



Costs Decision

Inquiry (Virtual) Held on 27 to 29 April and 21 to 22 September 2021

Site visit made on 23 September 2021

by Richard Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2021

Costs application in relation to Appeal Ref: APP/D1265/W/20/3265743 Land South of Lower Road, Stalbridge, Dorset

- 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 Land Value Alliances for a full award of costs against Dorset Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for development described as '*outline planning application for the erection of up to 114 dwellings, up to 2,000 sqm of employment space (use class b1, with up to one use class a1 unit), vehicular access points and associated works*'.
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Decision

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

The submissions for Land Value Alliances

2. The Council's unreasonable behaviour has been substantive – i.e., relating to the issues arising from the merits of the appeal. In the alternative, it is an application for a partial award of costs arising from the LPA's failure to follow the process.

Full award – substantive unreasonableness

3. What lies at the heart of the LPA's case is that housing in Stalbridge should be permitted only if it helps meet local needs. This is a wholly unreasonable position considering the dire and persistent shortfall in housing land supply across the district. There is no reason whatsoever why Stalbridge should not accommodate strategic housing needs, for the reasons set out in the LPA's own evidence base for its emerging plan.
4. It cannot be reasonable for an LPA to come to inquiry and reject its own evidence base, which members have considered, accepted and on the basis of which it has gone out to consultation on its draft plan. It matters not that the plan gets limited weight – what matters is that no explanation has been provided as to why the evidence base on which the plan is based should be rejected.
5. The way in which the LPA has considered other sites (adjacent to the appeal site) not only supports the above submission, but also supports the further submission that the LPA has failed to determine similar cases in like manner. Adjacent sites were allowed on basis that the housing would contribute

towards both Local and Strategic Needs to address the housing land supply deficit and because in that context para 11 was engaged. it argued that the site was not sufficiently proximate to services and facilities in Stalbridge. Once again, this shows that it has been guilty of not determining like cases in like manner.

6. At this appeal the LPA's position has been that applications in Stalbridge can only be granted if Local Needs exist, completely inconsistent with these previous decisions in the same town, in the same planning policy context (same Dev Plan/same deficit in 5yr HLS).
7. The LPA's position as respects the weight to be attached to AH is one that simply does not reach the threshold of respectability. What forms the basis for saying that this argument is wholly unreasonable, and should never have been ran, is that no reasonable inspector could possibly accept that anything other than substantial (i.e. 'top of scale') weight should attach to the delivery of AH in a district that has only a 3.3 yr supply of all types of housing, over 1,200 people on the housing waiting list (for the former North Dorset area alone) and which has persistently failed to provide sufficient AH year on year for almost a decade.
8. As the LPA has acted completely inconsistently with its earlier decision which allowed development further away in walking distance from the key facilities in the Town, with no reason set out for deviating from that earlier decision which was based on facts (i.e., measured distances to facilities) which have not/cannot have changed.
9. Finally, the LPA's RFR alleging adverse impact on Character and Appearance of the area is (a) inconsistent with the decision it took on the adjacent sites and (b) was based on wholly inaccurate and misleading calculations of density. Give that this is an outline application, with all matters reserved, no clear reason or explanation was provided as to why this site could not accommodate the proposed density of development in an acceptable manner, but adjacent sites can.
10. All the above, taken cumulatively, demonstrate unreasonable behaviour. All the reasons which justified permission on the adjacent sites clearly justified permission on this site, as the professional officers of the Council well understood.

Partial award - Procedural

11. Despite no mention of the during the application process, in the RTC, in the RFR or at the CMC the LPA decided at the 11th hour just before the inquiry opened to raise an objection on ecology grounds. As a result of this the Appellant had to prepare evidence on ecology for the April inquiry, none of which was required and constituted a waste of expenditure.
12. The LPA went out of its way to seek objections after the matter had already been taken to c'tee, after RFR had already been issued, and after the Inspector had at the CMC already outlined the issues in dispute. The Council's approach caused an inordinate amount of time to be expended by the Appellant in seeking to understand and respond to a case that continued to shift right up to the opening of the inquiry.

13. The LPA's case on Character and Appearance morphed and grew into an array of issues, all revealed very late in the process leading the Appellant to spend time and money on trying to figure out the LPA's case and respond to it. The Council failed to deal with the preapplication enquiry, made no comments on the illustrative master plan throughout the application process but then conjured up a RFR relating to Character and Appearance.
14. For all these reasons it is submitted that the LPA's case was always unarguable, and permission should not have been withheld. This is a clear case of an LPA 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.
15. The Appellant respectfully requests that the LPA be ordered to pay in full all the costs that it has incurred in connection with and arising from the LPA's refusal of planning permission. In the alternative, the LPA should be ordered to pay the additional costs incurred by the Appellant consequent upon the LPA's failure to follow the correct process.

