



Costs Decision

Hearing held on 15 and 16 November 2023

Site visit made on 14 and 16 November 2023

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2024

Costs application in relation to Appeal Ref: APP/P1805/W/23/3325834 Land at Intall Fields Farm, South of Stoke Pound Lane, Stoke Prior, Bromsgrove B60 4LE

- 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 Brynley Little (Your Land Partner Ltd) for a partial award of costs against Bromsgrove District Council and Worcestershire County Council.
 - The appeal was against the refusal of planning permission for the erection of 78 new dwellings and a flexible commercial/community use building with associated access, infrastructure, landscaping, and open space provision; considering access into the site only and with all other matters reserved, at Land South of Stoke Pound Lane, Stoke Prior, Bromsgrove.
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Decision

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

The submissions for Mr Brynley Little (Your Land Partner Ltd)

2. A costs application was submitted in writing prior to the Hearing, but the following additional points were made orally in relation to the part of the application concerning Bromsgrove District Council (BDC):
 - Worcestershire County Council (WCC) confirmed in the days prior to the Hearing that it recommended refusal of the appeal application if the contributions it sought for home to school travel were not provided [this point is referred to in WCC's written rebuttal].
 - The applicant's transport and planning consultants had to produce three rebuttals and the applicant had to consider mobilising a consultant if required at the Hearing.
 - BDC subsequently only confirmed late in the afternoon on 14 November 2023, the day prior to the Hearing, it would not introduce a refusal reason in respect of that matter.
3. An additional costs application was also made orally at the Hearing against BDC in relation to the following:
 - The second and fourth reasons for refusal shouldn't have been before the Hearing.
 - There is an agreed position between the main parties in the Statement of Common Ground (SoCG) at paragraphs 2.36, 2.38, 2.39, 2.46-2.53 and 2.55, which demonstrate the BDC does not have a tenable position to

defend its second reason. No new evidence was submitted orally from BDC's written submissions.

- BDC also made vague assertions about the proposal's impact in its Statement of Case (BDCSoC) by not specifically elaborating on where the proposal would be visible from either in its written or oral evidence.
- The applicant produced written evidence from his landscape and planning consultants about the issue, but BDC did not call its expert landscape witness or seek their comments to defend this reason. The Hearing was prolonged and preparation time associated with this increased for that reason.
- In terms of its fourth reason for refusal, BDC should have reappraised its position regarding the applicant's Agricultural Land Classification report in relation to the National Planning Policy Framework (the Framework) and the development plan. The applicant requested this on 9 October 2023, but the SoCG is the most recent document and paragraph 2.69 therein has made BDC's position untenable, so it should not have been before the Hearing.

The response by Bromsgrove District Council

4. The response to the points made orally that added to the applicant's written submission covered the following:
 - The response by BDC was late as part of the costs response and it accepted it had taken a hands off approach with WCC, which it would need to look at going forward.
 - It is accepted by BDC that additional work and responses to WCC needed to be commissioned by the applicant.
 - BDC would have preferred discussion with WCC to take place at the appeal application stage, but that was not possible given the request was made as part of the appeal.
 - It is for the Inspector to determine whether the contribution sought is acceptable or not.
5. The response made to the additional costs application made orally at the Hearing covered the following:
 - There is disagreement regarding the nature and quality of BDC's evidence, but it demonstrates why the proposal is unacceptable and there is direct conflict with the development plan. The second reason for refusal is clear and concise. BDC did not call an expert witness, but this did not prolong discussion.
 - The Inspector is invited to review BDC's case set out regarding its fourth reason for refusal. It has not acted unreasonably, and the applicant has not incurred wasted expense.

Reasons

6. 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.

7. The applications for partial awards of costs are made on the basis BDC and WCC each acted unreasonably on procedural and substantive grounds.

Bromsgrove District Council

Written Claim (Including Oral Evidence)

8. The application is made on the basis of the points raised above and the following: BDC did not identify reasons for refusal on either highways grounds or the absence of planning obligations; it failed to liaise with WCC to determine why it changed its view on the proposal from the application stage, specifically whether the contribution sought for home to school travel was necessary, and if the appeal should be dismissed on such grounds, especially in light of the agreed points in the SoCG.
9. The omission on the Decision Notice (DN) of a reason for refusal of failure to provide contributions and other provisions through a legal agreement, including affordable homes, is not exceptional, as BDC had other reasons for refusal and set out in its Officer Report (BDCOR) the obligations required to mitigate against the proposal. However, it would have focussed the applicant's attention when deciding whether to seek to remedy BDC's concerns. There was also no highways reason for refusal on the DN, but BDC would have been unlikely to proceed with one, as no such concerns were identified by WCC. The applicant would therefore have expected that BDC would liaise with WCC to establish the reasons for its changed approach from the planning application, particularly having regard to the matters of agreement outlined in the SoCG.
10. The justification for WCC's requested contribution was briefly set out in its letter of 26 September 2023 and expanded upon in correspondence dated 9 November 2023. While BDC encouraged WCC to provide clarification of the reasons for its request, it accepts it should have taken a more active role in discussions between the applicant and WCC. Moreover, after being made aware of WCC's request for the home to school contribution, it should have been possible for BDC to set out whether it also required the contribution to be made and, if it were not, whether it would have recommended the appeal be dismissed on that basis. Despite the applicant requesting clarity, BDC did not clarify these points until late in the afternoon, the day before the event, after I sought for it to be prompted. Before this the applicant's planning consultant indicated in separate correspondence earlier that day a highways witness would no longer be called on the basis BDC had not identified a refusal reason and WCC was not defending its position at the event.
11. BDC's inaction led to unnecessary certainty regarding the nature of its case and evidence that may have been required to be heard in relation to this at the event. This amounted to unreasonable behaviour but did not lead to wasted expense by the applicant for the following reasons: the witness was not ultimately required at the event; the additional work commissioned by the applicant, including correspondence and rebuttals, were in response to the request from WCC, not BDC and, in any event, would have been required to justify the applicant's position in light of any finding I needed to make in my main decision; direct correspondence between BDC and the applicant on this matter was more limited, such that it could be defined as 'de minimis'; and

discussion at the Hearing, which took place in connection with points of clarification and the content of a planning obligation, was short in both instances and did not unduly prolong the Hearing.

