



Costs Decision

Hearing held on 3 September 2024

Site visit made on 3 September 2024

by Ann Veevers BA(Hons) PGDipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2024

**Costs application in relation to Appeal Ref: APP/H1840/W/24/3340903
Land to the rear of Stonebow Road, Drakes Broughton
Easting (y) 392591, Northing (x) 248640**

- 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 Mr G Parricelli and Lone Star Land for a full award of costs against Wychavon District Council.
- The appeal was against the refusal of planning permission for outline planning application for the erection of up to 30 residential dwellings and associated infrastructure (all matters reserved except for access).

Decision

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

The submissions for Mr G Parricelli and Lone Star Land

2. The application was submitted in writing and a response to the Council's rebuttal was made orally at the Hearing.
3. The application is based on the claim that the scheme was recommended for approval by officers following a detailed and considered process. The officer's report (OR) included a proper balanced understanding of the proposal, taking into account statutory and key consultation responses. The OR highlighted the weight that should be given to the lack of a 4 year housing land supply in the district.
4. Notwithstanding the officer recommendation, the planning committee gave no detailed consideration about the proposals, disregarded the consultation responses on ecology and landscape and other technical considerations. Councillor gave terse mention to the local and national need for housing, gave no meaningful weight to Wychavon's lack of housing land supply or to other benefits of the development, including the retention and management of the orchard. The perceived harms were over-stated and contrary to expert advice. A judgement was made about the development without any alternative expert evidence. It was unduly influenced by local residents and the Parish Council's misplaced concerns.
5. Overall, the planning committee did not assess the application with proper and fair consideration of the relevant impacts and benefits and failed to adequately explain why they disagreed with the recommendation for approval by officers.
6. The Applicant also highlights that in the absence of robust planning grounds or evidence to justify the decision, the Council have delayed a development which

clearly should have been permitted. There has been no meaningful regard had to the recent housing development adjacent to the site or the site's role in that context to the setting of the village. No expert evidence has been presented by landscape specialists, arboriculturalists or ecologists to justify the reason for refusal in these regards. The Council have continued to defend the out-dated development plan in terms of the development boundary and the Council's statement includes conflicting and misleading arguments.

7. The applicant orally added to the above at the Hearing stating that the proposal was not a complicated development and the Council's case is essentially based on general assumptions rather than evidence.

The response by Wychavon District Council

8. The Council's response to the application for an award of costs was made in writing. The Council highlight that it has not acted unreasonably in refusing the application on the basis that it is contrary to the development plan and have not delayed development that should have been permitted. Whilst the planning committee did not follow the officer recommendation, they considered all comments received during the planning application and refused the application based on material planning considerations as part of the democratic process, which they were entitled to do.
9. The Council contend the refusal reason is precise, clearly outlines the harm arising from the development and makes reference to the relevant policies within the development plan. A detailed assessment of landscape impact and associated landscape harm has been provided as well as the importance of the traditional orchard as a landscape feature. There is no requirement to present expert evidence and verbal discussion to further substantiate the reasons for refusal can take place at the Hearing.
10. A statement of common ground has been agreed with the Appellant within the relevant timescale and the Council's case was clarified through this agreement. Details of the proposed conditions in the event of the appeal being allowed and a Draft s106 agreement have also been agreed.

Reasons

11. 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.
12. The PPG goes on to explain that unreasonable behaviour in the context of an application for an award of costs may be either procedural – relating to the process; or, substantive – relating to the issues arising from the merits of the appeal.
13. The application for costs relates to both procedural and substantive matters in that it is claimed the Council prevented or delayed development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failed to produce evidence to substantiate the reason for refusal; made vague, generalised or inaccurate assertions about the impact of the proposal, unsupported by objective analysis; and did not review the case promptly following the lodging of the appeal.

