



Costs Decision

Hearing held on 25 June 2024

Site visit made on 26 June 2024

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2024

Costs application in relation to Appeal Ref: APP/P1805/W/24/3339483 Land to the rear of 1-6 Smedley Croke Place, Hopwood, B48 7TP

- 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 Cawdor Capital (Hopwood) Limited for a full award of costs against Bromsgrove District Council.
 - The appeal was against the refusal of planning permission for 34 affordable houses.
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Decision

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

The submissions for Cawdor Capital (Hopwood) Limited

2. The costs application was submitted in writing. The applicant contends that the local planning authority (LPA) has behaved unreasonably which has led directly to the appeal. The LPA's officers put forward a strong recommendation for approval following a detailed analysis and assessment of the proposals. Notwithstanding this the LPA's Planning Committee departed from this clear recommendation and cited 2 reasons for refusal. These are without basis. The LPA has fundamentally failed to substantiate the reasons for refusal.
3. The Council has compounded its unreasonableness by refusing a second and identical planning application resubmission. This second application (PA Ref: 24/00079/FUL) was submitted following the publication of the revised National Planning Policy Framework (the Framework) and, more particularly, the latest Housing Delivery Test results and Ministerial Statement – all of which occurred in December 2023. The Housing Delivery Test presents a clear and worsening position in respect of Bromsgrove leading to a continuing presumption in favour of planning permission for residential development.
4. The Ministerial Statement also reiterates that the delivery of housing remains of paramount importance and that LPAs ought to follow professional officer's advice unless there are clear and exceptional reasons why this should not be the case. Where it is determined that planning officer's recommendations should not be followed a clear and convincing case must be put forward.
5. With regard to the second application, planning officers maintained their positive recommendation in favour of the granting of planning permission in respect of the proposed development – in the full knowledge of the Council's previous overturning of the application subject to the appeal. Indeed, this second report was even more positive in its support for the proposed development noting that the delivery of housing and affordable housing in particular were "material considerations that weigh very strongly in favour of

the proposals". This greater support was such that officers concluded that "the Green Belt arguments are no longer finely balanced" and that "the benefits of the proposals now clearly outweigh the harm to the Green Belt and, consequently, very special circumstances (VSC) apply".

6. With regard to sustainability, it was further noted that neither Worcestershire County Council Highways nor officers consider the site to be in an unsustainable location. This reflects the Council's earlier conclusion in respect of the Bridge Farm application (Appellant's Statement - Appendix 2.2) and the Inspector's conclusions regarding sustainability in respect of the Ash Lane Appeal (Appellant's Statement - Appendix 2.3).
7. In rejecting this advice, it is incumbent upon the LPA to demonstrate clearly why the Planning Officer's recommendation and presumption arising from the housing delivery test are incorrect, why the VSC have not been demonstrated and why the site is in an unsustainable location.
8. The reasons for refusal must be clear and comprehensive in this regard. They fail on all counts and are based upon unsubstantiated comments regarding impact upon openness, Green Belt purposes, VSC and sustainability. Nowhere is there any specific evidence nor grounds cited. The Council has not sustained a case as to why the officer's recommendation does not constitute VSC.
9. This is particularly incumbent upon the LPA to do so given both its latest monitoring report regarding housing land supply, the delivery of affordable housing in particular (including the lack of delivery of Social Rent properties), the recent Ministerial Statement, the Green Belt assessments for this site that have been undertaken by officers and the previous Inspector, and the continuing delay to the Local Plan Review (key to Policy BDP4).
10. The Council's Statement of Case also fails to substantiate the reasons for refusal nor to make any substantive case in support of the issues noted above. Therefore, the sole conclusion that can be reached is that the Council has behaved wholly unreasonably in refusing both applications, such that the appellant has been put to wholly unnecessary and wasted expenditure regarding this appeal. Accordingly, a full award of costs is considered appropriate.

The response by Bromsgrove District Council

11. The response was made in writing. The LPA is of the opinion that there is no merit in an award of costs. The Council has not been unreasonable at any stage of the planning application consideration and determination and as such an award of costs against the Council is completely unjustified.
12. The LPA is aware of the requirement in the Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 to work with the applicant in a positive and proactive manner, seeking solutions to problems arising in relation to applications. The submission of the application followed lengthy discussions and negotiations between the appellant and the LPA.
13. The application was considered by members of the Planning Committee who considered the main published report, the updates and the views of speakers during the meeting and reached a different view than that recommended, as is

their right. Members were not duty bound to follow the advice of their professional officers and they reached a different decision.

