



Costs Decision

Inquiry held on 1 March 2022

Site visits made on 3, 7 and 8 March 2022

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 22 April 2022

Costs application in relation to Appeal Ref: APP/L3815/W/21/3286315 Land to the West of Church Road, West Wittering, West Sussex, PO20 8FJ

- The application is made under section 78 of the Town and Country Planning Act 1990 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wellbeck Strategic Land IV LLP for a full award of costs against Chichester District Council.
 - The Inquiry was in connection with an appeal against refusal of planning permission for residential development of 70 dwellings (some matters reserved except for access).
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Decision

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

The submissions for Wellbeck Strategic Land IV LLP

2. The appellant contends that the Council acted unreasonably because:
 - They failed to adequately substantiate their reasons for refusal, particularly in relation to the matter of location and accessibility and matters of infrastructure capacity;
 - Relied on out of date information in forming a view on the weight to be attached to policies relating to development outside the settlement boundary;
 - Failed to adequately substantiate their case on whether the Council had a five year supply of housing land;
 - In doing so it is alleged that the Council delayed development which should clearly have been permitted.

The response by Chichester District Council

3. The Council responds that:
 - The Council refused the development on legitimate planning grounds;
 - The evidence supplied to support those grounds was not unreasonable;
 - With regard to the matter of infrastructure capacity the Council did not call any evidence on the issues discussed for the third reason for refusal, and the Appellant did not present any evidence of their own, so no costs can have been incurred;

- The Council's stance in relation to 5 year supply is reasonable and based on sound assumptions;
- The appellant's contention that the refusal of the scheme was a "product of public pressure" is entirely unsubstantiated.

Reasons

4. Planning Practice Guidance 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. Planning Committee Members are not bound to accept the recommendations of their officers. Nevertheless, reasons for refusal should be substantiated and based on relevant evidence.
5. The Council refused the proposal for three reasons, the last of which related to matters subsequently resolved by the provision of the legal agreement and so fell away. These were matters without which the permission could not have been granted, which the appellant does not dispute. The parties also disputed whether a 5 year supply of housing land could be demonstrated in the district. In the event I have found this not to be the case but do not consider the Council to have been unreasonable in the case put to me.
6. The second reason for refusal related to the impact of the proposal on the character and appearance of the area and the local landscape. Whilst I note that the reason for refusal was based on an outdated assessment of settlement boundaries, it was nonetheless not unreasonable for the Council to reach the view that some harm would arise to the character and appearance of the countryside as a result of the development, and to apportion weight to it. I have also found some harm in this regard and whilst I ultimately reached the decision that the harm identified was outweighed by the benefits of the scheme, this was a matter of planning judgement. I therefore do not consider the Council to have been unreasonable in apportioning more weight to this matter than I myself did.
7. In relation to the first reason for refusal the Council did not dispute that the village was generally well served by facilities but cited a small number of local facilities that were absent. In essence the case for the Council was largely based on the argument that travel to higher order services would involve travel off the Peninsula. Due to the particular constraints in peak hour and seasonal travel, and the Council's views on the distance travelled, this was considered to be unsustainable.
8. The settlement is identified in both the adopted and emerging local plan as a settlement hub, which is defined as a settlement which provides a reasonable range of employment, retail, social and community facilities serving the settlement and local catchment areas. It was therefore unsurprising that the Council was unable to provide substantive evidence to the contrary. At the time of refusal the Council would have been aware that there is nothing in national guidance to indicate that all new development must be served by a full range of services and facilities. The Council would also have been well aware at the time of the decision that housing numbers set out in the adopted Plan were out of date and so would also have been aware that any previous target set out in the Plan was also out of date. Furthermore, the Council provided no substantive evidence to me during the Inquiry that there was anything about

the proposed quantum of development, as put forward by this proposal, that rendered it unsustainable.

9. Therefore, whilst I appreciate the reason for refusal reflected the views of many local residents, I cannot conclude that the actions of councillors in disregarding the professional advice of officers were reasonable. Furthermore, I accept that this was a matter on which the appellant will have felt obliged to seek some clarity through the appeals process. In doing so the appellant will have had to support a case at appeal in relation to the first reason for refusal and so would have been likely to incur expense which could not have been avoided.
10. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs, in relation to the first reason for refusal¹, is justified.

Costs Order

11. 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 Chichester District Council shall pay to Wellbeck Strategic Land IV LLP, the costs of the appeal proceedings described in the heading of this decision insofar as they relate to the Council's first reason for refusal of application WW/20/02491/OUT, dated 28 September 2020.
12. The applicant is now invited to submit to Chichester District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Anne Jordan

INSPECTOR

¹ Planning application ref WW/20/02491/OUT