The response by Dorset Council

16. It is not unreasonable for a planning authority to give effect to the policies of its development plan. The fact that an emerging Local Plan, which is now subject to over 60,000 objections and yet to be informed by pending assessments, such as to employment and retail need; infrastructure and transport needs etc., identifies the appeal site as a potential housing allocation does not mean that the site is acceptable for this scheme or that the status of Stalbridge within the proposed settlement hierarchy is fixed.
17. Simply because the Council has allowed some other development in Stalbridge to meet strategic needs, in acknowledged conflict with the Local Plan, does not mean that it is bound to allow every scheme there. The circumstances of those cases were also different, and a different judgment was formed. For example, at that time the housing supply in the rural areas stood at 550 dwellings (i.e., less than the 825 dwellings envisaged in the Local Plan), whereas now it stands at 1,517 and there was a greater local need for affordable housing in Stalbridge.
18. The Council is perfectly entitled to come to the view that further development in Stalbridge would unacceptably distort the spatial strategy of the Local Plan. Indeed, the Inspector in the Waterlake appeal¹ came to the same view, just six months ago, notwithstanding the previous grants of permission in Stalbridge and the Council has recently refused another scheme on Station road, in Stalbridge on the basis that it is not a sustainable location for further development.
19. As to the weight to attribute to the delivery of affordable housing, the Council has presented evidence to justify Ms Witherden's judgment that this is a benefit to which moderate weight should be attributed. The Inspector must consider the benefits arising from this appeal scheme in this location. In circumstances where the local affordable housing needs over the next five years have already been met and exceeded through extant permissions,

¹ PINS ref: APP/D1265/W/3262267.

which are already under construction, it is perfectly reasonable to moderate the weight attributed to the delivery of affordable housing.

20. Matters of density were raised as a consideration by the Inspector at the case management conference. The suggestion that this reason for refusal was "a moving feast" does not bear scrutiny. It is entirely unremarkable for a reason for refusal to identify harm to the character and appearance of the area and for the evidence to elaborate on the nature of the harm.
21. Turning to the partial application, the chronology at paragraph 17 of the Appellant's application is partial and misleading. The full picture, as set out in the proof of Nikki Taylor, 5 reveals that the Council has not acted unreasonably on the issue of ecology.
22. The Appellant was plainly aware, before lodging its appeal, that the Council's NET had outstanding concerns which it had been asked to address. The Appellant failed to address those concerns in a timely manner, which resulted in the adjournment of the inquiry so that it could carry out appropriate surveys which, if it had followed the advice provided by the NET in November 2020 to produce a Biodiversity Plan could have been avoided.
23. The Appellant's concern in relation to character and appearance appears to relate largely to matters that took place before the appeal was even lodged. The reason for refusal squarely raised the issue of the scheme's impact on the character and appearance of the area and the Council maintains its position, supported by the evidence of Mr Hewitt.
24. The Appellant may disagree with the judgment formed by Council members and by Mr Hewitt, but that does not mean the judgment is unreasonable, and the Appellant has incurred no wasted costs in addressing this element of the Council's case
25. The Council has presented cogent evidence in support of its reasons for refusing permission. The Appellant disagrees with those reasons. Ultimately the Inspector will have to form his own judgment and may or may not agree with the Council's position. Planning judgments can, and often do, legitimately differ without being unreasonable. The Council's conduct of the appeal has been entirely reasonable and in all the circumstances, there is no justification for a full or partial award of costs

Reasons

Substantive

26. The Planning Practice Guidance ('the 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.
27. The appeal relates from the failure to determine the application within the statutory period. On 16 February 2021 a report was taken to the Council's Planning Committee with a recommendation to grant planning permission. I do not have the benefit of being party to the meeting and the discussions that took place. However, notwithstanding the positive officer recommendation, the committee was not bound to accept the advice and they had clear concerns on specific matters that formed the focus of the Inquiry.