14. This demonstrates an informed and evidenced based analysis. The Council's statement of case substantiated their reasons for refusal. Members did not behave unreasonably in reaching their own conclusions on the application, determining that planning permission be refused.
15. The reasons for refusal as set out in the decision notice are complete, specific and relevant to the proposal and states the policy of the Bromsgrove District Plan (BDP) (January 2017) that the proposal would be in conflict with. The committee member's reasoning regarding the conflict with policy is outlined in the minutes for the meeting. It is not considered that the Council's decision was so fundamentally flawed or without foundation as to represent unreasonable behaviour.
16. Scrutiny should be paid to applications for awards of costs, and it is respectfully submitted that the application for award fails to meet the required conditions of the Planning Practice Guidance (PPG). For the above reasons, the Inspector is respectfully requested to dismiss the application for an award of costs against the Local Planning Authority.

Final response for Cawdor Capital (Hopwood) Limited

17. The unreasonableness on the part of the Council is not due to its planning officers but is, instead, due to the actions of Members for it is they who twice went against their professional planning officers' advice.
18. The Council's costs rebuttal contends that Members have demonstrated an informed and evidence based analysis in reaching their decision. Furthermore, it also contends that the reasons for refusal are complete, specific and relevant – defining the specific policies of the BDP with which it is considered that the proposed development is in conflict.
19. This is patently not the case as evidenced at the Hearing where no Member of the planning committee who determined the planning application attended to explain and sustain the committee's decision.
20. In terms of reason for refusal 1, the Council refers specifically to policy BDP4. However, no explanation was advanced as to why this policy remains current and not out of date, nor was any evidence presented as to how much the much higher hurdle of there being substantial harm to the openness of the Green Belt, as required by paragraph 154(g) of the Framework, was in fact conflicted. No evidence has been advanced to explain how or why this is the case nor how or why the previous Inspector's conclusions regarding openness and the site's contribution to the purposes of the Green Belt (correctly identified as a material consideration) should now be discounted.
21. The evidence from the one Member who did attend was that the site is a greenfield site and that its development would set a precedent for other greenfield sites across Bromsgrove District. When this was questioned, he then stated that he meant Green Belt not greenfield. This simply does not hold water nor credibility. If this were a genuine "slip of the tongue", it was made repeatedly by this councillor and others on the Planning Committee at both planning committee meetings and flies totally contrary to the clear statements of fact made by both the appellant and planning officers to the effect that this

site is previously developed land and not greenfield. Members, including the Ward Councillor, were fully advised that the site was not greenfield but have repeatedly chosen to completely ignore this fact and have instead determined the application as if it were a greenfield site.

22. The entirety of the first reason for refusal is thus predicated upon this contrived misunderstanding of the status of the site as well as a blind adherence to an erroneous application of an out of date policy within the BDP – to the complete disregard of other clear facts that demonstrate that there are other material considerations.
23. No credible evidence was put forward as to why the provision of affordable housing, nor how the other benefits outlined in the Council's Statement of Case on Green Belt Balance do not individually or together constitute VSC.
24. Turning to the second reason for refusal, the Council refers to policies BDP1 and BDP16. The Council put forward no evidence to sustain any suggestion of conflict with BDP1 and accepted, at the Hearing, that there is actually no conflict with BDP16. Notwithstanding this it continues to rely upon both policies in its costs rebuttal. Accordingly it is relying upon policies that it now accepts have no conflict with the proposed development.
25. In its costs rebuttal, as with its evidence to the Hearing, the Council has failed to substantiate a single aspect of its reasons for refusal. Accordingly, this is precisely the sort of illegitimate reasoning that the Ministerial Statement highlighted as being unreasonable and advised that, should planning permission be granted on appeal, then the Planning Inspectorate should consider awarding costs to the appellant.
26. In this case a full award of costs is merited. The appellant, in an attempt to avoid this appeal, presented the Council with an opportunity to reconsider and amend its earlier refusal. This opportunity was rejected, with no additional explanation nor justification, such that the appellant has had to expend considerable costs to pursue this unreasonable and unnecessary appeal.

