



Costs Decision

Hearing (Virtual) held on 15 March 2022

Site visit made on 16 March 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th June 2022

Costs application in relation to Appeal Ref: APP/D3125/W/21/3281901 Land North East of 53 High Street, Ascott Under Wychwood OX7 6AX

- 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 Bloombridge LLP for a full award of costs against West Oxfordshire District Council.
 - The hearing was in connection with an appeal against the refusal of outline planning application (with some matters reserved except for access) for the demolition of existing building and construction of up to seven dwellings and new open space/memorial garden of approximately 0.06ha.
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Decision

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

Procedural Matter

2. An application for Costs accompanied the appeal, while the applicant provided an amplification to its case at the end of the Hearing.

Reasons

3. 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. Unreasonable behaviour can be procedural, or it can relate to the substance of the matters under consideration as part of the appeal. Examples of unreasonable behaviour by Local Planning Authorities are set out in Paragraph 047 and 049 of the PPG.
4. The Council's first refusal reason included policies T1 and T3 of the West Oxfordshire Local Plan 2031 (Local Plan). The Council's officer's report provides a summary of those policies, while also indicating that they sit alongside its spatial strategy. That said there is no assessment of how the proposal would be contrary to those policies, or which specific aspects of them the proposal would fail to meet. In this respect the Council did not demonstrate with any clear evidence or objective analysis how the proposal would fail to encourage the use of sustainable modes of transport and support measures which enable modal shift to public transport, cycling and walking and seek to discourage the use of the private car.

5. This led the appellant to present a statement of case without fully knowing what the specific concerns were in respect of those policies, an exercise which would have no doubt led to unnecessary expense on their part. The appellant has not dealt extensively with this matter in its statement of case or engaged with an accessibility specialist. Nevertheless, time has been expended in referencing other documents and cases nearby where the proposal was said to accord with Policies T1 and T3. Therefore, the inclusion of those policies without any detailed reasons at the application stage has led to unreasonable behaviour on the part of the Council.
6. The applicant considers that the proposal would amount to limited development in a village considered appropriate for development and therefore accords with the Policy OS2. The Council took a different view, and in its officer's report and statement of case clearly outlined why it would not meet the policy's requirement of also respecting the village character and identified factors on the ground that led them to that judgement. Therefore, the Council has not acted unreasonably in this regard.
7. Similarly, the applicant contends that the Council failed to explain in its Officer's report why the proposal would not accord with Policy BC1 of the Local Plan, while, in its appeal statement it sought to introduce a further category in the Local Plan's settlement hierarchy, i.e. "larger villages".
8. The 'Principle' section of the Officer's report concludes that the proposal would conflict with Policy BC1, while the same section indicates that a local need has not been met. Broadley speaking this is a requirement of the policy, therefore, I am satisfied that, albeit in brief terms, the Council has identified why it considers the proposal conflicts with that policy. In terms of its definition of "larger villages", it appears that this was the Council's attempt to contextualise the wording of the policy, and the fact that its understanding differs to the appellant's, would not amount to unreasonable behaviour.
9. The applicant is also concerned that the Council has been inconsistent in its approach to assessing the scheme against Policy BC1, given that it has allowed other cases nearby. Those other schemes are different in scale and location, and whilst it is not clear if the Council required a demonstration of local housing need in those instances, it has nonetheless outlined that local housing need has not been demonstrated in respect of the appeal scheme.
10. The applicant cites further unreasonable behaviour on the part of the Council, in its failure to provide adequate evidence or a suitably qualified expert to challenge the assertions and conclusions in the appellant's Landscape and Visual Impact Assessment (LVIA). The Council has not provided the same level of detail or supporting information, in its assessment of the proposal's landscape and visual impact. Nevertheless, the Officer's report and appeal statement, provide a sufficiently clear and detailed assessment of the existing character of the area, the effect of the proposal on the ground, in addition to details of where harm would be experienced. Moreover, there is nothing preventing the Council from challenging the conclusions of the LVIA in the absence of its own qualified expert. I find no unreasonable behaviour was exhibited by the Council in this respect.
11. The final matter relates to the Council's unwillingness, during the application stage, to enter into a unilateral undertaking (UU) to secure an affordable housing contribution. The applicant also refers to the matter only being

resolved in the final days leading up to the Hearing. If the UU was negotiated and agreed during the application stage, there would be no need for refusal reason No 2.

12. The Council, in this instance, chose not to pursue or enter into discussions to secure a completed UU at the application stage as it would not have resolved in its view the proposal's conflict with its strategic policies. It also maintains that any such discussions might have been wasteful given its concerns.
13. I understand the sense of frustration in the failure of the Council to engage in constructive dialogue and I note the advice contained in the Council's Developer Contributions SPD and PPG regarding negotiating obligations. However, it would not be reasonable to conclude that the Council had behaved unreasonably in the procedure leading up to the appeal as its other concerns meant it was not necessary to pursue a completed UU. In any case, there would have been a cost incurred upon the applicant had it concluded the discussions on the UU much earlier in the process.

Conclusion

14. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting Policies T1 and T3 in part of the Council's first reason for refusal, is justified.

Costs Order

15. 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 West Oxfordshire District Council shall pay Bloombridge LLP the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first part of the Council's reason for refusal, which concerned alleged conflict with policies T1 and T3 of the Local Plan.
16. The applicant is now invited to submit to the 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.

RE Jones

INSPECTOR