



Costs Decision

Site visit made on 18 October 2022

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Costs application in relation to Appeal Ref: APP/H1840/W/22/3293474 52 Bretforton Road, Badsey WR11 7XQ

- 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 Paul Newman New Homes for a full award of costs against Wychavon District Council.
 - The appeal was against the refusal of planning permission for the development of 21 dwellings together with associated accesses, parking and landscaping.
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Decision

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

Reasons

2. Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only 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 applicant's application for costs is based on the alleged unreasonable behaviour of the local planning authority ('LPA') and wasted expense, for substantive reasons, as considered below.
4. The LPAs reason for refusal ('RfR') 1 relates to the suitability of the location of the appeal site for housing. This reason was supported on the basis that the LPA could demonstrate a 5-year housing land supply ('5YHLS').
5. The 5YHLS position for Wychavon District is based on the South Worcestershire Five Year Housing Land Supply Report 2021 (Published September 2021) ('the 5YHLS 2021 Report'). This Report covers Worcester City, Wychavon District and Malvern Hills District and concludes that on a joint basis the three Councils can demonstrate 5.76 years' worth of deliverable housing sites.
6. The planning application (Ref 21/01836/FUL) was reported to Wychavon District Council Planning Committee on 9 December 2021, with a recommendation for refusal. In a letter to the Planning Committee, the applicant highlighted concerns about the LPAs 5YHLS. In particular, with reference to the Rushwick appeal decision (April 2021), the applicant argued that both the current supply and methodology (plan wide basis) were untested, therefore not considered robust.
7. In the Rushwick appeal, the Inspector found that the South Worcestershire Development Plan was more than five years old. Its policies had been reviewed

- and found to require updating. Therefore, in terms of paragraph 73¹ of the National Planning Policy Framework, this required looking for a housing land supply figure against the Council's local housing need as calculated by the standard method. The Inspector acknowledged that the Council had not calculated this yet and that this was planned for later in the year.
8. The Inspector also added that: 'The Council makes the point that, as and when supply is updated, it will be done on a plan-wide basis across the South Worcestershire Councils, rather than looking just at Malvern Hills District Council. Be that as it may, such an approach would need to be established through the plan making process and set out in strategic policies, which are not before me for the purposes of this appeal.'
 9. Even though the Rushwick appeal decision relates to a separate administrative area, this identified that in the South Worcestershire Development Plan ('SWDP') Area the standard method now applied and that to proceed with a 5YHLS calculation on a Plan area basis would need to be done through the strategic plan making process.
 10. As 'plan-making' is a different statutory exercise from producing 5YHLS Statements, in my view, the Inspector was highlighting the need for a fundamentally different approach from that being proposed and that which was subsequently adopted by the SWDP authorities including Wychavon District Council.
 11. I acknowledge that at the time of the Rushwick appeal, the 5YHLS 2021 Report had not been published. Even so, the Officers' Report acknowledged that the approach being put forward had not been supported by the Inspector in the Rushwick appeal. Whilst some reasoning is given in support the Council's approach, this is insufficient justification for an incorrect application of Government policy and advice. Furthermore, the Officers' Report failed to accurately set out the Council's position suggesting that the land supply was being calculated using the standard method rather than the standard method discounted by past "over supply".
 12. In March 2022, the applicant's original Hearing Statement and DLPs Strategic Planning Research Unit - Land Supply Statement, concluded that Wychavon Council did not have a 5YHLS as a result of the application of the standard method without the inclusion of over supply.
 13. Indeed, as per the submitted 'Statement of Common Ground, the LPA conceded that in calculating the housing land supply, the 5YHLS 2021 Report seeks to discount the standard method on the basis of a claimed "over supply" from earlier in the plan period and that, in light of subsequent appeal decisions, the LPA has accepted that it cannot take into account over supply as part of its housing land supply calculation and, as such, cannot demonstrate a 5YHLS.
 14. Given that the LPA was made aware at the outset of the determination of the applicant's original application, that the 5YHLS 2021 Report, was based on an untested supply and methodology, to then proceed with a refusal reason with this state of knowledge, constitutes unreasonable behaviour. Furthermore, at appeal the LPA has failed to produce evidence to substantiate RfR 1.