28. As it is often put in such appeals, depending on whether it suits the point being made or not, each case should be considered on its own merits. Whilst I appreciate that the applicant disagrees with the Council's consideration of the development, the concerns that led to the Council's ultimate objections in the suggested reasons for refusal are matters of planning judgement that involve a degree of subjectivity. Even when previous decisions have been made on similar issues no two sites are directly comparable and a balancing exercise of competing and complex social, economic, and environmental considerations, harms and benefits must be carried out.
29. Consequently, the exercise of planning judgment in an area with a lack of 5-year housing land supply does not amount to an automatic grant of planning permission. It involves competing and complex considerations and here, members clearly have concerns about the growth of the town, albeit they were not shared by their professional officers.
30. As made clear in the appellant's closing submissions for the associated planning appeal, other appeal decisions in the same town that support the Council's view are discounted on this very basis. I also understand that in those cases there was a greater local affordable housing need at the time of those decisions.
31. The appellant may well disagree with the weightings of the Council, in particular the use of 'Limited' weight for housing in the context of a 3.3-year housing land supply. Whilst I have considered that to be insufficient, weight is entirely a matter for the decision maker. The use of that phrase and supported by the Council's witness in evidence is no more unreasonable than the use of the term 'extreme' weight the appellant implores me I would need to give to the adverse impacts in the tilted balance² in the associated planning appeal.
32. As to the 'threshold of respectability' as put by the appellant, I also have not given 'Substantial' weight to the housing benefits and yet I have allowed the associated planning appeal. Perhaps this demonstrates to the appellant that not all decision makers who fail to agree or do so are unreasonable.
33. Matters of character and appearance involve a degree of subjectivity even in the context of residential development approved by that decision maker on a nearby site, especially when there are concerns about cumulative impacts. I also identified considerations of layout, density prior to the Inquiry as capable of being important considerations and such matters are integral to the resultant effects, including the issue of the central hedgerow and needed to be addressed.
34. Although I have not agreed with the Council on this issue in terms of the effects and resultant harm, I am satisfied that the Council's case has been substantiated in the submissions before me, it did not amount to unreasonable behaviour in substantive terms.

Procedural

35. It was not until 1 April 2021 that the Council's Natural Environment Team ('the NET') raised the objection. The appellant contends this was a waste of expenditure but having regard to the chronology of events put forward by the

² MK PoE paragraph 10.21.

Council an ecological report and Biodiversity Plan appears to have been previously requested by the NET.

36. When consulted on the second application in February 2021 the same comments applied. That response also raised concerns about the quality of survey evidence and that it was not compliant with NET guidance. This response was forwarded to the appellant on 15 March 2021 to which the Council indicated a holding objection.
37. On 22 March 2021 the appellant submitted additional information to the NET, although this again turned out to be non-compliant with a response given by the NET on 25 March 2021. The documents then appear to have been revised but the bat surveys were ultimately still deemed to be insufficient. The Inquiry was adjourned in part due to further protected species surveys being necessary.
38. No final comments to the Council's response were made by the appellant and it would appear that despite some challenges in terms of response timescales from the Council, if earlier advice had been followed then it is likely the matter could have been resolved much sooner. Even if it could not the evidence was required for me to make a decision and was not wasted expenditure.
39. Turning to the position of Natural England it would appear attempts were made to establish the position but whatever the realities of communications may have been, the raising of this issue even at such a late stage is an important consideration in my determination of the appeal and needed to be resolved. Officers had recommended approval and I see no substantive evidence of the Council going out of their way to seek objections.
40. In terms of shifting positions before the Inquiry, the Council had commented on employment space being an issue they would address in evidence, and it is a relevant consideration. The appellant's concern in relation to character and appearance appears to relate largely to matters that took place before the appeal was even lodged and I have considered them above. However, in response to matters I had raised that needed to be addressed, three days before the Inquiry opened, amended plans were received.
41. The appellant's own case could also be described as a somewhat moveable feast, including treating the development plan as almost irrelevant to start with and then in cross examination concluding the Council the proposal would conflict with its policies, and the plan as a whole. The flexibility to deal with changing situations that arise, or a party wishes to raise no matter how late in the day works both ways and to my mind does not amount to unreasonable behaviour.
42. Overall, this is not a clear case of preventing development which should clearly be permitted. Indeed, there was little clarity at times in both cases, but the evidence does not indicate to me that the Council went out of their way to seek objections to the proposal. I do not agree that their case was always unarguable, and permission should not have been withheld.

43. For the reasons given above, neither in substantive or procedural terms has unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, been demonstrated.
44. Therefore, the application for an award of either a full or partial award of costs is refused.

Richard Aston

INSPECTOR