



Costs Decision

Hearing held on 28 February 2024

Site visit made on 29 February 2024

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 27 March 2024

Costs application in relation to Appeal Ref: APP/K2420/W/23/3320919 Chapel Fields Livery Stables, Chapel Lane, Witherley, Atherstone, CV9 3LR

- 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 A R Cartwright & D Walker for a partial award of costs against Hinckley and Bosworth Borough Council.
 - The appeal was against the refusal of planning permission for the construction of five detached dwellings with associated garages, parking provision, access and landscaping.
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Decision

1. The application for an award of costs is refused.

The submissions for A R Cartwright and D Walker

2. The costs application was made orally at the hearing, with a copy subsequently submitted in writing.
3. The applicants seek a partial costs award in respect of reasons for refusal 2, concerning the location of the proposed development, and 3, concerning the proposal's effect on the living conditions of future occupiers with regard to noise.
4. The applicants submit that the refusal of permission on locational grounds was unreasonable because the adopted Core Strategy identifies Witherley as a sustainable location for some housing development. They consider that the Council's assessment of the village as having facilities in respect of a nearby application¹ at Kennel Lane is inconsistent with its assessment that it has "no such facilities" in respect of the appeal proposal. They state that the Council's conclusions that Witherley lacks facilities; that occupiers would be reliant on the private car; and that new housing at the appeal site's location would not enhance or maintain the vitality of rural communities lack supporting evidence. They refer to the lack of objection from the highway authority in support of their submissions on the locational reason for refusal.
5. Furthermore, they consider that the locational reason is unreasonable given the lack of such concerns in the previous appeal decision at the site, combined with the lack of any change in the provision of nearby services and facilities since then. They submit that the Council did not apply the National Planning Policy Framework (the Framework) provisions that decisions should take into account that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. They consider that the Council should have

¹ 22/01190/OUT

withdrawn its locational reason for refusal of permission for the appeal proposal in light of its assessment of the other scheme in the village in this regard, stating that their time and expense in defending the reason for refusal would have been unnecessary had it been withdrawn.

6. The costs application in respect of the noise main issue submits that the Council acted unreasonably in refusing the scheme on noise grounds because any adverse effects in terms of noise and disturbance at Plot 1 would be no greater than those experienced by the occupiers of an existing dwelling adjacent to the Parish Room hall. It refers to the lack of objection from the Council's environmental health department, the lack of any recorded complaints regarding noise from the hall and the conclusion of the noise assessment submitted with the planning application that activities at the hall would not result in unacceptable effects with regard to noise.
7. The application further submits that the Council does not provide substantive or technical evidence to support its noise and community facility reason for refusal. The applicants consider that the Council did not acknowledge material differences between the current and former appeal schemes at the site.
8. The applicants submit that the Council has not provided objective analysis to support its assertion that the scheme would be harmful in terms of location or noise. They state that the Council relies on non-technical evidence comprising vague and generalised assertions in both cases.

The response by Hinckley and Bosworth Borough Council

9. The response was made in writing. The Council defends the costs application in full.
10. In response to the submissions on its locational reason for refusal, the Council states that a lack of facilities in Witherley is considered to result in reliance on the private car for trips to meet day-to-day needs. It considers that the distance and character of pedestrian routes to access such facilities from the appeal site may deter people from walking. It states that the locational reason for refusal should have referred to a relevant development plan policy but that the refusal is not considered to be unreasonable given the lack of key services within a safe walking distance.
11. The Council refers to an appeal decision² elsewhere in the borough which considered similar issues. That decision concluded that future occupiers of the proposed development would use private cars for the majority of their day-to-day trips, resulting in conflict with the sustainable transport objectives of the Framework.
12. The Council considers that Witherley is a sustainable location for sustainable housing development, and submits that the appeal proposal does not form such development. It states that reports for the appeal proposal and the Kennel Lane scheme both acknowledge the three key services present in Witherley, and that the lack of a shop was an important factor in its conclusion in respect of the appeal scheme. It considers that the applicants place reliance on an erroneous statement that a shop is an easy walk away on suitable paths. It states that the Council has not claimed that the new occupiers would be wholly reliant on the private car, and that the highway authority typically do

² APP/K2420/W/23/3317284

not offer advice on location matters, so that it does not consider the point to be relevant.

13. Turning to its noise reason for refusal, the Council states that this was added in light of the findings of the previous appeal decision at the site. It submits that it was stated for the applicants that the noise assessment had not assessed noise levels in the garden of Plot 1. It submits that measured noise levels at the dwelling at Plot 1 exceeded British Standard levels for steady noise. It considers that the garden at Plot 1 would, in part, be subject to noise levels that would be likely to generate complaints from occupiers. It submits that the evidence does not suggest that there would be no material effects in terms of noise and disturbance at Plot 1.
14. The Council states that its environmental health department did not object to either the appeal proposal or the previous application at the site. It refers to the finding of the previous appeal that the impact on the living conditions of five of the closest dwellings would be significantly detrimental. It states that three of the gardens of the previous application were significantly further from the hall than the garden of the current Plot 1 would be, but were still considered to be significantly affected by noise.
15. The Council states that no conclusions may be drawn from the lack of noise complaints from the occupiers of the existing dwelling adjacent to the hall. It submits that Plot 1 would be considerably closer to the hall than any other dwelling apart from its existing neighbouring dwelling. The Council refutes the submission that it has relied on vague and generalised assertions.