New Claim Made Orally at the Hearing

12. Although BDC's oral evidence at the Hearing and the BDCSoC did not identify where the site and/or proposal would be visible from, this is detailed in the BDCOR. Prior to the event the main parties also agreed upon viewpoints for my site visit. Ultimately, it was for BDC to decide if it needed representation at the Hearing by a landscape expert. Furthermore, having regard to the evidence of each party and considering the appeal site in its context, I am satisfied BDC clearly substantiated its reason for refusal.
13. In my main decision, I disagreed with the appellant's evidence and arrived at similar conclusions to BDC regarding the effect of the proposal on the character and appearance of the site and its surroundings, including the rural setting of Stoke Prior. In doing so, I found the site to only be visible from limited public vantage points, reasonably well contained, and I noted its relationship with existing built forms, adjacent roads, and the railway line. However, I did not find this to visually isolate the site from the countryside or absolve the proposal of any harmful effects. As such, there can be no doubt that BDC did not act unreasonably in defending its second reason for refusal at the Hearing.
14. In terms of BDC's fourth reason for refusal regarding the effect on the use of Best and Most Versatile Agricultural Land (BMVAL), the SoCG clearly sets out an agreed position that there are no relevant policies in the development plan dealing with the loss of such land. Furthermore, there is also agreement there would not be significant loss of BMVAL as referred to in the Framework. In my main decision, I also reached these conclusions. It should therefore have been clear to BDC that it no longer had any grounds to substantiate its reason for refusal, and the applicant would have expected the reason to be withdrawn. The continued defence of the appeal on such grounds therefore constitutes unreasonable behaviour.
15. Turning to wasted expense, the applicant's planning consultant clearly sought to resolve this matter through correspondence with BDC, some preparation will have been necessary for the Hearing, and the presentation of evidence in relation to my questions required use of Hearing time. However, the additional work required to produce the relevant aspect of the SoCG and thereafter can be regarded as 'de minimis'. In fact, the applicant quickly and succinctly responded to my questions and the points made by BDC at the event, without wasting time and therefore expenditure.

Worcestershire County Council

16. The application is based on the following: the consultation responses by WCC to the planning application dated 21 September and 22 November 2022 did not raise objections to or recommend refusal for highways issues or the absence of a legal agreement related to the proposal; WCC has introduced a new reason for refusal at a late stage, addressing circumstances where home to school travel is not provided through the appeal; both the above responses state home to school transport costs would not be payable given walking distances to schools from the site, and contributions sought only apply to community transport and active travel; WCC's appeal response, dated 26 September 2023,

does not provide any justification for the school transport contribution, but contains contradictory amounts for the contribution and the circumstances on the ground regarding school walking routes; and WCC subsequently did not provide methodology for the contributions sought, despite being requested, which delayed production of a legal agreement.

17. The response dated 26 September 2023 does not contain contradictory amounts, as there is only one set of amounts referred to. However, despite WCC's thorough internal consultation process, in its responses to the planning application it did not identify any harm resulting from the proposal or the need for any contribution toward home to school travel. WCC state this was an omission from the responses due to interpretation of internal advice about school travel. Nonetheless, it should have been apparent at that time to WCC why existing walking routes to the Middle and High Schools are not sufficiently safe for the use by students. Moreover, its concerns relate to the narrow nature of the footway and the absence of streetlighting in Hanbury Road, and the crossing point at its junction with the A38 Redditch Road, but there is no evidence before me to suggest conditions have changed on the ground since planning application responses were sent to BDC.
18. In my main decision it was not specifically necessary for me to engage in discussion on the extent of the contributions sought, but I indicated they satisfied the requirements of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and Framework paragraph 57. Nevertheless, having regard to provisions of the development plan, national planning policy and other material considerations, the proposal should not have been permitted.
19. The applicant submitted his case, which included a detailed analysis of the policy context and reappraisal of existing evidence presented through the planning application. This included a new report as to the education impact of the proposal, which referred to home to school travel. WCC subsequently submitted new concerns as to the walking route for schools, which necessitated subsequent rebuttals by specialist consultants and the applicant's planning consultant. Had WCC's application responses correctly set out its position on home to school travel then the applicant may have been able to address such matters during determination of the planning application; approach the appeal differently, including presentation of his evidence; or not pursue the appeal.
20. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified against WCC in respect of the applicant's defence of the matters referred to in WCC's appeal representations regarding contributions for home to school travel.

Costs Order

21. 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 Worcestershire County Council shall pay to Mr Brynley Little (Your Land Partner Ltd), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in defending his case regarding the home to school contributions sought in connection with the appeal proposal; such costs to be assessed in the Senior Courts Costs Office if not agreed.

22. The applicant is now invited to submit to Worcestershire 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.

Paul Thompson

INSPECTOR