



Costs Decision

Hearing Held on 13 December 2022

Site visits made on 13 December 2022 and 20 February 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th March 2023

**Costs application in relation to Appeal Ref: APP/A2470/W/22/3301737
Land north of Braunston Road, Oakham, LE15 6LZ Easting: 484707,
Northing: 308416**

- 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 Jeakins Weir Ltd for a full award of costs against Rutland County Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for Outline application for the development of up to 100 no. dwellings including up to 30% affordable housing, open space, green infrastructure, children's play area and SuDS. All matters reserved except access.
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Decision

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

The submissions for the applicant

2. The applicant's initial costs application was made in writing and it was supplemented verbally at the hearing (Appendix A) and their final comments were also made verbally at the hearing (Appendix B). It is made on substantive grounds with respect to the approach that Rutland County Council (RCC) has taken in determining the planning application and in defending the appeal. The application is made for a full award, or alternatively a partial award of costs.
3. In summary, the planning application was refused on two grounds, neither of which withstand scrutiny. With respect to the first reason, the Council's Statement of Case accepts the principle of the site's development for housing. The Council's Statement does not grapple with the findings of the Officer's report or the comments of the landscape expert appointed by the Council specifically to review the scheme. Rather than provide an objective analysis, the Council relies on vague and unsubstantiated assertions.
4. With respect to the second reason, the Council is a Community Infrastructure Levy (CIL) charging authority. The applicant will be expected to make a CIL contribution and there is nothing further that they can be expected to do to ensure that the appropriate infrastructure is provided. This reason also flies in the face of the Council's stated intention to focus housing development in Oakham and it cannot be squared with recent decisions to approve housing on other sites, where other schemes were not refused on the basis of the impact on existing services. The Council's case also does not illuminate the harm caused or the policy conflict that arises.

5. The Council also behaved unreasonably in submitting a Statement of Case which raises matters irrelevant to its reasons for refusing planning permission. As a result of this, the applicant felt it had no option but to commission a transport consultant to produce a transport statement in response to the inaccurate and unjustified allegations as to the transport impacts.

The response by Rutland County Council

6. The Council's response was made verbally at the hearing as follows:
7. It is not unusual for a planning application to be overturned at committee. Officers provide a recommendation only and it is the right of the committee to disagree with Officers. In this case it is difficult to encapsulate the views of local people as objective evidence but that is essentially what the committee took into consideration as well as the submitted information. The debate was for 3 hours and it discussed matters in detail as well as potential reasons for refusal. The reason for refusal reflects the debate and in that sense in comparison to professionally produced evidence there is no escaping the fact that the reasons are based on a real life experience of local people feeding into committee members. They still raised character, landscape and being outside of the settlement boundary.
8. We have heard from local people very opposed to the development and evidence why the Committee took the decision is from those views. Landscape impact is subjective, which is why the Committee came to a more general position rather than the detailed assessment. Can be accepted in policy terms, tilted balance engaged but unacceptable in landscape terms. Why have a system of local Councillors and the public if only take a professional view? The scheme to the south was considered on its own merits. It is different to the appeal site, which is worse in this locality.
9. The Statement of Case was incorrect on 24 October 2022 – this was an error in copying information from an internal database rather than the decision notice. When highlighted, it was immediately corrected and it was confirmed on 3 November not to be part of the case, which was 9 days later. That was 5 weeks and 6 days ago. It was not necessary for the highway consultant to appear at the hearing as the error was corrected. The Council did explain why the paragraphs were included and then omitted them, that was an appropriate response.
10. Because the reason for refusals are coming from a non-expert perspective it is considered that this is taken into account. It was a decision by Members which they have every right to make in the planning system and it reflects the very strong feelings of local people.

Reasons

11. The planning application was accompanied by a Landscape and Visual Appraisal (LVA) which was undertaken by a professionally qualified person. The LVA was independently reviewed on behalf of the Council by another qualified practitioner who in short concluded that it was an accurate and sound basis on which to consider matters relating to the impact of the development on character and appearance. Whilst it was open to the Planning Committee to come to their own view on the degree of harm to character and appearance

- and to the landscape that they considered would arise, it was incumbent upon them to explain why they did so.
12. The Council's position has however been limited primarily to the premise that the proposed development would urbanise what is currently an undeveloped field and cause harm to views that are at the present time of open agricultural land. That could be said of all new housing developments on greenfield land and in defending the appeal there has been no considered assessment or rebuttal of the efforts that the applicant has gone to in order to demonstrate how a scheme could be devised to mitigate against its impacts and even offer some benefits. There has been no engagement by the Council with the findings of the LVA or its review. As a result, the Council has relied upon vague and generalised assertions which have not been substantiated in relation to the specific proposal and site. That represents unreasonable behaviour.
 13. The mechanism for providing contributions towards school place provision, doctors provision and leisure provision is the CIL. That is the mechanism that the Council has chosen to put in place to address those matters through the planning system. That the Council has then taken the express position that, notwithstanding the CIL, the proposed development would be unacceptable on infrastructure grounds is untenable. The applicant would have had a clear and reasonable expectation that the Council would accept its own CIL charging schedule as meeting the needs of the development, and it is unreasonable that a position to the contrary was taken and that reason for refusal 2 was included on the decision notice.
 14. The award of costs is made on a partial basis, to include the costs relating to reasons for refusal 1 and 2 on the decision notice. In terms of the matter relating to the transport consultant, the Council corrected its error promptly and confirmed in writing that the matter in question did not and would not form part of its case at the hearing. That the applicant chose nonetheless to bring a transport consultant to the hearing was not necessitated by the action of the Council, instead it was clear from third party representations that it was likely highway matters would be raised during the hearing. Therefore, it is reasonable to conclude that the applicant's decision to bring a transport consultant did not stem from the error that the Council made in its Statement of Case, and an award of costs relating to that part of the claim is not justified.

Costs Order

15. 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 Rutland County Council shall pay to Jeakins Weir Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect to reasons 1 and 2 stated on decision notice 2021/1124/MAO; such costs to be assessed in the Senior Courts Costs Office if not agreed.
16. The applicant is now invited to submit to Rutland County 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.

Graham Wraight INSPECTOR

Appendix A

Applicant's Supplementary Comments

After paragraph 11 – additional point – when asked about the specific harm alleged by the Council, Ms Simmons said the Council's concerns were more general and not technical. This point was repeated a number of times. This is no criticism of Ms Simmons but related to the issue she is having to defend. One example in the PPG is vague and generalised assertions not supported by objective analysis. The Council's landscape evidence is a classic example of that.

After paragraph 15 – again a question from the Inspector, Ms Simmons said issues under reason for refusal 2 was a general one. A general feeling that there is a lack of infrastructure. Notwithstanding the fact that the Council doesn't dispute any evidence in Appendix 11 of the Statement of Common Ground and furthermore Ms Simmons acknowledges that the appropriate way to mitigate in the current planning system is through CIL contributions which will be paid by the appellant in this case.

Appendix B

Applicant's Final Comments

Of course members can disagree but they are obliged to provide evidence to substantiate the reasons for refusal, but failed to do so. The evidence they rely on is that the local population don't like it, that is not good enough.

There needs to be consistency of decision making.

Relate to local services, number of schemes authorised by the Council since this planning application that would not have an unacceptable impact on services and infrastructure.

The concern is that the Council has addressed the same issue differently in the applications it has determined since this one.