The Planning Inspectorate

Costs Decision

Inquiry held on 31 October to 2 November 2023, 3, 4, 17 and 30 January 2024. Inquiry closed in writing on 13 February 2024.

Accompanied site visit made on 3 November 2023. Unaccompanied site visits made on 30 October 2023 and 2 January 2024

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st May 2024

Costs application in relation to Appeal Ref: APP/T3725/W/23/3319752
Land at Warwickshire Police Headquarters, Woodcote Lane, Leek Wootton, Warwick, Warwickshire CV35 7QA

- 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 Cala Homes (Cotswolds) Ltd for a full award of costs against Warwick District Council.
- The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for up to 83no. dwellings (including affordable housing), access, internal roads and footpaths, public open space, landscaping, drainage and other associated works and infrastructure (all matters of detail reserved except for the vehicular access to the site).

Decision

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

Preliminary Matter

2. The costs applications were dealt with through written representations by all parties. The applicant produced a revised costs application in writing on 13 January 2024. For the avoidance of doubt, I have considered only the revised application. The submissions seek either a full or partial award of costs.

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.

4. In summary, the applicant's full costs application is based on their view that the Council were unreasonable in relation to the non-determination of the original application, preventing or delaying the development which should clearly have been permitted and vague, generalised or inaccurate assertions about the proposal's impact.

5. The partial costs application relates to the introduction of fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense that would not have otherwise arisen, not agreeing statements of common ground (SoCG) in a timely manner or not agreeing factual matters common to

witnesses of both parties and prolonging the proceedings by introducing a new reason for refusal. I shall deal with this in turn.

Non-determination of the application

6. It is argued that the Council has provided inadequate justification for not determining the application within the prescribed time period. The Council contends that the applicant was kept fully informed of the Council's position, that additional information had been requested before 13 weeks had expired and that the applicant decided not to respond to these requested and exercised their right to appeal. While there was another full application for the site pending determination, the outline application still received consultation responses requesting additional information. On this basis, there were issues still to resolve. Thus, it does not seem wholly unreasonable for the Council to have delayed their decision to ensure these were addressed.

7. The evidence does not suggest the application was left to stagnate, and progress was being made toward taking the application to committee. The applicant also submitted additional information during the Inquiry process. This suggests some acceptable on their part that further evidence was necessary to satisfy the Council's concerns. As such, I am not persuaded that the Council acted unreasonably in this regard. In any event, even with the additional information in place, the Council concluded that it would still have refused the application had it been able to do so. As such, the appeal would still have been necessary and so there was no wasted or unnecessary expense resulting from this issue.

Delaying otherwise acceptable development / vague and generalised assertions / new reason for refusal

8. The first point to make here is that the appeal deprived the Council of the opportunity to determine the application. Nevertheless, the Council subsequently concluded that the benefits of the development would not outweigh the conflict with Warwick District Local Plan (WDLP) policies DS22 and HE1. It is therefore likely that the application would have been refused and the appeal necessary. Much of the applicant's criticism of the Council's position comes from the language used in the Council witness's proof of evidence. This stated that Members could find no other benefits than a "modest number of new houses (including affordable houses)".

9. It is important that all potential benefits of the development are properly considered. However, while acceptable to do so, I do not consider it absolutely necessary to break all benefits of a development down into individual facets and quantify them separately. Planning judgements are not mathematical or tick-box exercises where decisions are based on the totting up of individual 'scores'. It was also not necessary for the Council to describe the benefits in exactly the same way as the applicant. While combining all direct and indirect benefits associated with housing development under the banner of "providing houses" may be something of a shorthand, I am content from what I saw and heard that the elected Members took all the potential benefits into account in their determinations. That they concluded these would not outweigh the conflict with policy is a matter of planning judgement. There is no evidence of unreasonable behaviour in this regard.

10. The applicant has also raised concerns in relation to the extent to which highways issues contributed to the Council's position. This applies to both the full and partial costs application. The Council's Statement of Case did not suggest there were any concerns about highways or highway safety. However, the Council witness's proof of evidence did raise these as an issue. In particular, it stated that it was the witness's "*strong belief… that the Committee remains concerned about the impact on highways and public safety*".

11. Subject to conditions, the local Highway Authority did not object to the development. Nevertheless, elected Members would have been aware of the objections from residents. In principle, Members are entitled to disagree with their officers and come to their own conclusions about the impacts of development. However, if this is the case then clear reasons must be provided. Other than reference to it being the witness's "strong belief" that the Committee were concerned about the impact on highways and safety, it was not entirely clear what these concerns were or how much weight was given to them in the overall planning balance. There is certainly no clear evidence that these matters were determinative; it was clear throughout that the Council's primary concern was with the lack of any heritage benefits and the resulting conflict with Policy DS22.

12. The Council's witness provided no detailed evidence on this issue. The various agreed SoCG also do not suggest this was the formal position of the Council. Nevertheless, the reference to highway concerns in the proof did raise new issues and cause a degree of confusion. The witness himself seemed to accept this as the proof included an apology for raising these matters at this stage in proceedings. The assertions set out in the proof in relation to highways, and biodiversity, were also no more than generalised assertions that were not supported by any objective analysis. This constitutes unreasonable behaviour on the Council's part.

13. The applicant claims they would not have needed to produce a rebuttal proof had it not been for the issues raised by the Council's witness. However, while the rebuttal refers to the Councillor's concerns, the focus and majority of the content of the document is concerned with the evidence of the Rule 6 Party. I find it unlikely therefore that the rebuttal proof was only considered necessary because of the Council witness's evidence.

