



Costs Decision

Hearing held on 2 October 2024

Site visit made on 2 October 2024

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Costs application in relation to Appeal Ref: APP/J1860/W/24/3345062 Land at Furrow Close, Holy Green, Upton Upon Severn, Worcestershire, WR8 0RT

- 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 Rupert Parkin of Hamelin Partnerships Limited for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for the construction of 25 dwellings (100% affordable). This includes a mix of one, two, three and four bedroom properties and the construction of a new internal road, parking, SUDS infrastructure, and Green Infrastructure (including public open space).
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Decision

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

Preliminary Matter

2. It was agreed at the event that the Council could submit its response to the applicant's cost claim after the hearing had closed, with a deadline given of no later than the close of business on Friday 4 October 2024. The applicant was extended the same courtesy for the submission of any final comments, with a deadline given of close of business on Monday 7 October 2024. Both parties made their respective submissions in advance of the above deadlines.

The submissions for Mr Rupert Parkin of Hamelin Partnerships Limited (the applicant)

3. The costs application was submitted in writing a day before the event on Tuesday 1 October 2024. The applicant considers the following with regard to reasons for refusal (RfR) on the Council's decision notice. Regarding RfR no.1, the applicant considers a failure to determine similar cases in a consistent manner. Whilst the Council has refused permission for the proposed development, and defend its position at appeal, after having issued permission for the adjacent Furrow Close development that is similar in design terms, without at any stage articulating a single difference between the two. There is a vague, generalised and inaccurate assertion about the proposal's impact, unsupported by any objective analysis. A failure to identify any solid, defensible basis with design evidence, which the design of the proposed development is said to be so inadequate as to result in conflict with the Development Plan, with an incorrect interpretation of Development Plan policy to justify its position.

4. RfR no.2 is similarly considered unreasonable with vague, generalised and inaccurate assertions about the proposal's impact, which is unsupported by any objective analysis. Members did not have before them any cogent landscape and character evidence; the commentary provided by the Council's Tree and Landscape Officer (the TLO) was outside of their expertise. The Council's Statement of Case (SoC) does not offer any concrete detail as to why the proposed development is unacceptable in either landscape character or appearance. The Council has not provided any evidence to support its landscape case. It remains, the only landscape evidence before the Inspector is the Landscape Visual Impact Assessment (LVIA) completed by the Appellant, and the Hearing Statement of Ms Illman, both accompanied by various viewpoints and appendices, which conclude that the impact will not result in policy conflict. There is no evidence to the contrary advanced by the Council, which amounts to unreasonable behaviour.
5. As per RfR no.1, RfR no.3 has not been decided in a consistent manner to similar cases. No differences in terms of sustainability have been identified between the proposed development and the adjacent development on Furrow Close, which is material. There is no transport evidence to support the Council's position and is unsupported. There are contradictions contained in the Council's SoC and Statement of Common Ground (SoCG), which sets out agreement between the parties that that Holly Green "is suited to accommodate market and affordable housing needs". There is also an incorrect interpretation of Development Plan policy to justify its position.
6. In formulating RfR no.4, the Council overruled its own expert consultee, whom identified a need for affordable housing in the local area and supported the housing mix and tenure proposed, with no evidence to the contrary. No new evidence has been provided by the Council in light of the decision of Members to refuse the scheme contrary to the Officer recommendation for approval. As such, the Council's position is unsupported. The Council's Housing Team considered that they were able to identify a need for 67no. homes in Ripple and surrounding parishes. Yet, despite using the same data in its SoC, the Council now purport to identify a need of just 7no. homes, which is unevidenced, unsupported, and thoroughly unreasonable. Whilst there was particular reference to housing mix in RfR no.4, the Council has sought a wider challenge to the rural exceptions policy, none of which are concerned with the question of housing mix. This does not relate to RfR no.4 and constitutes an unreasonable approach to defending the appeal.
7. There was no evidence before the Council to demonstrate that the appeal site comprised best and most versatile agricultural land (BMV land). The Council seeks to defend its position by noting that it "could" have been BMV land. The Council failed to identify its own error for some 4no. months, where the applicant incurred expense, despite the site being under the 2ha threshold as set out in its own policy.

The response by Malvern Hills District Council

8. The response was made in writing and submitted on Thursday 3 October 2024. The Council contends that it has not acted unreasonably in respect of its determination of the planning application. With regard to RfR no.1 it is of the view that the applicant's case attempts to condense the matter of design down to simply the integration with the character of the area and the layout, form

and function of the development.

9. With regard to RfR no.2 It is stated that the Council has submitted no substantive landscape evidence, such as its own viewpoint or landscape character analysis. The comments of the TLO are clearly documented within the Officer Report, submitted with the Questionnaire and reflected in the Council's SoC. The SoC clearly expands on the reason for refusal and analyses the surrounding landscape. Severe and substantial harm to the landscape character and visual amenity of the area was identified by the Council at the time of making its decision and this view was supported by the comments of the TLO.
10. The claim surrounding RfR no.3 that the Council has failed to determine similar cases in a consistent manner, referring in particular to the adjoining development at Furrow Close (15/00684/FUL). With regard to that development, the decision to grant permission was taken in context of a different Local Plan and an older version of the National Planning Policy Framework (the Framework), such that the Policy context is not the same. The Council's findings on locational sustainability have been well considered, evidenced (as per the SoC which identifies available services and facilities) and are based on current guidance and standards.
11. In respect of RfR no.4, whilst Housing Officers were happy to accept the 60/40% split in terms of the tenure, this was not the view of the decision makers at the Planning Committee. As per the Council's Adopted Affordable Housing Supplementary Planning Document, 2016 (the SPD) the view was that the development tenure should meet with the requirement of 80% Social Rented and 20% Intermediate Housing Products. Whilst the SPD is a guidance document, it is adopted and more recent than the Development Plan such that it can be afforded considerable weight. The Council considers that it had a sound basis on which to make the decision it did, having regard to the affordable housing needs for the area. The SoC does not attempt to expand on the reason for refusal, but simply provide context to the Council's decision making process.
12. With regard to RfR no.5 surrounding BMV land, at the time of determining the planning application the land comprising the site was known to be Grade 3, so could have been BMV land. The knowledge that the land comprising the site is Grade 3b has only been established by the Agricultural Land Classification Report, dated May 2024 (ALCR), submitted with the appellant's statement of case and this information was not available at the time the decision was taken. Whilst picked up by the Council after producing its SoC through the production of the SoCG, this is a legitimate part of the appeal proceedings and the retraction of RfR no.5, following the submission of the ALCR has not resulted in a loss of any time, resource or money for the appellant.

