



Costs Decision

Hearing Held on 8 June 2022

Site visit made on 8 June 2022

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2022

Costs application in relation to Appeal Ref: APP/H1840/W/21/3266573 No. 1 and The Neuk No. 3 Bretforton Road, Badsey

- 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 Greystoke Land Limited for a full award of costs against Wychavon District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the residential development of up to 100 no. dwellings with associated access roads and car parking, public open space, landscaping, drainage and other associated infrastructure, following demolition of no.1 Bretforton Road.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) 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. The PPG provides that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, or by 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.
3. In this case, the issue centres around the Councils use of past over-supply when calculating the housing need using the Standard Method. The applicant states this assumption is wrong and also unreasonable. Without over-supply the Council would not be able to demonstrate a 5 year housing supply and the applicant indicates that this would likely have led to the planning application being approved and therefore no necessity for the appeal with the costs this incurred.
4. The PPG sets out the approach for calculating housing need with the Standard Method. Indeed, neither the PPG nor the National Planning Policy Framework (the Framework) include any provision for past oversupply to be factored into the standard method. The Council has drawn my attention to the case of *Tewkesbury Borough Council v Secretary of State for Housing, Communities and Local Government* [2021], where Mr Justice Dove concluded that the PPG

and Framework did not engage with a situation where there was past oversupply, therefore the matter was left as a matter of planning judgment for the decision-maker bearing in mind the particular circumstances of the case being considered. However, this case related to the factoring in of part over-supply when using the standard method in particular.

5. The applicant has highlighted the PPG with regard to the Standard Method which states that *"Step 2 of the standard method factors in past under-delivery as part of the affordability ratio, so there is no requirement to specifically address under-delivery separately when establishing the minimum annual local housing need figure."* In my view, though this relates to past under-delivery, it would also apply to over-delivery, though this is not expressly set out in the PPG.
6. Following recent appeal decisions in other Worcestershire Districts (issued after the Hearing for this appeal - APP/J1860/W/21/3289643 and APP/H1840/W/21/3289569), which both concluded that the case for incorporating oversupply when calculating housing need was not made successfully, the Council decided not to pursue this approach with this appeal and it was agreed between the parties that the Council could not demonstrate a sufficient amount of housing land supply. The appeal was determined on that basis.
7. However, at the time of the Council determining the original planning application at Badsey these appeal decisions did not exist. Furthermore, whilst the Framework and PPG did not support the use of oversupply with the Standard Method, there is no clear direction on this particular issue. The Council also explained their reasoning why they calculated their housing need in this way with the Standard Method, stating that this provided an accurate reflection of the progress made in delivering new homes in this area.
8. Overall, though the Council later conceded to not include previous oversupply in its housing need calculations, I do not consider that at the time of the planning application decision it was unreasonable for the Council to take this approach or for them to consider this was a suitable method of calculating housing need using the standard method. Furthermore, there was also the issue of housing density with the Council's second reason for refusal which is largely separate to the matter of housing land supply and more of a character and appearance issue. As such, even if the Council did not take the approach it did when calculating its housing land supply then, in my view, it would still be likely an appeal would be necessary. Although the appeal has been allowed, it was not 'clear' that any harm from the proposal would not significantly and demonstrably outweigh the benefits, with the Council explaining clearly the concerns with regard to density for example.
9. For all the reasons set out above, I find that there has not been unreasonable behaviour by the Council which has caused unnecessary expense in this instance and the application for costs is refused.

Mr S Rennie

INSPECTOR