14. The applicant did not produce detailed additional technical evidence to deal with the Council's apparent concerns. What was included in the rebuttal evidence would not have taken substantial time to produce and was subsumed within addressing the more detailed evidence of the Rule 6 Party. In addition, nothing extra was needed to address the Council witness's similar comments on biodiversity. To that end, the behaviour of the Council in this regard did not prolong the Inquiry to any material degree or, in my view, lead to unnecessary or wasted expense.

Statements of Common Ground

15. The Inquiry opened on 31 October. Proofs of evidence were required by 6 October. I did not receive any agreed SoCG until around 20 October 2023. This was much later than would be considered ideal. The second Case Management Conference (CMC) took place on 29 September. I noted the lack of any SoCG at this meeting and requested they be provided as soon as possible.

16. The evidence suggests drafts of these documents had been with the Council some time before they were agreed, and the applicant had had to chase comments on several occasions. The Council contend that they were deliberately waiting for the revised 'Wheatcroft' plans to be taken to Committee before they could agree their positions on various topics. This is logical to an extent. However, the revised plans were considered by Committee on 12 September 2023, well before the second CMC took place.

17. The Council has not given any explanation as to why there was no progress on the SoCG between the date of the committee meeting and the time they were finally signed. There appears to have been sufficient time between that meeting and the exchanging of proofs for the Council to have made their position clear. Without any persuasive evidence to the contrary, I consider this was unreasonable of the Council. In terms of wasted or unnecessary expense, it is likely that some of the appellant's evidence would not have been necessary or would have been presented differently had positions been agreed in a timely manner. This is particularly the case in terms of heritage where there was significant agreement between the Council and applicant about the degree of harm likely to be caused.

Five-year housing land supply.

18. This issue relates to the Council's introduction of updated housing land supply data on the first morning of the Inquiry. Prior to this, the main parties were agreed there was a 5-year supply of deliverable housing land. Following the updating of the supply data, the applicant no longer considered this would be the case. This resulted in an adjournment to allow the parties to consider their positions and to produce new proofs of evidence. It also resulted in the need for additional cross-examination and a housing supply roundtable session. The need to consider this evidence before other aspects could be addressed also resulted in the abandonment of a programmed sitting day.

19. The revised data had apparently been published on 18 October. However, the Housing SoCG between appellant and Council was agreed on 20 October 2023. This concluded that a 5-year supply existed. However, the statement failed to take account of the updated data.

20. It was plainly unreasonable of the Council to not make the other parties, or myself, aware that updated supply data had been published prior to the opening of the Inquiry. There was clearly sufficient time to do so. For the Council to have agreed the Housing SoCG with the applicant *after* it had already published the revised data was also unreasonable. The failure to inform, and thus allow any party time to consider its relevance before the Inquiry opened, caused an unwelcome degree of disruption.

21. I do not accept the Council's premise that, because they had conceded the so-called 'tilted balance' was already engaged, the housing land supply discussions were academic. Firstly, the Rule 6 party had not conceded the point about the most important policies being out-of-date. As this was still open to debate, it is logical for the applicant to have considered whether there were other issues that might trigger the 'tilted balance'. In any event, if the applicant considered the updated data altered or undermined their position, then they were entitled to make that argument to me.

22. Neither the fact that all parties were aware the WDLP was more than 5 years old, or the outcome of the subsequent debate, are to the point. The unreasonable behaviour stems from the failure to inform the parties of the new information in a timely manner. It is not for the Council to assume the other parties will be keeping a vigilant eye on their website to make sure nothing important is published. It has also not been satisfactorily explained why the Council entered into the Housing SoCG knowing its supply position had changed and that the data referred to was out-of-date. Even if the Council were content the 5-year supply position had improved, it was still important that the other parties had the opportunity to consider the data and come to their own conclusions. That this consideration could only be made once the Inquiry had begun was both unfortunate and avoidable.

23. The second issue is whether the resulting adjournment would have been inevitable in any event and thus whether there was any wasted or unnecessary expense. As noted above, proofs of evidence were due to be exchanged on 6 October. The revised supply data was published on 18 October. Therefore, proofs of evidence would not have been able to consider this issue and additional time may have been needed to consider and address new evidence. Even if the parties had been aware that the data was forthcoming, it would not have been possible to know what it meant for their positions until after this date. Therefore, the need for additional proofs and sitting time may have been inevitable. The issue of wasted expense is not, however, only in terms of the production of evidence. It also could come from the avoidable consequences of any abortive work carried out between 18 October and the Inquiry opening and the subsequent disruption to the programme.

24. Having fair warning of when the data was likely to be published, or being informed at least when it *was* published, would have given the parties time to consider the information and make representations about the effect on the Inquiry programme before it opened. Even if this had required a change to the programme, or giving more time for evidence to be prepared, it may still have meant some abortive work in relation to such things as the Housing SoCG could have been avoided. It would also have provided an opportunity to manage things such that the programmed sitting day on first week was not wasted. Moreover, it may have meant the subsequent difficulties in finding available days to complete the Inquiry and piecemeal approach would have been avoided. Therefore, even if there had been some inevitable effect on the Inquiry programme or need for evidence, the Council's timing and consequent avoidable disruption is likely to have resulted in some wasted or unnecessary expense for the applicant.

25. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of not agreeing statements of common ground in a timely manner and the submission of fresh and substantial evidence at a late stage which necessitated an adjournment. A partial award of costs is therefore warranted.

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 Warwick District Council shall pay to Cala Homes (Cotswolds) Ltd, the costs of

the appeal proceedings described in the heading of this decision limited to those costs incurred associated with the late agreement of statements of common ground and the implications of revised five-year housing land supply data; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Warwick 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.

S J Lee

INSPECTOR