Reasons

27. Parties in planning appeals normally meet their own expenses. However, the 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.
28. A LPA is at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. The applicant submits that the Council have acted unreasonably by:
 - i) failure to produce evidence to substantiate each reason for refusal on appeal, and;
 - ii) not determining similar cases in a consistent manner.
29. The Written Ministerial Statement¹ details that "The overturning of a recommendation made by a professional and specialist officer should be rare and infrequent – such that I have reminded the inspectorate that where it

¹ Dated 19 December 2023

cannot find reasonable grounds for the committee having overturned the officer's recommendation, it should consider awarding costs to the appellant".

30. Members were presented with a recommendation made by a professional and specialist officer that the benefits of the proposal clearly outweighed the harm to the Green Belt, and consequently, VSCs existed. The officer also found that the proposal was in a suitable location with regard to sustainability. The Council's Planning Committee refused planning permission contrary to officer recommendation. The conclusion on VSCs is ultimately a matter of planning judgement, however the Committee Minutes are clear that officers strongly considered that VSCs existed and that officers did not consider the sustainability reason to be sufficient to warrant refusal. While the Council is not duty bound to follow its officer's recommendations, if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and substantiate that reasoning.
31. The reasons for refusal set out the reasons why the proposal was refused and the asserted policy conflict. The Council's Statement of Case subsequently presented different sustainability findings, and a different green belt and planning balance to that in the Committee Report, finding that the other considerations did not amount to VSCs. Whilst there was no need for me to assess VSCs in the Appeal Decision, the reasoning is not overly convincing. This is perhaps because the officer who made the positive recommendation to Committee also wrote the Statement of Case and presented evidence at the Hearing defending the appeal.
32. I raised concerns at the Hearing as to whether the officer had had regard to Section 15 of the Planning Inspectorate's Procedural Guide, which explains the duty of an expert to help the Inspector. Expert evidence is evidence that is given by a person who is professionally qualified to express an opinion on a particular subject. It can be used in all appeals. This duty overrides any duty the expert may have to the party that involved them in the appeal or that is paying them. The evidence should be accurate, concise, and complete and should represent the expert's honest and objective opinion.
33. The officer considered that there was nothing in the Statement of Case or his evidence to the Hearing that contravened the Procedural Guide. I disagree. The officer's professional opinion to the Committee was that planning permission should be granted and that VSCs existed. Indeed, this was also the case for a later identical application in the full knowledge of this overturned decision.
34. To be required to defend the appeal and present a diametric professional opinion is at odds with the Procedural Guide. Critically, however it fundamentally undermines the evidence presented in the Statement of Case and at the Hearing as to why VSCs no longer exist and why the location is unsustainable. This is because there has been a failure to produce objective and honest evidence to substantiate the reasons for refusal. This behaviour is unreasonable.
35. Additionally, the Council in its reasoning, has failed to have regard to the previous Inspector's decision², which found that the site did not appear in any meaningful sense as open land and its contribution to openness of the Green Belt was very limited. This conclusion was made before any consideration of

² APP/P1805/W/19/3230823

the proposal before them, and this was a material consideration. Furthermore, the assessment of substantial harm lacked in understanding of the level of harm that could arise whilst still meeting the exception, having regard to the existing use and the site's very limited contribution to openness.

36. In relation to the sustainability conclusions, there are previous decisions³ made by the Council and at appeal which have found the location of new housing development on the edge of the village to be sustainable, and able to support active and sustainable modes of travel. The reasons and justification put forward relating to this reason for refusal were weak. Indeed, the officer could find no conflict with Policy BDP16 of the BDP when questioned at the Hearing. The only remaining conflict asserted was with Policy BDP1, which requires proposals to have regard to accessibility to public transport options. It was clear in the evidence before me that the appellant had more than regard to accessibility, the proposals included contributions to improve public transport options and the proposal complied with the relevant policies. There was a failure to substantiate this reason for refusal and a failure to determine similar cases in a consistent manner.
37. For the reasons given above, unreasonable behaviour resulting in unnecessary and wasted expense of the entire appeal has occurred and a full award of costs is therefore warranted.

Costs Order

38. 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 Bromsgrove District Council shall pay to Cawdor Capital (Hopwood) Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

Katie McDonald

INSPECTOR

³ 21/01008/OUT – Bridge Farm, and APP/P1805/W/22/3294824 Ash Lane