



Costs Decision

Inquiry Held on 10 - 13 May 2022

Site visits made on 9 and 13 May 2022

by R Norman BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st October 2022

Costs application in relation to Appeal Ref: APP/J1860/W/21/3289643 Land at Leigh Sinton Farms, Leigh Sinton Road (B4503), Leigh Sinton, Malvern

- 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 Lone Star Land and Mr W Beard for a partial award of costs against Malvern Hills District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for an outline application for up to 45 residential units including 12 self/custom build units and associated infrastructure (all matters reserved except access).
-

Decision

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

The submissions for Lone Star Land and Mr W Beard

2. The applicant has submitted an application for a partial award of costs on substantive grounds, namely that they consider that the Council behaved unreasonably for contending that a 5-year housing land supply could be demonstrated.
3. It is the applicant's view that as this matter had been considered and rejected at previous appeals¹ it should not have been pursued. The applicant contends that the Council persisted with the same arguments relating to the geography of the supply and the position in relation to the oversupply when there had been no material changes from the previous appeals.
4. The applicant notes that the two previous appeals, Claphill Lane and Bransford Road, concluded that the Standard Method for calculating housing should be done at the District Level and any joint working must be endorsed through the plan making process, and that the 5-year housing land report was put before the previous Inspector at Claphill Lane.
5. The applicant also considers that if it is determined that the Council were unreasonable in running the geography point, then they should not have run

¹ APP/J1860/W/21/3267054 – Land off Claphill Lane, Rushwick; APP/J1860/W/19/3242098 – Land South of Bransford Road, Rushwick (CD9)

the oversupply point as alone this could not demonstrate a 5-year housing land supply.

6. As such, the applicant is of the opinion that by rerunning the oversupply and geography arguments in this case the Council have resulted in unnecessary costs in relation to preparing evidence to address these matters.

The response by Malvern Hills District Council

7. The Council have responded to the partial costs claim to state that they consider the application to lack sufficient thought and they have provided a table comparing the facts on the previous appeals and to test the basis for a costs claim in the Claphill Lane case². The Council consider there are a number of points which should be demonstrated to establish a principled basis for a costs claim³. They state that it is wrong to assert that there is a basis for a costs application when an issue has been argued at another appeal and that if this were the case there would only be one previous decision on the matter.
8. The Council also consider that the applicant has failed to address the rationale of the local plan and that their suggested approach would also be subject to the same local plan process. The Council consider the approach that they put forward to be a reasonable solution. It is also suggested that the applicant's approach to Housing Delivery Targets fails substantively.
9. The Council highlights recent judgements relating to Tewkesbury, Gotherington and the Fiddington appeals and highlights that in terms of oversupply, there is no relevant national policy or guidance, and it is a matter of judgement for the decision maker.

Reasons

10. The Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process⁴. It is therefore for the applicant to demonstrate that the unreasonable behaviour in question has led to unnecessary work being carried out that would have otherwise not been necessary as a result of the Council persisting in objections to a scheme or element of a scheme that has been previously indicated by the Secretary of State or an Inspector to be acceptable.
11. I accept the Council's view that if a main issue is argued in a previous appeal then there is nothing to say that it cannot be considered at subsequent appeals and I have had regard to all of the evidence and proofs put forward by the Council in relation to the main issue of housing land supply. I have also noted the East Riding judgement relating to the reasons given by Inspectors when making their decisions⁵.

² Table at paragraph 18

³ Points a – g, paragraph 13

⁴ Paragraph 028 Reference ID: 16-028-20140306

⁵ East Riding of Yorkshire Council v Secretary of State for Levelling Up, Housing and Communities and Gladman Developments Limited [2021] EWHC 3271 (admin) (CD28)

12. It had been established from the Bransford Road appeal that the plan-wide approach to calculating housing land supply should be established through the plan making process. It is also demonstrated in that decision that the Housing Delivery Target approach was considered also. I note that in that case the Council accepted that they could not demonstrate a 5-year supply. Nevertheless, although the Council's position had moved on from that point, the Council's forthcoming approach and the need to establish this through the plan making process was highlighted.
13. I have had regard to the closing submissions and decision letter from the Claphill Lane inquiry which indicates strongly that the matters of geography and oversupply were both considered at that appeal. Furthermore, the identified main issues⁶ in the Claphill Lane inquiry included the Council's 5-year housing land supply. The applicant has highlighted a number of paragraphs of the closing submissions which demonstrate that the same matters were presented to that Inspector that were put forward in this appeal.
14. I have had regard to the Fiddington and Gotherington appeal decisions⁷ and the Tewkesbury judgement⁸ which determined that whether or not to take account of past oversupply is not prescribed by national policy or guidance and is therefore a matter of judgement for the decision maker. The Fiddington appeal decision also concluded that oversupply should be taken into account. However, I have addressed my specific findings on this in my main appeal decision.
15. I note the Council's concerns over the level of detail originally provided and the timescale for putting forward the applicant's full costs submission. However, I do not find it unreasonable for the applicant to want to hear the evidence at the Inquiry before finalising their submission and I have not been provided with any legal precedent to say the detail of the costs claim is required earlier than was provided by the applicant. This therefore does not alter my overall findings in this case.
16. In conclusion, based on all the evidence before me including the previous appeal decisions, closings and judgements, I find that these issues had been similarly considered at the previous appeals and it has not been demonstrated that there were sufficient material changes prior to this appeal to justify considering the above matters again.
17. I therefore 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.

Costs Order

18. 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 ORDERED that Malvern Hills District Council shall pay to Lone Star Land and Mr W Beard the costs of the appeal proceedings described in the heading of this decision, limited to those

⁶ Paragraph 8 iv) CD10

⁷ APP/G1630/W/21/3283839 – Land to the North West of Fiddington, Ashchurch, Tewkesbury (CD42); APP/G1630/W/20/3256319 – Land off Ashmead Drive, Gotherington (CD36)

⁸ Tewkesbury Borough Council v SoS for Housing, Communities and Local Government [2021] EWHC 2780 (Admin)

costs incurred in relation to the 5-year housing land supply main issue; such costs to be assessed in the Senior Courts Costs Office if not agreed.

19. The applicant is now invited to submit to Malvern Hills 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.

R Norman

INSPECTOR