
Costs Decision

Hearing (Virtual) Held on 13 May 2021

Site visit made on 17 May 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2021

Costs application in relation to Appeal Ref: APP/E3715/W/20/3265601 Wolston Allotments, Stretton Road, Wolston, CV8 3FR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Rosconn Strategic Land for a full award of costs against Rugby Borough Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for the development of up to 48 dwellings with associated public open space, landscaping and infrastructure.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Rosconn Strategic Land

2. The applicant has set out in writing their reasons for seeking an award of full costs, and this submission covers their case in detail. An alternative application has been made for partial costs with respect to reason for refusal two.
3. Their case can be summarised as being; the planning application was referred to the Planning Committee with an Officer recommendation to grant planning permission and detailed reasoning was given for that recommendation; Policy HS4 of the Rugby Borough Council Local Plan 2019 (LP) was not applied correctly by the Council; Policy DS3 of the LP is not relevant to the appeal proposal and the Council has taken an erroneous and unreasonable approach to Policy GP2 of the LP, which was not referred to in its reason for refusal.
4. As a result, the Council has prevented and delayed development that should clearly be permitted and has relied upon vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis.

The response by Rugby Borough Council

5. In response, the Council consider that the assessment of whether there is a surplus of open space is not simply a mathematical exercise and it requires consideration of whether the open space under consideration is 'clearly surplus'. The planning application and the documents submitted in support made no contention that the first limb of HS4C was met, instead the focus was squarely upon the second limb. Whilst Wolston as a whole has a surplus as against the adopted standards there is in fact, upon more detailed

consideration, no quantitative surplus, taking account of likely future demand and development in the locality.

6. The Council have a relatively recently adopted local plan. That plan, as part of the plan led system, made allocations for all of the Main Rural Settlements. In the case of Wolston it allocated a site with capacity for around 15 dwellings. Whilst the Officer considered that all other planning matters, taken as a whole, had been sufficiently addressed such that the application should be approved it was, ultimately, for the Planning Committee to draw its own conclusions. In doing so the Planning Committee evidently observed that the proposal was a factor of three times larger than the entirety of Wolston's allocated residential development land.
7. Whilst in spatial policy terms Officers considered that the proposal drew support from GP2 the role of the Planning Committee was not only to take account of the development plan but also to consider those various objections raised in opposition to the scheme. Those issues were again raised at the Hearing by interested parties. The Council acted reasonably in taking into account those objections, it follows that the Council acted reasonably in concluding that those objections were relevant and of importance. It further follows that those objections, which focus upon issues of sustainability in terms of the ability of Wolston to support development of the scale proposed, were a relevant factor in the Council's decision as to whether or not to grant planning permission and whether or not to defend this subsequent appeal.

Reasons

8. The 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.
9. Whilst I accept that it will have been frustrating to the applicant that the Council Members took a different view to that which was recommended by their Officers, they were entitled to take this course of action and it does not in itself represent unreasonable behaviour. However, the costs application before me encompasses matters relating to both of the reasons for refusal, and I will address these separately.

Reason for refusal one

10. This reason for refusal refers only to the second limb of Policy HS4C. Whilst the Council contends that the applicant themselves only sought to demonstrate that this limb was satisfied, it is clear from the Officer report to the Planning Committee that they considered that there is an evidenced surplus of allotment provision in Wolston. This information was therefore before the Planning Committee and, having concluded that the second limb of policy HS4C would not be met and given that only one of the limbs needs to be met, it is unreasonable that the Council did not address whether or not the first limb of HS4C was satisfied, and provide its reasoning behind its conclusion on that matter.
11. The Open Space, Playing Pitch and Sport Facilities Study 2015 (OSPPSFC) is referenced in the accompanying text to Policy HS4 and there has been nothing put before me in written form or during the hearing that would suggest that

there are material factors which should diminish its relevance in assessing whether there is a surplus of allotment provision in Wolston. Indeed, this is not a case that the Council made. In terms of future allotment requirements generated by future housing development, this is by its very nature a speculative matter. However, Policy HS4 provides a requirement for future housing schemes that come forward to have regard to this.

12. With respect to the first reason for refusal, the fact that the Council failed to consider the first limb of Policy HS4C and as a result failed to provide any explanation or reasoning as to whether or not there would be an accordance with it is unreasonable behaviour. That it was unable to counter the detailed evidence provided in the OSPPSFC or by the applicant during the appeal process, in particular in terms of the Statement of Common Ground between Rosconn Strategic Land and Wolston Parish Council/Wolston and Brandon Allotment and Garden Association (jointly), also represents unreasonable behaviour.
13. To further rely on speculative future requirements relating to new housing developments is also unreasonable, as Part C of Policy HS4 does not require this, and indeed this consideration is addressed elsewhere in the same policy with respect to new housing development.

Reason for refusal two

14. Policy DS3 of the LP is not relevant to the consideration of the appeal proposal. It seeks only to allocate the Linden Tree site for residential development of around 15 new dwellings and is silent on unallocated sites in Wolston or elsewhere. The Council's interpretation that the policy in effect puts a limit of 15 on the number of new dwellings that can be permitted in Wolston cannot be borne out by any interpretation of the policy wording. In addition, the Council has not been able to identify any evidenced harm that would occur to the settlement as a result of the proposed development. The Council's reliance on Policy DS3 in its reason for refusal was therefore unreasonable.
15. The unreasonableness was further compounded by reference by the Council during the appeal process to Policy GP2 of the LP. This policy is clear that development will be permitted within the existing boundaries of all Main Rural Settlements and on allocated sites, with the accompanying policy text further providing clarification that there is no threshold on the size of sites that can come forward within their settlement boundaries. Again therefore, the Council relied on a policy whose wording cannot form a basis for refusing the application, and this too inevitably must be considered to be unreasonable.

Conclusion

16. With respect to the first reason for refusal, the decision did not address the first limb of Policy HS4 where it refers to demonstrating whether there is a surplus of public open space. It is unclear therefore how the matters that were before the Committee in that respect were considered in the Council's assessment of Policy HS4, in particular as their own Officer had provided information which would suggest that this very limb of Policy HS4 would be satisfied.
17. Without this clarity and in the absence of any substantive evidence being forthcoming during the appeal process to counter that of the applicant, on the

balance of what is before me I conclude that with respect to reason for refusal one the appeal could have been avoided and that development that should have clearly been permitted has been delayed. This means that the appellant has incurred unnecessary and wasted expense in the appeal process on this ground.

18. Reason for refusal two cannot be sustained on a reading of either Policy DS3 or GP2 of the LP and therefore the applicant has also occurred unnecessary and wasted expense in contesting this reason for refusal.
19. In conclusion, the Council has acted unreasonably with respect to both reasons for refusal and this has resulted in the applicant incurring unnecessary and wasted expense in the appeal process. A full award of costs is therefore justified.

Costs Order

20. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Rugby Borough Council shall pay to Rosconn Strategic Land, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. The applicant is now invited to submit to Rugby Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Graham Wraight

INSPECTOR