



Costs Decision

Inquiry opened on 28 July 2022

Site visit made on 29 June on 28 July & 27 September

by Mrs J Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 2nd December 2022

Appeal Ref: APP/K0425/W/22/3296128

Land to the rear of 20 Wycombe Road, Holmer Green, High Wycombe, HP15 6RY, 489803, 196518

- 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 Inland Homes Ltd for a partial or full award of costs against Buckinghamshire Council
 - The inquiry was in connection with an appeal against non-determination within the prescribed period of an outline application (including details of access and layout) for the erection of 101 dwellings with all other matters reserved.
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Decision

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

The application

2. The application was made for a full, or alternatively partial, award of costs, made in writing and orally before me. The Council having received an advance copy from the applicant opted to respond to the claim via its closing submissions.

The case made by Inland Homes

3. The application is a claim for all costs arising from the appeal or in the alternative costs arising from the date of the putative reasons for refusal (May 2022).
4. It is argued that the Council's reasons do not withstand scrutiny and amount to an unreasonable exercise in the development management responsibility of the Local Planning Authority. Moreover, that in the context of the non-determination appeal the reasons for withholding planning permission have not justified the delay in determining the application nor withholding planning permission. It is further argued that by unreasonably deferring the application by reference due to the alleged failure to provide or comply with a development brief, which has not been persisted with as a policy failure and which has since been recognised as a matter of limited weight, was never a reasonable basis upon which to refuse planning permission.
5. The need to instruct an inquiry team, the preparation of evidence is argued to be a wasted expense in the context of a decision which the applicant asserts

should reasonably have been to grant planning permission subject to a legal agreement and appropriate conditions.

6. Key points for consideration are that the Council have failed to properly consider the position in respect of the connections from the appeal site in the context of land to the south which is undeveloped and has no existing network to connect into and where no evidence has shown that the connections provided by the appeal proposals cannot acceptably be made use of. Secondly that the council have failed to appreciate the scope of reserved matters to overcome the narrow scope of matters set against the scheme.
7. Finally, that the Council have failed to properly consider the planning balance, compliance with local and national policy as a whole nor provide any specialist urban design or landscape evidence to substantiate that the proposal is not capable of being well designed when the advice of their own specialist officers was entirely consistent with the evidence provided by relevant experts to the Inquiry. A preference for one approach to providing a sense of separation is considered to be insufficient to justify refusal having regard to a properly conducted planning balance.

The response of the Council

8. The Council contend that as the proposal fails to comply with Policy HW8. Whilst it is supportive of development on this allocated site in principle the particular layout, which is not reserved for future consideration, does not provide for the comprehensive development of the appeal site. As such the consideration of access and layout involves approval of routes and open spaces and at this stage has not been demonstrated to be consistent with the proposals on the as yet undetermined proposals on the Bellway part of the allocation.
9. The Council argue that the applicant could have chosen to make layout a reserved matter however argues that its insistence on putting forward a detailed layout for consideration is at odds with the development of land to the South within HW8 and that this has necessitated the Inquiry. Moreover, in its closings the Council highlighted that the appellant sought to rely on a proposed flexible condition which it then did a U turn. The Council argued that it was never reasonable for the appellant to deal with this matter by way of a condition and that it was always unreasonable and imprecise, the Council having pointed this out in its opening to the Inquiry. The appellant relied on a proposed flexible condition to secure the links and during the course of the inquiry altered this approach.
10. The Council initially recommended the appeal proposal for approval. The Planning Officers' report exercised a professional judgement based on the evidence arising from consultation responses and the information contained in the application. Members did not accept the officer recommendation initially seeking to defer a decision until after the production of the development brief and the subsequently resolving to oppose the proposal citing two putative reasons for refusal.

Reasons

11. Following the lodging of the non-determination appeal the Council made clear what its putative reasons for refusal were. Those reasons were essentially the

lack of comprehensive development and the failure to maintain the appropriate sense of separation between Hazlemere and Holmer Green. These are the main threads of the evidence provided by the Council and upon which I have made my own assessment in the separate development decision notice.

12. Whilst the initial deferral of the appeal proposal solely on the basis that a development brief should be prepared may have been unreasonable this did not and does not obviate the conclusions of the Council that the proposal was deficient against the Development Plan even though the officers of the Council had recommended otherwise.
13. The Council was entitled to disagree with the officer recommendation and to set out the reasons for that conclusion. It is neither unusual nor irregular for elected members to overturn a recommendation before them, indeed this is part of the nature of decision making particularly where members take a different view provided that they articulate the reasons for that difference. It was inevitable under those circumstances that policy issues would require further scrutiny.
14. In any event it is clear to me that the necessary legal agreement was not in place until long into the process of the inquiry and it was not sufficiently advanced that the Council could have granted permission had the elected members agreed with the officer recommendation. As such there does not appear to have been an unnecessary delay. The Council would not have been in a position to conclude proceedings and grant consent in either February or May given that the agreement was a matter which was outstanding.
15. The Planning Practice Guidance (PPG) makes it clear that an award of costs may be justified where development is prevented or delayed which clearly should have been permitted having regard to the development plan. The PPG also makes clear that for costs to be awarded unreasonable behaviour must have caused the party applying for costs to incur unnecessary or wasted expense during the appeal process. I have found the proposal deficient in relation to the requirements of the development plan and that planning permission should be refused.
16. The PPG makes it clear that any application for costs needs to clearly demonstrate the basis for alleged unreasonable behaviour and how this resulted in unnecessary or wasted expense in the appeal process. For the reasons given above I have not found that unreasonable behaviour occurred, and it is not therefore necessary for me to consider the matter of unnecessary or wasted expense in the appeal process.
17. For the reasons set out it has not been demonstrated that the Council has behaved unreasonably in the appeal process as set out in the PPG. It cannot therefore follow that the applicant has incurred unnecessary or unreasonable expense in pursuing the appeal. The application for an award of costs is therefore not justified.

Mrs J Wilson

INSPECTOR