



Costs Decision

Inquiry held on 18-20 and 25-26 June 2024

Site visit made on 20 and 21 June 2024

by Gareth Wildgoose BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2024

Costs application in relation to Appeal Ref: APP/H1033/W/24/3339815 Land to south of Dinting Vale, Glossop, SK13 6PA

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Wain Homes (North West Ltd) for a full award of costs against High Peak Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for residential development comprising 92 dwellings including areas of public open space, landscaping and associated works.
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Decision

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

Reasons

2. 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.
3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes procedural matters during the appeal and substantive matters relating to the matters under appeal. The substantive matters 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. Other substantive matters include the failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. A further substantive matter is refusing planning permission on a planning ground capable of being dealt with by conditions. The application for costs broadly relates to each.
4. The reasons for refusal set out in the decision notice are specific to the application and the harm identified by High Peak Borough Council (the Council) in terms of the development, with four reasons for refusal identified with reference to conflict with policies of the High Peak Local Plan (LP), adopted April 2016, and the National Planning Policy Framework (the Framework). The Council decision was made on 27 October 2023 by its Development Control Committee and overturned the officer recommendation to approve the application subject to a Section 106 agreement and conditions. The appeal site forms part of a larger parcel of land that comprises a housing allocation in the

LP which a Local Plan Review undertaken by the Council in 2022 did not find to be out-of-date.

5. With regard to the above and in summary, the Council's first reason for refusal related to the effect of the proposed development on the Dinting Vale Air Quality Management Area (AQMA) in terms of increased levels of air pollution arising from increased traffic levels. It included concerns around the impact on the health of people in particular children in the area and that the planning obligations towards air quality monitoring and sustainable travel feasibility would not mitigate the impact. The Council's second reason for refusal related to unacceptable risk to road safety of the position of the proposed access road from the A57 in close proximity to the school. The third reason for refusal identified by the Council was that the proposed development did not achieve a policy compliant level of affordable housing and failed to fully mitigate for substantial tree loss and loss of biodiversity, matters that were considered to outweigh the viability issues noted. The Council's fourth reason for refusal related to the potential for the public right of way onto Simmondley Lane being used as a 'rat run' for vehicle access. This was in the absence of detailed and workable proposals for preventative measures within the application allowing for residents' access to be maintained, with resultant risk to safety of users of the right of way and highway safety at the Simmondley Lane junction.
6. During the appeal and prior to the Case Management Conference (CMC), the Council indicated on 22 April 2024 following the receipt of the applicant's Statement of Case that they did not intend to offer evidence in relation to and sought to withdraw the first, second and fourth reasons for refusal. Further correspondence from the Council dated 7 May 2024 went on to confirm that the element of the third reason for refusal relating to biodiversity was no longer a matter in dispute as the Council were satisfied that the applicant was proposing full mitigation.
7. Following the CMC and prior to the Inquiry opening, the Council confirmed through submission of a Statement of Common Ground on 12 June 2024 that it no longer intended to offer evidence in relation to the remaining reason for refusal (number 3 on the Council decision notice insofar as it referred to affordable housing and the effect on trees). In doing so, the Council confirmed that having considered the applicant's appeal submissions and having taken advice from its viability consultants received on 6 June 2024, it had concluded that in its view the appeal could no longer be defended/resisted.
8. The decision taken at the Council's Planning Committee was different to the officer recommendation. However, it is not unreasonable of itself for Members of a Development Control Committee to take a different view from officers provided such an approach can reasonably be justified and explained, including with evidence where necessary.
9. Notwithstanding the above, with respect to the Council's first reason for refusal relating to air quality, it is evident that the applicant's Statement of Case did not materially alter or add any additional evidence to that which was available to the Members of the Development Control Committee. As such, the Council's withdrawal of case relating to the first reason for refusal in terms of air quality in response to the applicant's Statement of Case reflects a failure to produce evidence to substantiate it, which does fall within the definition of unreasonable behaviour.

