



Costs Decision

Hearing held on 6 June 2023

Site visit made on 6 June 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2023

Appeal Ref: APP/H1840/W/22/3313745

Land off Broadway Lane, Fladbury, Pershore, Worcestershire WR10 2QF

- 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 appeal is made by Lone Star Land Ltd for a full award of costs against Wychavon District Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for a proposed development described as erection of 34 affordable homes, new access off Broadway Lane and associated works including SuDS pond and new landscaping.
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Decision

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

Preliminary Matters

2. The application and the Council's response were made verbally at the Hearing.

Reasons

3. The Planning Practice Guidance (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.
4. The applicant asserts that the Council behaved unreasonably on various grounds relating to behaviour and actions before and during the appeal, including at the Hearing. The claim was structured partly on the basis of each reason for refusal, which is reflected within its consideration below, within which I have reordered the reasons to facilitate assessment.

Behaviour and actions prior to the appeal

5. The PPG makes clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal, though behaviour and actions at the time of the planning application can be taken into account. In this regard the applicant's criticism of the way the Committee Meeting was handled by officers, how certain Members behaved, and what they said is of little direct relevance. Moreover, insofar as allegations were made relating to the conduct of Members, these are not matters properly addressed within the context of a planning appeal.

6. I also dismiss the claim that drafting of the decision notice caused the applicant to incur any distinct expense. Though I agree that more precise reference could have been made to the parts of the policies held to have been offended, this should have been reasonably obvious upon reading the said policies within the context of the decision notice.
7. Though the applicant takes further issue with the fact that Members took a different view to officers, this is no more than they are entitled to do. That said, this does not mean that decisions can be taken without any sound basis in fact or reasoning. I shall consider this point further below.

Reason for Refusal 2

8. The Council's second reason for refusal concerned the matter of whether or not the site was a 'small site'. In this regard officers and Members took directly contradictory views and in neither case was it entirely clear on what objective basis these views were founded. The vague nature of the phrase, as too the lack of any clear guidance provides ample scope for interpretation of exactly the same data. Thus, notwithstanding the fact that I have found that the site is 'small', I can't conclude that the Council acted in a wholly unreasonably way by concluding that it was not. Moreover, the Council sought to substantiate its view further at appeal.
9. Both parties have sought to demonstrate consistency, or a lack of, in the Council's decision making by referencing appeal decisions relating to developments in other villages. These decisions simply serve to illustrate the variation possible even where circumstances appear, at face value, to be similar.
10. Insofar as the Council asserted additional conflict with the Council's spatial strategy during the Hearing, having previously agreed that no conflict would arise, its actions were unreasonable. That said, under the circumstances, conflict obviously would arise in the event of non-compliance with policy addressing rural exception sites. This is apparent upon simple reading of the text. It is hard to see therefore what costs, if any, arose in consequence.

Reason for Refusal 1

11. The Council's first reason for refusal concerned access to services and facilities. As outlined within my main decision, the Council's spatial strategy allows for rural exception sites notwithstanding the matter of access to services and facilities. This is already taken into account in establishing the settlement hierarchy. The Council could therefore only reasonably refuse the scheme on the basis of access to services and facilities if also finding that it would conflict with its rural exception sites policy. This it did. Given my consideration of reason for refusal 2 above, I cannot therefore find that reason for refusal 1 was itself unreasonable. The fact that during the Hearing the Council made repeated and largely irrelevant reference to possible modifications to the settlement hierarchy does not change this.

Reason for Refusal 3

12. The Council's third reason for refusal was factually incorrect insofar as it asserted conflict with a policy with which no such conflict would arise. Indeed, loss of agricultural land would clearly fall below the threshold set. The Council accepted this at the Hearing and withdrew the reason. Though the Council

claimed that loss of agricultural land would have been a matter that required attention at appeal in any case, I see no reason why given the absence of policy conflict, and given that the policy itself was broadly consistent with the National Planning Policy Framework. Imposition of the third reason for refusal was clearly unreasonable, and so too was the Council's failure to withdraw it sooner. It follows that all expenses incurred in addressing it at appeal were unnecessary.

Reason for Refusal 4

13. Insofar as the applicant has sought a full award of costs, the merits for reason for refusal 4, which related to the lack of planning obligations securing affordable housing provision and contributions towards transport and schools, were not addressed. I appreciate that it is common practice to obtain a positive recommendation at Committee prior to seeking to agree planning obligations, and therefore that such a reason for refusal may be imposed in default of its absence. However, given that the applicant sought to challenge the need for education contributions both during the course of determination and at appeal, and given that I have found such contributions to be necessary, I cannot presume that the matter would have been simply addressed had the Council's Committee reached a different view. Moreover, even had the Committee's recommendation been positive, and even had the applicant proceeded to agree the obligations sought, it is unlikely that the costs involved would have differed from those incurred in necessarily addressing the matter at appeal. These costs cannot therefore form part of the claim.

Other matters

14. The Council raised a number of points as part its case during the Hearing which were directly contrary to the position it had already agreed in the Statement of Common Ground (SOCG). I have already considered the spatial strategy above. Other departures related to points which it was agreed had no relevance. The Council's failure to respect and abide by the SOCG was again clearly unreasonable, and this did not assist in the efficient running of the event. How much time this wasted is however very difficult to quantify, and given the impossibility of establishing a figure I cannot award costs in relation to this matter.

Conclusion

15. I conclude that unreasonable behaviour resulting in unnecessary expense as described in the PPG has been demonstrated in relation to reason for refusal 3, and that a partial award of costs is therefore justified.

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 Wychavon District Council shall pay to Lone Star Land Ltd the costs of the appeal proceedings described in the heading of this decision limited to the costs incurred in addressing the Council's third reason for refusal of planning permission; such costs to be assessed in the Senior Courts Costs Office if not agreed.

17. Lone Star Land Ltd is now invited to submit to Wychavon District 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.

Benjamin Webb

INSPECTOR