



Costs Decision

Inquiry held on 6, 8, 9, 13 and 14 June 2023 and 3, 4, 5 and 7 July 2023

Site visit made on 6 July 2023

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 10th October 2023

Costs application in relation to Appeal Ref: APP/D3125/W/23/3315391 Land east of Hill Rise, Woodstock

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Blenheim Estate for a full award of costs against West Oxfordshire District Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a hybrid planning application consisting of full planning permission for 48 dwellings, 57 sqm of community space (Class E), a parking barn, means of access from the A44, associated infrastructure, open space, engineering and ancillary works; outline planning permission for up to 132 dwellings, up to 57 sqm of community space (Class E), a parking barn, with associated infrastructure, open space, engineering and ancillary works (amended description).
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Decision

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

The submissions and responses by the parties

2. The costs application was made in writing on 12 July 2023 following the final sitting day but before the Inquiry closed. The Council's written response was received on 17 July 2023, and the applicant's final comments were received in writing on 19 July 2023.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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. The PPG states that awards against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
4. The applicant contends that the Council has behaved unreasonably on substantive grounds by failing to substantiate its refusal. The applicant argues that the Council's case has been based on vague and generalised assertions, unsupported by objective analysis or evidence, and has refused permission for development that should clearly be permitted having regard to the development plan and national policy. The costs application focuses on three topics: landscape and visual effects; design; and the planning balance.

Landscape and visual effects

5. One of the grounds put forward by the applicant is that the Council failed to substantiate the reason for refusal on landscape and visual effects which refers to 'significant landscape harm'. Although it will be seen from my appeal decision that I disagreed with the Council on the extent of landscape harm, this was a matter of planning judgment based on the evidence before me. The Council put forward evidence to demonstrate its position on landscape harm that was objective and based on detailed analysis. The aim of the Inquiry process is to test the evidence of different parties. While concessions were made on landscape harm, this does not mean that the Council's position was unreasonable.
6. Another ground cited by the applicant is that the decision notice makes no reference to unacceptable visual effects and that such effects were only raised during the appeal process. It is clear from reading the officer report to planning committee that visual effects were considered as part of the overall consideration of landscape matters. It is unfortunate that the decision notice does not refer to visual harm explicitly, but the Council's position was clear and reasonable from an early stage.
7. Linked to this ground is the applicant's contention that the Council failed to substantiate its position on visual effects. However, the Council put forward evidence relating to visual matters in the landscape proof of evidence that were based on detailed analysis. As noted above, just because concessions were made at the Inquiry does not mean that the Council failed to produce evidence to demonstrate its case or that the evidence was vague or lacking in objectivity. Therefore, it was not an unreasonable position to have taken.
8. The applicant contends that the Council's case on the retention of important views to the church was unreasonable by stating in the landscape proof of evidence that the development would not clearly frame views of the church in terms of retaining a key view. However, this position reflected concerns set out in the statement of common ground and stated by the Council's own advisers that while a key view would be retained, it would be seen in the context of built development. Thus, while the exact extent of that view will depend on the detailed design at the reserved matters stage, it was not an unreasonable claim for the Council to have made.
9. The applicant also contends that the Council failed to review its case on landscape and visual matters as part of sensible ongoing case management. Several points were conceded by the Council during cross-examination but that is one of the primary functions of this part of any Inquiry. There were still matters of disagreement between the parties. Therefore, I do not consider that the Council failed to review its case or demonstrated unreasonable behaviour in that regard.
10. Finally, the applicant contends that the Council behaved unreasonably by only raising concerns with the landscape methodology and landscape strategy at the appeal stage. In terms of the landscape methodology, the two parties took different positions on the relevance and applicability of the landscape character areas and types in the district and county landscape studies¹. However, as my decision makes clear, both studies are relevant to this case. The parties'

¹ The West Oxfordshire Landscape Assessment 1998 and the Oxfordshire Wildlife and Landscape Study 2004

respective positions were tested at the Inquiry and concessions made as part of that process. As a consequence, I do not consider that it was unreasonable for the Council to have taken the position it did.

11. In terms of the landscape strategy, the Council had concerns about the effect of the proposed strategy on landscape character in terms of additional tree planting, including within the blue land area beyond the red line site boundary. It was evident that the Council's witness was not fully aware of the recommendations within the district landscape study or the biodiversity net gain proposals, both of which formed part of the evidence for the appeal from the start and promote tree planting in this location. While she conceded at cross-examination that the strategy was acceptable, it was unreasonable for the Council to have made unsupported assertions about the development's impact in terms of the landscape strategy.
12. In conclusion on this topic, while I have reached a different position to the Council on landscape and visual matters, I am satisfied that evidence was produced to substantiate the reason for refusal and to avoid vague, generalised or inaccurate assertions about the proposal's impact. The one exception is the Council's position on the landscape strategy, where its opposition was unsupported and unreasonable. This led to the applicant incurring unnecessary and wasted expense in the appeal process in challenging this position both in the submission of written evidence and through cross-examination.