10. The applicant went on to provide additional evidence to the Inquiry in any case in seeking to address concerns raised by interested parties in terms of air quality. It will be seen from my appeal decision that this was influential upon my conclusions insofar as verifying the predictions taken forward from monitoring data in the evidence beyond the baseline date of 2019 when the Dinting Vale AQMA was designated. However, the notable additional evidence comprised more up-to-date Council monitoring of annual mean concentrations of nitrogen dioxide within the AQMA for 2022.
11. To my mind, it is a reasonable expectation that the Council should have had awareness of its own monitoring data at the time of its decision and taken it into account as a material consideration. Irrespective of whether or not the Council did so, given the presence of such evidence, I find its decision reflected vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. This heightens the unreasonable behaviour I have already found. Irrespective of the Council withdrawing its defence of the reason for refusal at the earliest opportunity during the appeal following consideration of the applicant's Statement of Case, it is evident that the Council's unreasonable behaviour necessitated that the matter of air quality be addressed in detail by the applicant during the Inquiry. To my mind, the applicant would not have had to deal with these matters in such depth, despite the residents' concerns, if the Council had not refused planning permission on those grounds. It follows that the associated costs of preparation and presentation of evidence by a witness could otherwise have been avoided if the Council's unreasonable behaviour had not occurred, and therefore, constitutes unnecessary or wasted expense in the appeal process.
12. Turning to the Council's second reason for refusal, it is again evident that the applicant's Statement of Case did not materially alter or add any substantive evidence to that which was available to the Members of the Development Control Committee. As such, the Council withdrawing its defence of the second reason for refusal relating to road safety on the A57 in response to the applicant's Statement of Case reflects a failure to produce evidence to substantiate it. As will be seen from my appeal decision, the Council decision reflected vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. I, therefore, find that the Council behaved unreasonably when imposing the second reason for refusal.
13. Again, irrespective of the Council withdrawal of case relating to the second reason for refusal at the earliest opportunity during the appeal after consideration of the applicant's Statement of Case, the unreasonable behaviour necessitated that the matter of the position of the proposed highway access road from the A57 and its close proximity to the school and associated highway safety considerations, be addressed in detail by the applicant during the Inquiry. To my mind, the applicant would not have had to deal with these matters in such depth, despite the residents' concerns, if the Council had not refused planning permission on those grounds. It follows that the associated costs of preparation and presentation of related evidence by witnesses, otherwise could have been avoided if the Council's unreasonable behaviour had not occurred and therefore, it constitutes unnecessary or wasted expense in the appeal process.
14. Turning to the Council's fourth reason for refusal, the applicant did prepare additional evidence in the form of a Technical Note dated 16 February 2024

relating to an Adderley Place Vehicle Discouragement Scheme which based on the evidence before me would not have been available to Members of the Development Control Committee at the time of their decision. It will be seen from my appeal decision that I am satisfied following the Inquiry that the potential harm identified in the Council's fourth reason for refusal is capable of being addressed by a condition of planning permission. However, the evidence provided in the Technical Note which accompanied the applicant's Statement of Case was an important and influential factor that led me to reach such a conclusion. It follows that, in the absence of such evidence being before the Members of the Development Control Committee, I find that they did not behave unreasonably in reaching a different view to my own. Furthermore, as the Council withdrew the case against the reason for refusal at the earliest opportunity during the appeal following consideration of the applicant's Statement of Case, the applicant did not suffer any unnecessary or wasted expense during the appeal process or when preparing for and presenting evidence at the Inquiry in relation to the fourth reason for refusal.

