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## Costs Decision

Hearing Held on 10 January 2024

Site visit made on 10 January 2024

**by S Leonard BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 13 February 2024**

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**Costs application in relation to Appeal Ref: APP/V3120/W/23/3329000  
Land South of Steeds Farm, Coxwell Road, Faringdon**

**Easting:427823. Northing: 194109**

- 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 Wain Homes for a partial award of costs against Vale of White Horse District Council.
  - The hearing was in connection with an appeal against the refusal to grant consent, agreement or approval pursuant to condition Nos. 1, 7, 8, 9, 10, 11, 14, 15, 17 and 18 of outline planning permission Ref P18/V0259/O, for 'up to 125 dwellings and associated public open space, all matters except access reserved', granted on 20 July 2021.
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### Decision

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

### Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, a successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either procedural, having regard to behaviour in relation to completing the appeal process, or substantive, relating to the planning merits of the appeal. The applicant is seeking a partial award of costs on both procedural and substantive grounds.
4. Paragraph 47 of the Guidance advises that examples of unreasonable behaviours by local authorities which may give rise to an award of costs on procedural grounds include: introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen; prolonging the proceedings by introducing a new reason for refusal; and withdrawing any reason for refusal.
5. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of

costs include: 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; acting contrary to, or not following, well-established case law; and not reviewing their case promptly following the lodging of an appeal against refusal of planning permission as part of sensible on-going case management.

6. The Council's decision on the appeal proposal was different to the recommendations set out in the Council Officer Committee Report. The Council's Planning Committee is not required to accept the advice of its professional officers and is entitled to exercise its own planning judgement and reach a different conclusion. However, if a different conclusion is reached, the Council must clearly demonstrate, on planning grounds, why a proposal is unacceptable and provide clear evidence substantiating that reasoning.
7. The Council's first reason for refusal specifically relates to 9 properties that would not meet the Council's design guide requirements in respect of garden sizes. The individual plots in respect of which the reason for refusal relates are not identified in the Council's decision notice, nor in the published Planning Committee Minutes. The Officer Committee Report does not provide clarification on this matter as it refers to 28 properties which fall short of their minimum recommended sizes.
8. The Council's third reason for refusal repeats the Council's concerns about reduced garden sizes and includes an additional concern in respect of the distance between houses in respect of some properties.
9. Both the aforesaid reasons for refusal specifically cite harm to the living conditions of future occupiers of the appeal scheme. Whilst they refer to Local Plan Part 2 Policy DP23, they fail to identify which of the 6 listed factors within this policy the Council considered to be specifically relevant to a detrimental impact upon the amenity of future occupiers as a result of the proposed garden sizes and house-to-house distances. Neither is this matter clarified in the Planning Committee Minutes.
10. The Council's appeal statement confirms that its third reason for refusal encompasses concerns in relation to criteria (i) and (ii) of Policy DP23. However, privacy, daylight or sunlight, and dominance of visual intrusion were not referred to in the Council's reasons for refusal nor in the Planning Committee Minutes. The Officer Committee Report only refers to privacy, when stating that there would be no direct overlooking.
11. Having regard to the above, the first and third reasons for refusal fail to accord with the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the DMPO)<sup>1</sup> in so much as when the local planning authority give notice of a decision or determination on an application for approval of reserved matters, where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision.
12. The Council has confirmed that, in accordance with the Council's constitution, the necessary authorisation from the Chair of the Planning Committee was

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<sup>1</sup> Part 6, Article 35 (1)(b)

given for the manner in which the Council defended the reasons for refusal. However, compliance with the Council's adopted procedures does not necessarily mean that the Council has acted reasonably in relation to the appeal.