Design

13. The applicant contends that the Council failed to set out design expectations clearly at any stage in the planning process and did not work proactively and positively with the applicant to secure the delivery of the site allocation. It is unfortunate that no site-specific planning brief was produced by the Council despite the ambition of the adopted Local Plan (LP) to have such guidance for allocated sites. However, that there is no requirement for the Council to produce them even though it might have been helpful in this case.
14. Furthermore, I note that the Council provided pre-application advice and several rounds of comments at the application stage, including from its professional advisers. At both the application and appeal stage, the Council provided detailed comments on design matters and identified policy conflict. Therefore, I do not consider the Council has behaved unreasonably in terms of setting out its design expectations or working with the applicant to try and resolve them.
15. The applicant also contends that the Council has failed to articulate its concerns or substantiate the reason for refusal relating to design. A number of specific matters are raised by the applicant as demonstrating unreasonableness in terms of car parking arrangements, density, development north of 1 Hill Rise, and detailed design points.
16. On car parking, I consider that the Council adequately explained its concerns regarding the design of the parking barns in terms of its appearance. The Council also explained why it believed the parking courts were too urban and why the public right of way would be car dominated. On density, the Council explained why it considered the proposed densities would be overly urban and why the development would not complement the existing pattern of development nearby. Although my appeal decision reaches different

conclusions on these matters, the Council did not behave unreasonably in how it articulated its concerns on car parking or density.

17. For development to the north of 1 Hill Rise, the Council had regard to the wording of LP Policy EW4 which seeks to keep development away from the northern edge of the site and requires a well-integrated and logical extension of the existing built form of the town. The Council set out in evidence why it considered development to the north of 1 Hill Rise would be harmful in terms of encroaching further into the countryside than necessary. My appeal decision concludes differently, but the Council clearly and reasonably set out its concerns.
18. As for its detailed design concerns, the Council accepted during the Inquiry that they did not constitute grounds for refusing the development on their own. However, they were raised as part of its case as to why the design overall was unacceptable. There were several detailed points made in the Council's proof of evidence that the applicant addressed in its rebuttal, but it was not inappropriate to have raised them. While my decision finds that the detailed design matters are acceptable, the Council did not behave unreasonably.
19. In conclusion on this topic, while I have reached a different position to the Council on design matters, I am satisfied that evidence was produced to substantiate the reason for refusal and to avoid vague, generalised or inaccurate assertions about the proposal's impact.

Planning balance

20. The applicant contends it was unreasonable for the Council to suggest that the harms significantly and demonstrably outweighed the benefits of the scheme, having regard to paragraph 11(d) of the National Planning Policy Framework which all parties agreed was engaged in this case. The applicant notes that the Council gave great weight to the benefits of housing delivery even without considering a range of other benefits.
21. I have found that it was not unreasonable for the Council to have sustained its position on landscape and design matters or to have identified conflict with the development plan. The Council produced evidence to substantiate its reason for refusal and avoided vague, generalised or inaccurate assertions apart from in relation to the landscape strategy.
22. Therefore, it was not unreasonable for the Council to have maintained a position at this appeal that the overall harms, including those relating to design and landscape matters, and the conflict with the development plan, were sufficient to significantly and demonstrably outweigh the benefits. As such, the Council has not prevented or delayed development which should clearly be permitted. Ultimately, it was a matter of planning judgment on matters such as landscape and design.

Other matters

23. The applicant and the Council disagree on whether there was sufficient notification of the costs application and whether it was submitted in a timely manner at the end of the Inquiry. While earlier submissions are encouraged by the PPG, it is not uncommon for costs applications to be made at the end of oral events only once all the evidence has been heard and tested. The applicant had indicated at the start of the appeal and at the start of the Inquiry that a

costs application was likely. A party applying for costs does not have to give advanced warning of the detailed nature of its application. On the penultimate sitting day of the Inquiry, the applicant and the Council agreed on a timetable for the costs application process, which was completed before the Inquiry closed in writing.

24. Thus, I am satisfied that there has been no procedural unfairness in the costs process. In any event, the timing and notification of the costs application has no bearing on my overall conclusion on the merits of the application.

Conclusion on the costs application

25. On most of the stated grounds, the applicant has not demonstrated any unreasonable behaviour by the Council. However, in relation to its position on the landscape strategy, the Council behaved unreasonably and caused the applicant to incur unnecessary and wasted expense in the appeal process. Therefore, a partial award of costs is justified.

Costs Order

26. 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 West Oxfordshire District Council shall pay to Blenheim Estate, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in challenging the Council's position on the landscape strategy; such costs to be assessed in the Senior Courts Costs Office if not agreed.
27. The applicant is now invited to submit to West Oxfordshire 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.

Tom Gilbert-Wooldridge

INSPECTOR