15. With respect to the third reason for refusal, the Council sought to substantiate it through submission of its Statement of Case on 24 April 2024. The Statement of Case was delayed in submission relative to the appeal timetable. However, as the delay allowed instruction from the Members of the Development Control Committee (that meet on a monthly cycle) to be taken into account I find that the delay was not unreasonable in this case. In that respect, it is evident that there are three separate elements to be considered.
16. Firstly, in terms of the matter of affordable housing and the weight to be afforded to viability evidence, I am satisfied that the Council decision when imposing that element of the reason for refusal reflected reasonable matters of judgment relating to the intention of the allocation of the site in the LP and the expectation that it would deliver affordable housing to meet local needs. Furthermore, given that the proposal only comprises part of the housing allocation and does not deliver all of the houses expected, it is reasonable to me that whether development of the site allocation as a whole would otherwise be capable of providing a contribution to affordable housing is a material consideration to inform such a judgment. Irrespective of the outcome of the appeal, the identification of that material consideration in the Council Statement of Case did not constitute the introduction of a new reason for refusal nor unreasonable behaviour during the appeal. It follows that the appellant did not suffer unnecessary nor wasted expense when preparing for and presenting evidence at the Inquiry in relation to it.
17. Secondly, in terms of the matter of loss of trees, it is evident that the applicant's Statement of Case did not materially alter or add any substantive evidence to that which was available to the Members of the Development Control Committee. Furthermore, to my mind, the Council's Statement of Case did not substantiate the reason for refusal and reflected vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. In that respect, the principle of substantial tree loss had already been established by the allocation of the site in the LP which included identification of a site access being necessary from the A57 in the Inspector's report. It is also evident that relevant policies of the LP offer a greater degree of flexibility to account for the need for and benefits of development with respect to tree loss, and in terms of requirements for tree planting and

mitigation in the form of tree replacement, than the Council applied when making its decision.

18. I, therefore, find that the Council behaved unreasonably when imposing the element of the third reason for refusal relating to loss of trees. Furthermore, irrespective of the timing of not seeking to defend this issue, it necessitated that the matter of loss of trees be addressed in detail by the applicant during the Inquiry. To my mind, the applicant would not have had to deal with these matters in such depth, despite the residents' concerns, if the Council had not refused planning permission on those grounds. It follows that the associated costs of preparation and presentation of related evidence by witnesses, otherwise could have been avoided if the Council's unreasonable behaviour had not occurred and therefore, it constitutes unnecessary or wasted expense in the appeal process.
19. Finally, in terms of the matter of biodiversity, the applicant did prepare additional evidence in the form of a Biodiversity Net Gain Strategy and 30-year Management Plan dated February 2024 which accompanied its Statement of Case. However, based on the evidence, this appears to only have taken forward the principles already agreed at the time of the Council decision and as referred to in the Development Control Committee report of 23 October 2023. In that context, the Council's Statement of Case did not substantiate the reason for refusal that reflected vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis. It was evident that a feasible approach to full mitigation and/or compensation could be provided for loss of biodiversity within the site at the time of the decision. I, therefore, find that the Council behaved unreasonably when imposing this element of the third reason for refusal.
20. With regard to the above, irrespective of the timing of not seeking to defend the related element of the third reason for refusal, it necessitated that the matter of biodiversity be addressed in detail by the applicant during the Inquiry. To my mind, the applicant would not have had to deal with these matters in such depth, despite the residents' concerns, if the Council had not refused planning permission on those grounds. It follows that the associated costs of preparation and presentation of related evidence by witnesses, otherwise could have been avoided if the Council's unreasonable behaviour had not occurred and therefore, it constitutes unnecessary or wasted expense in the appeal process.

Conclusion

21. I have found that the application demonstrated that the Council behaved unreasonably in relation to imposing the first and second reasons for refusal listed in its decision notice, and two distinct elements of the third reason for refusal (relating specifically to tree loss and loss of biodiversity). The applicant did incur unnecessary or wasted expense in the appeal process in relation to each.
22. Notwithstanding the above, irrespective of the outcome of the appeal, I have found that no unreasonable behaviour nor unnecessary or wasted expense occurred in relation to part of the Council's third reason for refusal (affordable housing element only) and its fourth reason for refusal. As such, I cannot reasonably conclude that the appeal and/or the Inquiry could have otherwise been avoided in this case.

23. It follows that I conclude that only a partial award of costs is justified. It can only be made specific to contesting the Council's first and second reasons for refusal and two distinct elements of the third reason for refusal (relating specifically to tree loss and loss of biodiversity on the site) during the appeal.

Costs Order

24. 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 High Peak Borough Council shall pay to Wain Homes (North West Ltd), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting the Council's first and second reasons for refusal and two distinct elements of the third reason for refusal (relating specifically to tree loss and loss of biodiversity on the site) during the appeal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
25. The applicant is now invited to submit to the 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.

Gareth Wildgoose

INSPECTOR