



Costs Decision

Hearing Held on 21 February 2023

Site visit made on 21 February 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2023

Costs application in relation to Appeal Ref: APP/K2420/W/22/3311038 Land off Workhouse Lane, Burbage, Hinckley LE10 3AS

- 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 Mather Jamie (Central England Cooperative) for a full award of costs against Hinckley & Bosworth Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for outline planning application for the development of up to 40 dwellings, public open space and associated infrastructure with all matters reserved for subsequent approval other than access.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

The submissions for Mather Jamie (Central England Cooperative)

2. The planning application was refused permission for 2 reasons. The second relates to the failure to enter into a planning agreement to cover planning obligations. The appellant has not sought to challenge the proposed obligations and so had refusal reason 1 not existed the Council (HBBC) would have made a positive determination on the planning application. The reason for the appeal therefore lies with objections raised on the safety and suitability of the access.
3. The proposed 40 dwellings would not result in significant or severe adverse effects that warrants refusal of planning permission. The extent of the evidence from Leicestershire County Council (LCC) as local highway authority amounts to section 5 of its statement of case. This simply states that there is an unacceptable carriageway width and that video evidence will be presented at the hearing that identifies a level of conflict along the route.
4. The appellant's highway representative identifies that there would be no conflict with Manual for Streets. LCC has sought to apply its own design criteria for new roads to an existing highway. This is an error. Moreover the video evidence provided amounts to 4 short clips over 3 days of recording. These clips show the Workhouse Lane/Britannia Road junction working as expected.
5. The appellant has provided an independent road safety audit and no detailed explanation has been provided as to why this is not agreed with. There has been no recorded accidents on the part of the highway that is the cause of concern. The Bellway scheme on the adjacent site was approved in the same highway context.

6. There has been no evidence of any kind to support HBBC's position. The appellant has provided documents that demonstrate no significant or severe adverse effects. There is no credible evidence from LCC to demonstrate such impacts. The LCC highway guidance may have been applied successfully elsewhere but this is irrelevant to this case.

The response by Hinckley and Bosworth Borough Council

7. HBBC has determined the planning application in line with LCC's response as highway authority. It is considered the scheme would have significant and/or severe impact on the highway network. The guidance on road widths has been applied successfully elsewhere and enabled schemes to come forward that otherwise would not have progressed. As such HBBC and LCC has acted reasonably and cooperated with the appellant since the planning application was submitted.

Reasons

8. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and so caused the costs applicant to incur unnecessary expense in the appeal process. The appellant has not referred to the PPG in their costs application. However, from the submissions it is evident that the application claims unreasonable behaviour in terms of (i) failing to produce evidence to substantiate the first refusal reason, (ii) making vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by an objective analysis, and (iii) preventing or delaying development which clearly should have been permitted having regard to the development plan, national policy and other material considerations.
9. HBBC's first refusal reason relies upon concerns raised by LCC as highway authority. The appeal submissions include the decision notice, officer's report on the planning application, consultation responses to the application as well as appeal statements of case from HBBC and LCC. These cover the issues of the safety and suitability of the access to the development and so HBBC has not failed to produce evidence in respect of the first refusal reason.
10. Only brief comments are included in LCC's statement of case as to why planning permission should be refused but LCC's consultation responses to the planning application provide further explanation. The concerns raised are fairly specific in that they relate to the width of the existing carriageway on Workhouse Lane being below the 5.5m figure set out in Table DG1 of the Leicestershire Highway Design Guide (LHDG). Also, it is suggested that the tight junction and restricted visibility where Britannia Road joins Workhouse Lane leads to potential traffic conflicts and vehicles needing to mount the pavement.
11. As explained in my appeal decision, I am unconvinced that the referred to provisions of the LDHG are strictly applicable in the assessment of the existing roads that would serve other properties as well as the proposed dwellings. HBBC state that the LHDG has been applied successfully on other schemes but no detailed evidence is before me to show that these are similar to the appeal development.
12. In any event, even if I accept the LHDG is relevant to the assessment of the appeal, no substantive evidence has been provided by HBBC or LCC to show

how any deficiencies in the layout of local roads prejudices highway safety. Indeed, at the hearing the LCC officer accepted that there was no evidence that the layout of Workhouse Lane causes highway safety problems and there is no record of any accidents. The video clips shown at the hearing illustrated how the road configuration may lead to vehicles having to wait at the Britannia Road junction. However, the clips and the HBBC and LCC evidence in general fail to convincingly show how waiting vehicles undermines highway safety.

13. There is no dispute the development would generate extra traffic on local roads but this in itself is insufficient to demonstrate the development would lead to highway safety issues. The independent road safety audit found no highway safety issues associated with the development and HBBC and LCC have provided little explanation as to why I should arrive at a different conclusion. In a situation such as this where the objections relate to existing roads, it is incumbent on HBBC and LCC to clearly show how any claimed deficiencies in road layout prejudice safety. In the absence of any substantive evidence in these regards, I find the first refusal reason is based upon generalised assertions and unevidenced assumptions about the impact of traffic associated with the development. In these regards, HBBC has acted unreasonably.
14. The second refusal reason relates to planning obligations. I acknowledge that the appellant has been willing to enter into a legal agreement that secures the required and requested obligations. However, at the time HBBC made its decision on the planning application no legal agreement had been completed. As such, I am unable to conclude that HBBC has prevented development that clearly should have been permitted at the time it determined the planning application.
15. Nonetheless, HBBC in referring to and relying on LCC's objections has acted unreasonably in making generalised assertions about the impacts of the development on highway safety. The appellant has had to prepare and submit evidence in response to HBBC's first refusal reason and its associated appeal submissions. As such, the appellant has incurred unnecessary expense. A partial award of costs is justified to cover the appellant's expense in contesting HBBC's case on the safety and suitability of the access to the development.

Costs Order

16. 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 Hinckley and Bosworth Borough Council shall pay to Mather Jamie (Central England Cooperative), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's case that the development would not be served by a safe and suitable access route; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is 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.

Jonathan Edwards

INSPECTOR