



Costs Decision

Hearing Held on 10 January 2024

Site visit made on 10 January 2024

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 February 2024

Costs application in relation to Appeal Ref: APP/C3105/W/23/3327581 Land North of Ells Lane, Bloxham, OX15 5EE

- 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 Mr Dean Weldon of Deeley Homes for a full award of costs against Cherwell District Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for up to 30no. dwellings including access off Ells Lane, and demolition of the existing stabling on site, all matters reserved except for access.
-

Decision

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

The submissions for Mr Dean Weldon of Deeley Homes (the applicant)

2. The costs application was made in writing prior to the Hearing. The applicant considers the following with regard to reasons for refusal (RfR) on the Council's decision notice. Regarding RfR no.1, the applicant considers the lack of an objection from the Council's Landscape Officer in respect of the Landscape Visual Appraisal submitted by the applicant. The Council failed to take into account a Highways Technical Note by Rappor dated 31 March 2023 (the HTN), which is also relevant to RfR no.2. Reference to highways works, which the applicant does not consider to be part of the application.
3. There is no policy basis for 800m being the appropriate benchmark on RfR no.2 and no consideration given towards the HTN. No consideration was given to a further Technical Note being produced in August 2023 and the Council's Statement of Case (the SoC) does not substantiate this reason for refusal. In respect of RfR no.3, there was a failure to assess an Agricultural Land Classification Report (ALCR) that was submitted with the application by the applicant and then again as part of the appeal documents. There was a lack of engagement on this matter from the Council and the SoC does not substantiate this reason for refusal.
4. Whilst acknowledging this RfR no.4 is not unreasonable itself, there was a significant delay in instructing the legal team and a failure to provide in a timely manner Heads of Terms, CIL Compliance Statement or a draft legal agreement (the S106). This led to applicant having to chase and request these documents on numerous occasions. The applicant also had to start drafting some of the documents themselves. Surrounding RfR no.5, sufficient information had been provided at application stage in the Technical Note on

Drainage by Rappor dated December 2022 (the DTN) and other accompanying documents to allow this matter to be secured at Reserved Matters stage and/or by condition. A further DTN dated August 2023 was then prepared and submitted with the appeal, where the Council only informed the applicant, it wouldn't be defending this RfR through its SoC.

5. The applicant also raises matters surrounding the Council's housing land supply, as well as procedural matters surrounding the Council's conduct and lack of engagement through the appeal process. The applicant responded verbally to the Council's response to their award of costs at the event, summarising their position.

The response by Cherwell District Council

6. The Council provided a written response to the applicant's grounds for an award of costs on the day of the Hearing. The Council contends that it has not acted unreasonably in respect of its RfRs or in respect of housing land supply or in respect of discussions over the Statement of Common Ground (the SoCG). Some of the additional costs cited by the applicant are down to his own decisions rather than actions of the Council. Whilst the Council acknowledges its delays in instructing its legal team and in the preparation of the draft legal agreement and in some of its replies in respect of the SoCG, these do not amount to unreasonable behaviour. A lack of resources is also cited by the Council.

Reasons

7. 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. These may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal. A successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense and parties in the appeal process are normally expected to meet their own expenses.
8. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, amongst other things.
9. In terms of substantive matters, in refusing the application in respect of RfR no's 1 and 4, I consider that the Council was not unreasonable in including such refusal reasons in relation to these matters on its decision notice. With regards to RfR no.1, I do find that the Council had regard to the LVA and comments from its Landscape Officer. Even though I reached a different conclusion to the Council on this matter, given the greenfield character of the site, its edge of settlement location and a degree of subjectivity on the matter, the Council was not unreasonable in its approach and substantiated its position in its SoC and verbally at the event. I agree that RfR no.4 is not unreasonable

itself, but note the difficulties experienced by the applicant in engaging with the Council on securing Heads of Terms, the S106 agreement and other documents. I will address this procedural aspect later in my decision.