¹ Paragraph 74 of the current National Planning Policy Framework

15. In August 2022, the Council issued, the South Worcestershire Five Year Housing Land Supply Report ('the 5YHLS 2022 Report'). This report concluded that there was a 5.22 year housing land supply for the plan area. On the 5 September 2022, the LPA Case Officer also confirmed this to the applicant via email and a meeting.
16. Nonetheless, on the 7 September 2022, the LPA acknowledged as part of separate appeal, that the 5YHLS 2022 Report contained an error and that the Council could not demonstrate a 5YHLS. The 5YHLS 2022 Report was withdrawn.
17. At the time (12 September 2022) when the Planning Inspectorate agreed that additional information could be submitted by the applicant, the Council had already withdrawn the 5YHLS 2022 Report and acknowledged that it could not demonstrate a 5YHLS. Indeed, the Planning Committee Report published for the applicant's revised application, confirmed that the South Worcestershire Councils could no longer demonstrate a 5YHLS.
18. In light of the above and given that the applicant had already submitted evidence to dispute the Council's original 5YHLS position, although the applicant chose to submit additional evidence in September 2022, I do not consider that this was necessary.
19. Whilst the LPA did not advise the applicant of their initial request to the Planning Inspectorate for the appeal to be determined by way of written representations, this in itself is not unreasonable behaviour, given that the LPAs intention was to save all parties the additional costs associated with a Hearing. Moreover, the decision to change the appeal process was made by the Planning Inspectorate in consultation with the main parties.
20. The second RfR relates to the failure of the original scheme submitted as part of planning application (Ref 21/01836/FUL) to provide an appropriate housing mix. The third RfR relates to matters of layout and design. These reasons, as set out in the Council's decision notice are complete, specific and relevant to the application. These reasons also refer to relevant development plan policies. Whilst RfR 2 and 3 were resolved, this was as part of a further planning application with a revised scheme.
21. In respect of RfR 4, despite the applicant's best intentions to provide a completed legal agreement based on agreed Heads of Terms to secure the required obligations, this was not available on the occasion the application was refused by the LPA. Accordingly, I am of the view that the reasons for refusal 2, 3 and 4 were based on reasonable planning grounds.
22. Although I have found in favour of the applicant's appeal, this was based on a revised scheme which is identical to a scheme that has already been approved by the LPA and a completed S106 Agreement. Therefore, under the circumstances, I cannot be certain that even if the LPA had accepted that it was unable to demonstrate 5YHLS during the determination of the applicant's original application, that in light of reasons 2, 3 and 4, the LPA would have approved that application.
23. Even so, for the reasons set out above, the LPA acted unreasonably with regard to pursuing RfR 1. Consequently, the applicant did incur costs of having to prepare and provide information as part of the appeal to defend this particular

RfR. However, this should not include the costs incurred for submitting the further appeal evidence in September 2022, given that by then the LPA had published a Planning Committee report which clearly acknowledged that the Council could not demonstrate a 5YHLS.

Conclusion

24. I therefore find that unreasonable behaviour on the part of the LPA resulting in unnecessary or wasted expense incurred by the appeal, as indicated in the PPG, has been demonstrated. Accordingly, I conclude that a partial award of costs is justified.

Costs Order

25. 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 Wychavon District Council shall pay to Paul Newman New Homes the costs of the appeal proceedings described in the heading of this decision but limited to those costs incurred in initially responding to RfR 1 of the authority's decision in March 2022 and those associated with making the costs application, and such costs shall be assessed in the Senior Courts Costs Office if not agreed.
26. Paul Newman New Homes are now invited to submit to the 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.

M Aqbal
INSPECTOR