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## Costs Decision

Hearing Held on 17 October 2022

Site visit made on 16 October 2022

**by C Beeby BA (Hons) MIPROW**

**an Inspector appointed by the Secretary of State**

**Decision date: 9 January 2023**

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### **Costs application in relation to Appeal Ref: APP/X0360/W/22/3300991 423-431 Reading Road, Winnersh RG41 5HU**

- 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 Mr Steve Wood on behalf of Roy Wood Transits Ltd for a full award of costs against Wokingham Borough Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the demolition of an existing workshop and store and the erection of 7 x 3 bedroomed terraced houses with parking and new access road.
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### **Decision**

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

### **The submissions for Mr Steve Wood**

2. The applicant submits that substantive unreasonable behaviour has occurred. He considers that the Council unreasonably delayed the delivery of housing on brownfield land in a settlement within an area where there is a recognised housing need, failed to substantiate the application of development plan policy and to consider whether it was up-to-date, erroneously treated that policy as taking precedence over the Written Ministerial Statement (2014) (the WMS) on affordable housing contributions and the National Planning Policy Framework (2021) (the Framework), and that references to the consistency of development plan policy with the Framework were made within his application documents but were not considered by the Council. At the hearing the applicant submitted an appeal decision<sup>1</sup> which found that the level of affordable housing need had not been demonstrated in that case. This contributed to the Inspector's assessment that the Framework carried greater weight than Policy CP5 of the Core Strategy (the CS).
3. The applicant additionally contends that the Council maintained that a viability assessment could not be considered, invited additional evidence and then stated that it was irrelevant, failed to have reasonable regard to submitted valuation evidence, and did not reconsider its case following submission of the applicant's case.

### **The response by Wokingham Borough Council**

4. The Council states that, whilst it was unaware at the decision-taking stage that the applicant disputed the consistency of development plan policy with the

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<sup>1</sup> APP/X0360/W/19/3224032

Framework, its officer report dealt with that matter, in any case. The Council acknowledges other appeal decisions<sup>2</sup> submitted by the applicant but highlights that no grant of permission arose from these. It considers that the applicant's policy submissions go against the Council's process.

5. The Council acknowledges the applicant's viability assessment. It considers that the achievement of conclusions on almost all inputs to the viability assessment demonstrates that the parties worked together.

## **Reasons**

6. The Planning Practice Guidance (the 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.
7. The PPG sets out that councils are at risk of an award of costs where they:
  - prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
  - fail to produce evidence to substantiate each reason for refusal on appeal;
  - act contrary to, or do not follow, well-established case law; and
  - make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
8. The delivery of housing on a brownfield site is accorded moderate weight in the officer report, which additionally considers the Framework to lend support for such developments. The consideration forms part of the planning balance and hence the weight attributed to it was a matter for the Council's judgment. Thus, it was open to the Council to subsequently determine that the development should be prevented, having regard to its conclusions in respect of conflict with the development plan. No unreasonable behaviour has consequently been demonstrated in relation to this ground.
9. In this proposal it was common ground that there is a need for affordable housing in the area and the Council attached weight to this factor accordingly. The other decision (submitted at the hearing) found that the level of affordable housing need had not been demonstrated in that case. Therefore the circumstances in this appeal are not so similar to those within the other appeal that the Council's conclusions regarding Policy CP5 of the CS may comprise unreasonable behaviour.
10. Data from the Council's 2016 Berkshire Housing Market Assessment and thereafter is relied on in support of the Council's view that there is a continued need for affordable housing in the area, in its officer report. Some of this is extracted in the applicant's statement, and shows a need for affordable housing. Therefore the Council's decision to apply Policy CP5 does not lack an evidential basis.

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<sup>2</sup> APP/X0360/W/21/3275086 and APP/X0360/W/21/3276169

11. I acknowledge the case law<sup>3</sup> provided, which affirms that the determination must be made in accordance with the development plan unless material considerations indicate otherwise, and states that “no systematic primacy is to be accorded to the development plan”.
12. Nevertheless, whilst the council’s officer report acknowledges the conflict between Framework policy (which supersedes the WMS policy) and development plan policy on affordable housing contributions, it finds that there is a continued need for affordable housing in the area. The lack of a contribution in this regard is then found to be of significant concern and to outweigh the benefits associated with the scheme. Therefore the application has not been assessed against development plan policy without an assessment of relevant circumstances.
13. Whilst I have found in my decision that particular circumstances which justify the need for a viability assessment exist in this case, the Council’s view that such circumstances had not been demonstrated was, similarly, a matter for the Council’s judgment.
14. The evidence before me does not clearly demonstrate that the trading accounts approach taken was agreed between the parties, or whether the Council considered the submitted accounts to be irrelevant during the application stage but failed to convey this to the applicant. It appears likely that the assessment of irrelevance resulted from advice taken by the Council in response to the submission of the appeal, and therefore that the assessment could not have been conveyed prior to the appeal. Thus, there is no evidential basis for me to conclude that unreasonable behaviour has been demonstrated in this regard.
15. The Council’s statement sets out that the evidence submitted with the appeal has been reviewed by the Council’s advisor, and a full response is provided. Therefore regard has been had to the evidence provided, and no unreasonable behaviour has consequently been demonstrated on this ground.
16. Similarly, the Council’s statement responds to a number of points in the applicant’s appeal case and there is minimal substantive evidence to support the applicant’s final costs ground. How the Council is considered to have failed to review its case has consequently not been sufficiently demonstrated to show unreasonable behaviour.
17. As the application for a full award of costs has not succeeded based on my above conclusions, I have considered whether only a partial award is justified. However, I have not identified unreasonable behaviour by the Council in respect of any particular aspect of the appeal process. Accordingly, I conclude that a partial award of costs is not justified.
18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*C Beeby*

INSPECTOR

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<sup>3</sup> Secretary of State for Communities and Local Government v West Berkshire District Council & Anor [2016] EWCA Civ 441