10. The claim from the applicant surrounding RfR no.5 is noted, but I am not convinced that without the submission of the further DTN dated August 2023 that the RfR would have been overcome. As this document was produced after the determination of the application and presented in the appeal submission, I do not consider that the Council was unreasonable in notifying the applicant in its SoC that it would no longer be defending this RfR. I also do not consider matters surrounding the Council's housing land supply basis for unreasonable behaviour. This matter was brought about by the applicant's submission, forming part of his case. An Annual Monitoring Report (AMR) containing the latest 5-year housing land supply figure was discussed at the 'Executive' meeting (EM) on 4 December 2023, 2 days before the original date for the event. Whilst the original event was postponed due to the limited time to prepare responses, this was initially at the request of the applicant. However, whilst a clearer understanding and implications of the EM would have been appreciated earlier in the appeal process, I accept that the Council personnel involved in this appeal may not have been involved in the preparations of the AMR.
11. However, regarding RfRs no.2 and 3, I do find that unreasonable behaviour has occurred on behalf of the Council. In RfR no.2, I find there is no policy basis for the reference towards an 800m distance as a benchmark to access shops and services. In any event, such a distance would be walkable in the vast majority of cases. Additionally, there are bus stops approximately 100m away with a regular service in operation that travels to both Banbury and Chipping Norton, through Bloxham. There are also the footpaths and street lighting along the A361, particularly in the direction of Bloxham that are beneficial to pedestrians. At the event the Council confirmed verbally that if the footpaths were installed on Ells Lane as part of the proposed development as indicated, the development would then be accessible. However, as outlined in my decision, I do not find the installation of footpaths prejudicial to this aspect of the scheme. The Council was unreasonable in its approach, which resulted in an unnecessary RfR being imposed on its decision notice.
12. It will be seen from my decision that even when putting aside the equestrian use of the site, the submission of the ACLR attracts significant weight when determining the best and most versatile agricultural land. The ACLR has been produced specifically for the site and concludes that the site has a classification of sub-grade 3b. The Council do not dispute the credentials of the ACLR or that it has been produced by a suitably qualified authority. Instead, the Council sought to defend its refusal on using less specific data and citing a lack of resources to commission an appraisal of the ACLR. I find the ACLR to be very clear in its scope and conclusion and as there is no aspects of the credentials of the ACLR under scrutiny, I find that the Council was unreasonable in its lack of its meaningful consideration, which resulted in another unnecessary RfR being imposed on its decision notice.
13. In terms of the procedural claim, it is clear that the Council failed to adhere to various deadlines throughout the appeal process, which it acknowledges at paragraph 3.4 of its response. I have some sympathy for the Council in this regard, as I have no doubt that the Council and its Officers are under

significant pressure, this was evident through some of the time stamps on a number of emails received, which indicated excessive and unsociable hours being worked. The efforts and engagement that eventually occurred between the parties resulting in various documents being produced prior to the event and the completed/signed S106 after the event is acknowledged. For this reason, I am stopping short of a full award of costs on a procedural basis. Nonetheless, the number of deadlines missed, resulting in the applicant having to chase responses and documents on multiple occasions constitutes unreasonable behaviour on behalf of the Council.

14. I note the comments from the Council in respect of diverting resources away from its planning service if this application was allowed. The PPG is clear that all parties are expected to behave reasonably to support an efficient and timely process¹ and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis² could give rise to an award of costs, amongst other things. In this instance, there is nothing contained within the PPG that would excuse the unreasonable behaviour displayed.

Conclusion

15. For the above reasons, I find that unreasonable behaviour by the Council, resulting in unnecessary expense, as described in the PPG, has been demonstrated and that a partial award of costs is 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 Cherwell District Council shall pay to Mr Dean Weldon of Deeley Homes, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in arguing against RfRs nos.2 and 3 on the Council's decision notice, and in respect of the amount of chasing of responses and documents from the Council that the applicant had to undertake during the course of the appeal. Such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Cherwell 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.

W Johnson

INSPECTOR

¹ Paragraph: 028 Reference ID: 16-028-20140306

² Paragraph 049 Reference ID: 16-049-20140306