13. The Council's appeal statement confirms that the reference to 9 dwellings in the first refusal reason was based on the applicant's submitted information comprising drawing *P21-2599-21C Garden Areas*, and that, after the refusal of the application, following the Council's subsequent discovery of calculation errors and its re-measuring of the plots to inform the Council's appeal statement, the scheme was found to be significantly more substandard.
14. Moreover, there were ongoing differences of opinion between the main parties as to some of the relevant garden sizes, and the Hearing appeal process, which requires both parties to seek to agree a statement of common ground, provided an appropriate appeal mechanism by which to facilitate agreement between the parties on the matter of the number of properties which failed to meet the JDG standards.
15. With the above in mind, within the context of this particular appeal, having regard to both parties awareness of the details included within drawing *P21-2599-21C Garden Areas* and the Officer Committee Report, and having regard to the Hearing appeal process, I am not persuaded on the basis of the evidence before me that the appellant has incurred unnecessary or wasted costs in respect of the Council's first reason for refusal.
16. In its defence of the third reason for refusal, the Council introduced a Sunlight and Daylight Assessment (the SDA) within its appeal statement. In addition to relating to a new matter that had not been raised previously by the Council, it introduced new solid technical evidence.
17. The SDA comprised an Initial Draft v1.1. It related to a limited number of the proposed plots and, whilst referring to the BRE Guidelines in respect of garden sunlight and daylight, it did not include detailed analysis of the information contained within the included figures. Moreover, the Council did not provide any additional substantive information in this respect at the Hearing.
18. With the above in mind, I find that addressing this matter has resulted in the applicant incurring some unnecessary costs in respect of the Council's third reason for refusal. This relates to the commissioning of a specialist sunlight and daylight report at a late stage in the appeal process, which has involved extra expense for preparatory work that would not otherwise have arisen. Also, the applicant incurred expense as a result of the attendance of the applicant's sunlight and daylight consultant at the Hearing and the additional time added to the length of the proceedings in respect of this matter.
19. In respect of the second reason for refusal, the Council's evidence includes commentary on whether 2.5 storeys are justified in urban design terms within their proposed context. Whilst this is not a requirement of Neighbourhood Plan Policy NDS9, these comments have partially been made in response to the applicant's statement of case.
20. Moreover, the Council's appeal statement specifically refers to the requirement within Policy NDS9 that accommodation above first floor level needs to be visually compatible with the scale of buildings in the surrounding area. The

Council's evidence in respect of the latter is brief. However, it does include a recognition that higher than 2-storey development has been built nearby, and it differentiates between the location of that built development and that of the appeal site in relation to the edge of the settlement.

21. As such, whilst I do not agree with the Council's second reason for refusal, for the reasons stated in my Decision, I am not persuaded on the basis of the evidence before me that the Council failed to deal with like-for-like cases in a consistent manner, and I am satisfied that the Council has acted reasonably in providing sufficient objective analysis to satisfactorily substantiate this reason for refusal.
22. Having regard to case law<sup>2</sup> which establishes that a local planning authority should not materially deviate from the existing outline permission on the appeal site, on the basis of the limited information before me in respect of why the Council decided not to contest this reason, I find that the Council's fourth reason for refusal is unreasonable in relation to its concern about coalescence between Great Coxwell and Faringdon. This is having regard to the development plan residential allocation for the site and the parameters of built development on the appeal site which were established by the outline permission.
23. There is no evidence before me that there has been a change of circumstances or planning policy or the submission of additional information by the applicant to address this reason for refusal since the refusal of the planning application, which would have justified the Council's decision not to contest it. Whilst the Council's withdrawal of the fourth refusal reason occurred prior to the submission of its appeal statement, the applicant would have incurred unnecessary appeal costs in respect of any work it undertook in relation to this reason for refusal prior to the Council's notification of its intention not to contest it on 25 October 2023, including expenses sustained in association with the preparation of the relevant part of its appeal statement.

## **Conclusions**

24. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has occurred and that a partial award of costs is therefore justified.

## **Costs Orders**

25. 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 Vale of White Horse District Council shall pay to Wain Homes, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the Council's third and fourth reasons for refusal as stated above.
26. The applicant is now invited to submit to Vale of White Horse District Council, 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

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<sup>2</sup> R v Newbury DC Ex p. Stevens and Partridge (1992)

*S Leonard*

INSPECTOR