14. The OR to the 1 February 2024 planning committee is clear, though my decision sets out why I have reached different views on some aspects even though the overall outcome is essentially the same as the recommendation. Although the recommendation of the OR was to approve the planning application, whilst I accept that it will have been frustrating to the applicant, the Council is not duty bound to follow the advice of its professional officers. However, if a different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
15. The minutes of that meeting indicate that the Council raised concerns about the proposal relating to highway, drainage, wildlife and loss of a traditional orchard. Comments were also made that housing would be provided in time at a potential strategic site in the district known as Parkway. Ultimately, the Council were minded to refuse the planning application for settlement boundary, landscape, greenspace, orchard habitat and wildlife reasons.
16. All the above reasons have been set out as one lengthy reason in the Council's decision notice. In this respect it is not precise or clearly articulated, although it does refer to the relevant policies of the development plan that the proposal would be in conflict with. From the minutes of the meeting, it is clear that the Council felt that there had been enough recent house building in Drakes Broughton and there was no need for any more. Therefore, a key issue is whether the Council have provided sufficient evidence to substantiate their reason for refusal at appeal.
17. There is no obligation for the Council to provide additional support to defend an appeal. However, it is imperative that clear evidence is provided to justify the decision. Whilst the Council's hearing statement explains the reasons for refusal in more detail, there is little substance in relation to matters of landscape setting and ecology. Although the minutes of the meeting suggest that Councillors visited the site to understand the context of the proposal and matters of character and appearance are for the most part matters of planning judgement, those relating to landscape setting are able to be more objectively assessed (for example through a Landscape and Visual Impact Assessment).
18. The Council appear to have confused the effects in relation to local character and greenspace with landscape setting and have not provided any analysis against the adopted Landscape Character Assessments referred to in the development plan. Save for the provision of aerial photographs with limited corresponding explanations, the Council provided no detailed evidence to rebut the findings in the applicants' landscape report and provided only vague and generalised assertions regarding the landscape impact of the proposal. As such, I find the reference to landscape setting in the reason for refusal is unsupported by any objective analysis.
19. The Council provided details of the Traditional Orchard Habitat Action Plan in order to substantiate why the loss of the traditional orchard would be harmful to the character of the area. Nevertheless, even though the Council's statement sets out that much of the orchard would be retained as part of the proposals, no balanced assessment has been made that mitigation would be provided for the loss of part of the orchard and other habitat would be provided off-site, which is a legitimate consideration. Nor has the fact that the orchard would be accessible and formally maintained and managed been addressed. No

compelling evidence has been provided to counter the Applicant's evidence in relation to the Invertebrate Survey of Noble Chafer.

20. In relation to biodiversity, the Council's ecologist was satisfied that the proposal would provide 10% Biodiversity Net Gain (BNG). This is not, based upon the date of submission of the application, a requirement of national or local policy. This benefit has not been addressed in the Council's case. The reason relating to a wildlife corridor and harm to wildlife has not been substantiated by any evidence other than local sightings and photographs.
21. The applicant presented a thorough case in support of their proposal which addressed the above matters. It is further notable that objections were not received from those consultees aligned to landscape, tree and ecological matters. In the face of these considerations, the Council's refusal with respect to landscape setting, loss of the orchard, biodiversity and wildlife is unsubstantiated. This represents unreasonable behaviour, as set out in the PPG.
22. The Applicant claims that the relevant development strategy policy, Policy SWDP 2, is out of date. The Council has acknowledged this policy is out of date in terms of the supply of housing. Whilst no specific reference has been made in the Council's evidence to consistency with the Framework in relation to the settlement boundary, the tilted balance was engaged.
23. In terms of the overall planning balance, a brief mention of housing land supply, including affordable housing, and economic benefits, as benefits of the scheme have been referred to in the Council's statement. However, it is not evident from the minutes of the planning committee, the statement or from what I heard orally, that all the competing considerations in this case were assessed as part of a balanced judgement in the context of paragraph 11d of the Framework. Therefore, there was also unreasonable behaviour in this respect.
24. The Applicant claims that the Council did not review the case promptly following the lodging of the appeal as part of sensible on-going case management. Whilst the appellant, and I, are of a different overall view regarding the merits of the scheme, that is not to say that the Council's opposition to it was not without some basis. Therefore, whilst I accept the appellant's frustration with the process hitherto, on the balance of the evidence before me, including the local opposition to the proposal, it seems to me that a prompt review of the evidence presented to the Council would not have prevented the appeal.
25. The appeal proposal was considered against the relevant planning policies and it is fact that the site lies outside the defined settlement boundary. There are evidently matters of planning dispute at hand, rather than the proposal being one which should clearly have been permitted.
26. However, I find the Council behaved unreasonably with respect to matters in the reason for refusal relating to the wider landscape setting, loss of the orchard, and wildlife for the reasons set out above. This has resulted in the applicant incurring unnecessary and wasted expense by having to address these matters at appeal. A partial award of costs is therefore justified.

Costs Order

27. 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 and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wychavon District Council shall pay to Mr G Parricelli and Lone Star Land, the costs of the appeal proceedings described in the heading of this decision, limited to those costs of the appeal incurred in relation to landscape setting and ecology; such costs to be assessed in the Senior Courts Costs Office if not agreed.
28. The applicant is now invited to submit to Wychavon 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.

A Veevers

INSPECTOR