Reasons

16. 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.
17. Examples of unreasonable behaviour that may lead to an award of costs against appeal parties are given in the PPG. These 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; and
 - Not determining similar cases in a consistent manner.
18. Turning first to the locational submissions, whilst Witherley is identified in the development plan as a rural village suitable for some development, the plan also identifies a settlement boundary beyond which countryside policies will apply. As set out in my Decision, Policy DM4 of the Site Allocations and Development Management Policies DPD (2016) (SADMP) concerns safeguarding the countryside and settlement separation. The appeal proposal does not form one of the types of development which is considered by Policy DM4 to be

sustainable at such locations. It consequently conflicts with the policy, and with Policy 12 of the Core Strategy, which sets out the types of residential development which will be supported within settlement boundaries. As the development envisaged for Witherley is subject to the settlement boundary it was not unreasonable for the Council to identify conflict in achieving the planned strategy.

19. The Kennel Lane site is close to the appeal site in Witherley. The Council's planning committee resolved to grant permission for that scheme, subject to conditions and a planning obligation, in December 2023. The assessment in the Kennel Lane scheme officer report that there are facilities in the village is inconsistent with the finding of the appeal scheme report that there are "no such facilities". This appears to be an error as the type of facilities considered are stated to be shops, services and work/school, and the report previously identifies that the village has a school.
20. A conclusion that there are no facilities in the village, so that the location is not sustainable, is reached in the planning balance at the end of the Council's report on the appeal scheme. This results in a finding that the proposal is contrary to the Framework provision that housing should be located where it will enhance or maintain the vitality of rural communities. As set out in my Decision, my own views differ in these regards.
21. The Council's conclusions on the matter of location consequently appear to be based on an error, as I have set out above. This is additionally supported by the differing conclusions of the Kennel Lane report. The erroneous point is partially determinative because it contributes to the harm which is subsequently weighed in the balance, and it is cited in the resulting reason for refusal which led, in part, to the appeal. The report additionally contains minimal objective analysis in support of its conclusion that occupiers would be heavily reliant on the private car. The Council's assessment in this regard consequently forms an inaccurate assertion about the proposal's impact, which is unsupported by any objective analysis. Furthermore, it indicates that the Council has failed to determine the cases in a consistent manner.
22. When the conflicting conclusions of the appeal and Kennel Lane schemes were raised with the Council during the appeal process, the error and lack of analysis could reasonably have been expected to have been identified at that point. This may have resulted in the withdrawal of the reason for refusal, or in the production of additional reasoning or evidence in support of the Council's case. Nevertheless, neither course of action was taken. As a result, unreasonable behaviour was additionally demonstrated by the failure of the Council to produce evidence to substantiate the reason for refusal on appeal.
23. Unreasonable behaviour has consequently been demonstrated in the above regards. Nevertheless, the Council concedes that the Framework provision relied on in its second reason for refusal is erroneous and that a development plan policy which generally aligns with sustainable transport Framework provisions, against which my Decision identifies conflict, should have been relied on instead. As my decision identifies harm to arise in terms of that concern, it follows that there was a locational matter for the appellant to defend at appeal. Therefore unnecessary or wasted expense in defending it did not arise.

24. A planning authority is not compelled to agree with its consultees on applications and, moreover, the Council states that the highway authority would not typically offer advice on the location of proposed development. Therefore the lack of objection of the highway authority on the grounds of location does not form a matter which should necessarily have been given weight by the Council.
25. I have little information on the circumstances which led to the absence of locational concerns in the previous appeal decision at the site. I have identified unreasonable behaviour in terms of the accuracy and analysis supporting the locational reason for refusal, the failure to produce evidence to substantiate it, and the failure to determine cases in a consistent manner. Nevertheless, the Council's concerns generally in this regard may have been informed by subsequent considerations since the previous decision, including more recent appeal decisions. Thus, no unreasonable behaviour arises from the principle of the introduction of a locational reason for refusal of permission.
26. Whilst the Framework must be taken into account where it is relevant to a planning application or appeal, it need not necessarily be referred to in every assessment. The Council's report refers briefly to public transport and walking and cycling, and moreover my own Decision identified limited harm in this respect, so that there is insufficient evidence for me to conclude that the Council prevented development which should clearly be permitted, having regard to the sustainable transport provisions of the Framework.
27. The Council's concerns in respect of the noise main issue relate solely to the effect of the proposed development on the living conditions of the occupiers of Plot 1, with specific regard to noise and disturbance levels in the garden to that dwelling. The Noise Assessment submitted with the application does not discuss whether the sound levels in the garden to Plot 1 would be acceptable during music events at the hall, or whether mitigation would consequently be required, in any detail.
28. Whilst the Council does not provide technical evidence to support its third reason of refusal concerning noise, its decision report reviews the Noise Assessment and reaches reasoned conclusions concerning the development's effect in this regard. The Council is not required to find an issue acceptable based on the lack of objection of consultees, and in this case the lack of noise complaints. Its report notes the findings of the previous appeal on the matter and discusses the new evidence submitted since then in light of the development now proposed. The technical evidence on the specific issue of concern within the Noise Assessment is minimal, so that it does not demonstrate any compelling lack of harm. For these reasons, no unreasonable behaviour by the Council in respect of the noise main issue has been demonstrated.
29. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

C Beeby

INSPECTOR