



Costs Decision

Site visit made on 4 May 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2022

Costs application in relation to Appeal Ref: APP/D3125/W/21/3285075 Land East of London Lane, Ascott-Under-Wychwood OX7 6AN

- 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 Blue Cedar Homes Limited and Cornbury Estates Company Limited for a full award of costs against West Oxfordshire District Council.
 - The appeal was against the refusal of planning permission for erection of 7 one storey age restricted dwellings for older people (65 years) with access, landscaping and associated infrastructure.
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Decision

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

Reasons

2. The 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.
3. The application for a full award of costs is on the basis that the Council acted unreasonably on procedural grounds, as the applicants claim that the Council did not undertake a site visit, and on a number of substantive grounds. Firstly, the applicants claim that the Council incorrectly interpreted its policies regarding the principle and need for the development in the village, particularly in respect of local need, and failed to assess whether the proposal would be within or outside the built-up area of the village. Secondly, the Council objected regarding the location of the site in relation to services and facilities to serve the proposal, including in the village. In doing so, the applicants suggest that it did not consider an approved scheme opposite and ignored the advice of the Highway Authority. Thirdly, the Council raised concerns in relation to the effect on heritage assets, despite the absence of objections from its Conservation Officer and Historic England, and it failed to have regard to the applicants' Heritage and Archaeology Statement. Fourthly, the Council objected to the proposal on the basis of its effect on the landscape value of the Cotswolds Area of Outstanding Natural Beauty (AONB) and upon trees but did so on the basis of no expert advice or appraisals/reports of its own.
4. The applicants claim that no permission was sought to enter the site for the Council to undertake its site visit, but I am not able to say with any degree of certainty whether or not this occurred. However, as I experienced on my visit, the site is also evident from public land surrounding the site. As such I have had no further regard to this matter in this application. Similarly, while the

Council did not engage with the applicants on all matters of concern during the course of the planning application, I am mindful that the proposal followed pre-application advice and the majority of the Council's areas of concern were identified in its response to the applicants at that time. It is also by no means certain that there would have been resolution of those concerns with further engagement. Therefore, in this instance, I do not consider that the Council exhibited deliberately disruptive behaviour in determining the application.

5. The Council's first reason for refusal relates to the location and need for the proposed development, as well as the availability of services. However, the Officer Report fails to explain how the Council interpreted its housing policies, particularly whether the site falls within or outside the built-up area of the village. Ultimately, for reasons explained in my main decision, I determined that the site would not be within the built-up area of the village, but it was insufficient for the Council to assume that this would be self-evident.
6. In determining that there would not be a clear need for specially adapted homes for elderly people in the District, the Council's Officer Report failed to have regard to the applicants' needs report, which clearly mentions the shortfall in housing for older persons in the district, as identified in the Local Plan, and its generally more supportive approach to such housing.
7. The applicant has suggested that, when read together, Policies OS2, H2 and BC1 of the Local Plan do not place an embargo on windfall housing, such as the proposal, in the AONB. However, as I explained in my main decision, there is a clear expectation in villages in the AONB that housing is based on a derived local need. The main parties clarified their cases in terms of the interpretation of what should equate to 'local need' and I was ultimately not satisfied that the applicant's case was sufficiently robust. Moreover, it did not interrogate the need at settlement level, including for the nature of the accommodation proposed. However, this does not alter my initial finding regarding the analysis of such matters in the Officer Report.
8. In my main decision, I had regard to the applicants' Transport Statement and the appeal decision for the site opposite in London Lane. I outlined that the site was a short distance from the services and facilities in the village, but these were unlikely to meet the specific day-to-day needs of the occupiers of the proposed development, which distinguishes it from the site opposite. The applicants would also have expected the Council to undertake such an assessment in its Officer Report, as they clearly referred to that development in supporting information for the planning application. Conversely, given that the Highway Authority's response appears to relate solely to highway safety and convenience, not accessibility from the site, it is unlikely to have had any bearing on the Council's decision.
9. While the Council's second reason for refusal identifies the importance of the site to the setting of adjacent heritage assets, there is no reference to any harmful effect to such assets in the Officer Report, nor is there any reference to the applicants' Heritage and Archaeology Statement. Given its content, the applicants would have expected the Council to clearly identify how the proposal failed to have regard to Section 66(1) the Planning (Listed Buildings and Conservation Areas) Act 1990 and relevant local and national policies. However, assuming that the Council did have regard to this duty, the absence

of an objection from the Council's Conservation Officer and Historic England is not necessarily determinative.

10. The Council also identified harms to the landscape and scenic beauty of the AONB and trees in its second and third reasons for refusal. It was reasonable for the planning officers to come to their own conclusions regarding the magnitude of those harms, regardless of the presence or otherwise of consultation responses from its tree or landscape officers and both harms were briefly but clearly articulated in the Officer Report. The Council's approach to these matters was therefore reasonable and I arrived at similar conclusions in my main decision, as explained below.
11. In my main decision I acknowledged the finding of the applicants' Landscape & Visual Appraisal, that the proposal would have a localised effect on the AONB, a point which was ultimately accepted by the Council. Nevertheless, the effect on the landscape and scenic beauty of the AONB would be harmful and, in the context of local and national policy, great weight should be given to its conservation and enhancement. In the case of the appeal, I found that the proposal would do neither, so the Council's concerns were justified.
12. The Council's third reason for refusal referred to trees and its Officer Report clearly identified the potential pressure for landscaping to be removed to allow sunlight to the proposed properties. The Council's evidence does not call into question the findings of the applicants' Arboricultural Impact Assessment and I too found some of its recommendations to be rational. However, my concerns reflected those of the Council regarding living conditions and future pressures for planting adjacent to the proposed dwellings to be removed. This is a different issue to initial effects of the proposal on such planting. The applicants have suggested that the Council should have referred to Policy EH2 of its Local Plan, as this refers to the loss of trees, but Policy OS2 also refers to the loss of features that contribute positively to character and appearance. The Council's objections were therefore with merit.
13. In the planning judgement, it appears to me that, having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should not have been permitted. However, the applicants submitted their Statement of Case, which includes a detailed analysis of the policy context and reappraisal of existing evidence presented at the planning application stage in light of the Officer Report and Decision Notice. A new report of the need for the development was also produced by the applicants but this did not ultimately provide a detailed assessment of the need for the development in the settlement. The applicants also provided a rebuttal of the Council's case, which amounted to further detailed analysis of each area of disagreement. Had the Council's Officer Report been clearer, the applicants may have been able to approach the appeal differently or not pursue it.
14. The refusal of planning permission, by advancing vague assertions about the proposal's impact, unsupported by any objective analysis of the applicant's evidence and the Council's Local Plan therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework and the PPG. As a direct result, the applicants have been faced with the unnecessary expense of preparing evidence for the appeal against the

Council's case which, from its Officer Report, was not clearly articulated or understandable in a number of areas.

15. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial award of costs is justified in respect of the applicants' defence of the matters referred to in the Council's first reason for refusal and the effect on heritage assets identified in the second reason for refusal.

Costs Order

16. 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 to Blue Cedar Homes Ltd and Conbury Estates Company Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in the defence of the matters referred to in the Council's first reason for refusal and the effect on heritage assets identified in its second reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicants are now invited to submit to West Oxfordshire 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.

Paul Thompson

INSPECTOR