
Costs Decision

Hearing Held on 15 November 2022

Site visit made on 14 November 2022

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2022

Costs application in relation to Appeal Ref: APP/D3125/W/22/3302410 44 Common Road, North Leigh, Oxfordshire OX29 6RB

- 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 Abbeymill Homes Ltd for a full award of costs against West Oxfordshire District Council.
 - The Hearing was in connection with an appeal against the refusal of planning permission for the demolition of existing residential property, construction of a new access onto Common Road with the erection of 10 detached and semi-detached two storey dwellings, associated garaging and parking, landscaping and all enabling works.
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Decision

1. The application for an award of costs is refused.

The submissions for Abbeymill Homes Ltd

2. It is alleged by the Appellant that:
 - The Council behaved unreasonably by publishing a 5-year Housing land Supply position that includes sites that do not meet the Framework's definition of being deliverable.
 - The Council has incorrectly described the site as greenfield land and failed to have regard to the definition of Previously Developed Land in the Framework.
 - The Council has provided no objective analysis of why if finds the proposal would not complement the existing pattern of built form and contradicts its comments within the officer report saying that cul-de-sac development exists in the local area.
 - The Council provided contradictory statements in acknowledging that the scheme would deliver a biodiversity net gain but also claiming it would fail to conserve the natural environment.

The response by West Oxfordshire District Council

3. The Council has replied that:
 - It was reasonable for the Council to have maintained its Housing Land Supply (HLS) position, of December 2021, when making its decision on the planning application on 21 May 2022. The Council argues that whilst it had its HLS position challenged at previous appeals it had successfully

defended its position. It states that there was therefore no substantive evidence to indicate that its position was unreliable at the time. Furthermore, the Council has since conceded and agreed within the Statement of Common Ground that it cannot demonstrate a 5-year HLS. It has also shown that this new position was reported to Lowland's Area Planning Sub-Committee. This found that even if the tilted balance were engaged the identified harm would be significant and demonstrable and the proposal would still fail, meaning that an appeal would have been necessary in any event.

- The Council's understanding of the definition of Previously Developed Land is set out in its Statement of Case (SoC) and was discussed further at the Hearing. Essentially, the Council finds that the Appellant's interpretation of PDL in the glossary of National Planning Policy Framework (the Framework) is wrong.
- The Council's explanation of the characteristics of the site and its surrounding area is described in its SoC and was discussed further at the Hearing. In summary the Council has explained that the village is predominantly linear in character, especially within the immediate vicinity of the site and when considering its position to housing to the south.
- The harm found in the decision notice, with respect to loss of the natural environment, derives from policy OS2 of the Local Plan. The Council asserts that the decision notice and loss identified cannot be off-set by the proposed bio-diversity gains identified and supported elsewhere in the officer report.

Reasons

4. 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.

Five-year supply position

5. The Council's five-year HLS position seems to have evolved over a relatively short period of time. It may have been useful for the Officer Report to identify that the applicant sought to challenge the Council's housing position. This would have been especially important as the challenge largely related to deliverable sites, a point clearly addressed within the glossary of the Framework. This seeks for housing sites that only benefit from outline applications to be excluded from the supply unless clear evidence demonstrates that housing completions will begin within the prescribed timeframe.
6. Nonetheless, I am satisfied that the Council properly reflected on the challenges to its supply position and paid regard to more recent appeal decisions, such as at Barns Lane (appeal decision August 2022). It therefore conceded it did not have an adequate supply at a reasonable point in the evolution of its 5-year HLS position. Furthermore, it has been helpful for the Council to revisit the decision it made, by seeking views from the Planning Sub-Committee, in advance of the Hearing. Accordingly, I have found that the Council did not defend its 5-year HLS position at an untenable point, and it

conceded this when it had clear evidence and reasoning to do so. Therefore, this does not describe unreasonable behaviour.

Previously Developed Land (PDL)

7. In my main decision I have found that the definition of PDL in the Framework is clear and unambiguous. As I have found that the front part of the appeal site falls within the built-up area, its residential garden would not constitute PDL. Also, the middle parcel of land, beyond the residential garden, appears to have last been in agricultural use. Also, the final parcel of land beyond this is uncontested between parties as greenfield land. As such, the majority of the site would not be PDL. The case law submitted by the Appellant does not illustrate that this interpretation is wrong. Indeed, it confirms that residential gardens not in built-up areas would be PDL as was found in that case for an isolated property in the open countryside.

Character of the area

8. The officer report, in making a recommendation of approval, found that the proposal would be in character with the village as it already included cul-de-sac estates. Nevertheless, the Council made a decision that found this was not the predominant character which was instead linear in form. Consequently, it found that the proposal would not accord with the established settlement pattern. The Council was entitled to not follow officer advice and this contrary view was adequately set out in its SoC and at the Hearing.
9. The Council's SoC recognised the existence of Common Close and other cul-de-sac forms of development but found that the predominant character was more linear in form, especially close to the appeal site. As such, whilst this may seem contradictory it is perhaps inevitable in identifying the most predominant characteristics of an area when officer advice is not followed. As a result, the assessment of the settlement's key characteristics, when comparing the officer report to the SoC does not reveal a clear contradiction that identifies unreasonable behaviour.

Loss of natural environment

10. Policy OS2 of the Local Plan, lists general principles that should guide development when seeking to locate development in the right place. Bullet point 'nine' states that development should conserve and enhance the natural, historic and built environment. Although the Appellant's ecological survey found the site to be of low ecological value, the proposal would nevertheless result in the loss of greenfield land and associated tree and vegetative cover resulting in a loss of the natural environment, albeit of limited significance. However, the proposal included the provision of on-site and off-site bio-diversity enhancement measures that would result in a net gain to the natural environment. This would outweigh the loss in satisfaction with this part of the policy. This apparent contradiction has not been clearly explained by the Council and as such I concur with the applicant that this criticism is warranted.
11. Nevertheless, this contradiction had only a limited bearing on my consideration of the merits of the case, as I found that the proposal would result in moderate harm to the character and appearance of the area in conflict with other parts of policy OS2. The identified contradiction therefore has had no material bearing on the conflict found with the policy and the resultant outcome of the decision.

12. As a result, this matter alone would not be unreasonable behaviour and even if it was, this alone would not have resulted in unnecessary costs to the applicant.

Conclusion

13. Accordingly, taking all the above points into account, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Ben Plenty

INSPECTOR