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## Costs Decision

Site visit made on 8 November 2022

**by Tamsin Law BSc MSc MRTPI**

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

**Decision date: 12<sup>th</sup> May 2023**

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### **Costs application in relation to Appeal Ref: APP/G1630/W/21/3281074 Land north of Perrybrook, Shurdington Road, Brockworth, Gloucester GL3 4QY**

- 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 Charterhouse Strategic Land Ltd for a full award of costs against Tewkesbury Borough Council.
  - The appeal was against the refusal of the Council to grant permission for the erection of 47 dwellings and associated vehicular access, public open space, landscaping, and other associated infrastructure.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (PPG) tells us that in general, parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeals process, they may be subject to an award of costs. The aim of the costs regime, amongst other things, is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice.
3. The PPG gives examples of unreasonable behaviour which may result in an award of costs against a Council. A substantive award of costs may be made where (and the list is not exhaustive) the Council has: prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The application for costs asserts that the Council failed to give appropriate weight to the benefits of the development which caused the applicant unnecessary delay and wasted expense.
5. Whilst the Council is not duty bound to follow the advice of its professional officers if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the Council's planning officer concluded that whilst there was harm in relation to the connectivity of the proposal with the wider site, when balanced against the benefits, including

increasing the then lack of a housing land supply, the proposed development was acceptable.

6. Policy A3 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017) (JCS) relates specifically to a strategic allocation, of which the appeal site forms part. This policy requires high quality connections within and adjacent to the site, and safe, easy, and convenient pedestrian and cycle links within the allocation. It is clear from the submission that the appeal scheme is somewhat limited in its ability to provide connections to the wider allocation due to the approved neighbouring scheme not providing any opportunities for connection. Yet in response to the appeal, little weight appears to have been attached to these limitations or that the proposal would provide good links within the appeal scheme and to the wider area, providing additional bus stops and a toucan crossing.
7. The committee report accepted that the proposal would provide much needed housing, both market and affordable, is in a location where the principle of housing is acceptable, would have economic benefits and would provide infrastructure improvements.
8. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the proposed development should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework (the Framework) and the PPG and the applicant has been faced with the unnecessary expense of lodging the appeal with regards to the first reason for refusal.
9. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified in this regard.
10. The second reason for refusal related to the lack of a mechanism to secure developer contributions. Without these the proposed development would not meet local and national planning policy with regards to a number of matters, including but not limited to, affordable housing, open space, and highway improvements. Whilst it is evident from the main decision that I have disagreed with the Council's reasons for refusal, the Committee Minutes set out an assessment of the harm should these contributions not be provided.
11. Accordingly, I have found that the Council had reasonable concerns about the impact of the proposal which justified its decision with regards to this reason for refusal. Additionally, the work that has been undertaken to complete the planning obligations for the appeal would have anyway been required had the planning application progressed to an approval. I therefore do not consider that unnecessary and wasted expense has been demonstrated in this regard.

## **Conclusion**

12. The Council's reasons for refusing planning permission, consists of two distinct elements: location of the development having regard to its connectivity, and whether there is adequate provision for facilities through developer contributions. I have found that the Council behaved unreasonably in reaching the first of these conclusions, but not the second.

13. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the first reason for refusal, is justified.

**Costs Order**

14. 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 Tewkesbury Borough Council shall pay to Charterhouse Strategic Land Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in defending the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to Tewkesbury Borough 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.

*Tamsin Law*

INSPECTOR