



Costs Decision

Hearing held on 22 June 2021

Site visit made on 23 June 2021

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2021

Costs application in relation to Appeal Ref: APP/C3105/W/20/3255419 Land off Berry Hill Road, Adderbury, OX17 3HF

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Hollins Strategic Land LLP for an award of costs against Cherwell District Council.
 - The appeal was against the refusal of planning permission for resubmission of application 17/02394/OUT - outline application for permission for up to 40 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road (all matters reserved other than access).
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The application centres on the applicant's claim that the Council: (a) failed to produce evidence to substantiate a reason for refusal; (b) relied on generalised or inaccurate assertions about the proposal's impact, unsupported by objective analysis; (c) persisted in objections to a scheme or elements of a scheme which various Inspectors has previously indicated to be acceptable; (d) lacked co-operation with the other party, including through not agreeing a statement of common ground (SoCG) in a timely manner; (e) introduced fresh and substantial evidence at a late stage, necessitating extra expense for work that would not otherwise have arisen; (f) did not determine similar cases in a consistent manner; (g) did not carry out sensible on-going case management, through promptly reviewing their case following the lodging of the current appeal.
4. PPG indicates that local planning authorities will be at risk of an award being made against them if they behave in such ways.
5. Regarding matters (a), (b) and (c) the Council emphasise the relatively recent engagement of the tilted balance, in the light of the Ministerial Land Supply Update Statement of 25 March 2021, as a key driver behind their change in position to no longer contesting the first reason for refusal (RFR1). Whereas the applicant considers that the Council's change amounts to substantially

- more than that, namely to a position that the scheme is compliant with development plan policies that RFR1 previously stated conflict with. In particular, the applicant considers that the Council gave insufficient weight to the amplified rationale that 750 homes at Category A villages is not an automatic 'ceiling' figure and that the Cherwell Local Plan (2011-2031) Part 1 (2015) (LP) does not specify the subdivision of dwelling numbers among such villages, which together arose from various other appeal decisions, and the refusal of a Council application to challenge the Ambrosden appeal decision.
6. As the tilted balance argument does not equate to either acknowledgment of the other appeal decisions cited in this case or a position of compliance with the development plan, there is some impression of ambiguity in the Council's evolved position in relation to RFR1.
 7. Regarding matter (d), the SoCG apparently went through several iterations. This culminated in confirmation in the final agreed SoCG, three days before the hearing, of among other things, the Council's position of no harm to the significance of the grade I listed Church of St Mary. This differs from the impression of harm that was previously articulated in paragraph 7.33 of the Council's Statement of Case.
 8. In relation to matter (e), it is undisputed that the Council submitted a comparison table of the parties' positions on landscape effects, 'late in the day', namely the day before the appeal hearing.
 9. Regarding matter (f), given the complex balance of strategic considerations at play, community concern regarding the strategic fit of the current appeal proposal, and that each site has its own setting and circumstances, the Council was entitled to exercise their planning judgement in respect of spatial strategy, without being automatically bound to reach a similar conclusion of acceptability as other appeal decisions cited in this case.
 10. Furthermore, notwithstanding the Council Planning Officers' reports presented regarding housing proposals at Deddington and Hook Norton¹, the decision notices for those cases are not before me. Thus, the evidence relating to these other emergent proposals does not amount to decisions that the Council's position on the current appeal case is inconsistent with.
 11. Regarding matter (g), in the light of my finding above in respect of matter (f) there is not a clearly demonstrable omission in terms of the Council's review of their case.
 12. To conclude, I find as follows. In relation to matter (a) the impression of ambiguity in the Council's evolved position on RFR1 was unreasonable. In terms of matters (d) and (e), the relative lateness of the Council's confirmation of their final position on the proposal's impact on the significance of the grade I listed church, and landscape effects was unreasonable.
 13. Regarding matter (b), there is not conclusive evidence that this type of unreasonable behaviour occurred. Given my finding regarding matter (f), unreasonable behaviour did not occur in respect of matters (c) and (f). Regarding matter (g), unreasonable behaviour is not demonstrated in terms of the Council's review of their case.

¹ Planning Application Refs: 20/02083/OUT (the Deddington application) 21/00500/OUT (the Hook Norton Application).

14. I appreciate that parties operate in a sometimes fluid context of emergent plans, decisions and the development picture 'on the ground'. I do not underestimate the potential resource demands of this. Nevertheless, as a result of my above findings, it follows that the Council has acted unreasonably in this case in respect of matters (a), (d) and (e).
15. However, it is not clear that had the Council been clearer in depicting their evolved position on RFR1, the core appeal arguments would have been substantially different in scope, or an appeal would have been avoided. Nor, given community expressions of concern about the proposal's impact on heritage assets, and that landscape matters were covered in a relatively timely manner on the day of the hearing, it is not certain that the applicant's consultants' input to the appeal, including presence at the hearing, would have been substantially less, had the Council confirmed their final position on heritage and landscape details earlier.

Conclusion

16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated in relation to matters (a) to (e). Accordingly, the application for costs fails.

William Cooper

INSPECTOR