to the length of the inquiry. The Applicant's modelling was scrutinised in detail. Had the case for Ledbury Town Council been accepted then it would have been necessary to conclude that the proposed access was unsatisfactory, and in the light of the impacts of its case on junction capacity my conclusion regarding the effects on the ANOB and Conservation Area may have been different. Notwithstanding this, Ledbury Town Council's approach to the assessment of the effect of the additional traffic on the Conservation Area misinterpreted the Environmental Statement and failed to recognise the relatively small difference in the volume of traffic passing through the Conservation Area should the proposal include a second access. However, the impact of the proposal on the Conservation Area is a material consideration, and looked at in the round, I therefore do not consider that Ledbury Town Council behaved unreasonably in relation to these matters.
68. The Town Council's objection to the pedestrian and cycle links would appear to be contrary not only to the views of their previous Consultant, but also its own consultation response to the application that specifically requested that *"Consideration that a combined cycle way/footway link, from the southeast corner of the site, through the old canal bridge, connecting to Ballard Close is essential for the connectivity of the site, creating a safe, pleasant and direct link to the Town Trail and the Town Centre, encouraging both cycling and walking."*
69. That inquiry time was spent considering an access in a location that was specifically requested by Ledbury Town Council cannot be considered to be anything other than unreasonable behaviour. This matter was addressed at Mr Millington's Rebuttal Proof of Evidence paragraphs 3.1.6 – 3.1.11 and was discussed at the inquiry.
70. The objection to the impact on the AONB and the Conservation Area were predicated on the increase in traffic using Station Junction and the consequential delays. The fact that I reached a different conclusion in this matter does not detract from Ledbury Town Council's case in relation to these matters.
71. I conclude that Ledbury Town Council behaved unreasonably in pursuing an objection to a pedestrian route that it specifically requested to be provided and therefore gave rise to unnecessary and wasted expense. These costs should be limited to paragraphs 3.1.6- 3.1.11 of Mr Millington's Rebuttal Proof and the time spent discussing this matter at the Inquiry.

Conclusion

72. I find that unreasonable behaviour on the part of Herefordshire Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. For the reasons given above, a partial award of costs is justified.

73. I find that unreasonable behaviour on the part of Ledbury Town Council resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated. For the reasons given above, a partial award of costs is justified.

Recommendations

74. For the reasons set out above I recommend:

- In respect of Herefordshire Council that, subject to the Secretary of State's conclusions in relation to the planning appeal, the application is allowed, and a partial award of costs should be made against the Council in the terms set out above.
- In respect of Ledbury Town Council that, subject to the Secretary of State's conclusions in relation to the planning appeal, the application is allowed, and a partial award of costs should be made against the Council in the terms set out above.

Lesley Coffey

PLANNING INSPECTOR



Ministry of Housing, Communities & Local Government

www.gov.uk/mhclg

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.