Reasons

13. 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. These may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal. A successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in

unnecessary or wasted expense and parties in the appeal process are normally expected to meet their own expenses.

14. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples 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, amongst other things.
15. I recognise that 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. Whilst the Council's RfRs on its decision notice are complete, precise, specific and in most cases relevant to the application, I have found issues surrounding the RfRs.
16. I accept that matters of design are subjective, but whilst the Council refers to "a wealth of older properties with traditional detailing, as well as some well-designed modern developments" no examples are given. Furthermore, when asked at the event to expand on its comments where the proposed design was considered "bland" and "not present the "high quality" that is required by Policy SWDP21" in its SoC, there was nothing of substance added verbally. I note that the Council in its response to this application now considers the existing development at Furrow Close adjacent to the appeal site to be "higher quality" than the appeal scheme, but this view was not as clearly expressed at the event, or in its submissions. Additionally, in the response to this application, the Council refer to para 7.2.6 of the Officer Report stating that Members acted on the objections received. However, within the same paragraph it also states "Officers understand that concern but it is clear that the design as proposed is not significantly different to those properties already constructed on Furrow Close and the Beeches".
17. The Council is of the view that the existing development at Furrow Close was subject to different local policies and an earlier version of the Framework. However, the Officer Report to Planning Committee for the proposed development states that planning application (15/00684/FUL) for 33 dwellings was approved on 25 May 2016, approximately 3 months after the current Development Plan was adopted. Additionally, the first version of the Framework advocated high quality design in new development, similar to the latest version. Consequently, I find a lack of consistency in the determination of the appeal scheme with regard to design and RfR no.1, when compared against the existing development adjacent to the site.
18. Again, like design there is some subjectivity surrounding RfR no.2 and landscape character. The applicant provided a LVIA with the planning application, supported by various viewpoints and appendices. In support of their appeal, the applicant has also brought in a landscape specialist. Whilst noting the comments of the TLO and their objection, I find nothing within the Council's submission that clearly refutes the findings of the LVIA. Additionally, the Council has not supplied any further evidence to the contrary at appeal that

would advance an alternative argument to that put forward by the applicant. Consequently, I consider RfR no.2 has not been adequately substantiated.

19. It will be seen from my Decision that I do not agree with the Council with regard to RfR no. 3, as I consider that the proposed development is in a suitable location with particular regard to access to local services/facilities. At the event additional information was provided by the applicant surrounding local bus services, which was not disputed. Furthermore, the journey to Upton upon Severn along the A1404 was discussed. From my own site visit I established the journey to Upton upon Severn was one that could be undertaken on foot or by bicycle, without experiencing any extreme topography or conditions prejudicial to highway or pedestrian safety, albeit I recognised the entire distance does not benefit from street lighting.
20. Additionally, in its submission the Council refers to distances to bus stops in the Worcestershire County Council Streetscapes Design Guide, 2022 (the Design Guide) to support its position in relation to RfR no.3. However, in the same document, other distances are referenced in 'Principles of New Development', that demonstrate Upton upon Severn is within walking and cycling distances when travelling from the appeal site. This is a considerable oversight by the Council. Taking all of this together, and the oversight by the Council with regard to the Design Guide, there is an obvious lack of evidence to support its position. Furthermore, when considering the existing development on Furrow Close, there is a lack of consistency in the determination of the appeal with regards to this matter. I also find on this matter a lack of clarity by the Council in its interpretation of Policy SWDP 2 of the South Worcestershire Development Plan, 2016.
21. In relation to RfR no.4, there was clear evidence in support of the proposed development from the Council's Housing Team, which the Council in its submission acknowledges. However, in its submission, the Council appears to reach its own findings to support its position, contrary to that advanced by its own Housing Team. Additionally, in the Council's submission there appeared to be confusion surrounding the sites highlighted in Policy SWDP 58 and the number of affordable units that could potentially come forward. However, even taking the figures advanced by the Council, there would still be a shortfall of affordable dwellings, when compared against the proven need.
22. Given that the Housing Team has identified a proven and unmet local need for affordable housing, with no other suitable and available sites within the development boundary of the settlement and that a counterpart planning obligation has been submitted to secure the affordable housing for local people, the proposed development clearly meets the requirements of Policy SWDP 16. Whilst noting the dispute surrounding housing mix, it was established at the event that the concern from the Council on this issue relates to the tenure requirements.
23. The SPD clearly sets out: "the requirement sought between the tenures will be 80% social rent and/or affordable rent and 20% intermediate products". However, the SPD then goes on to advise: "This will be the starting point for negotiation". It is abundantly clear from the evidence that the appellant and the Housing Team held discussions in arriving at the proposed tenure mix. This aspect appears to have been given little acknowledgement by the Council in its decision to refuse the proposed development and in its submission at appeal.

24. I cannot find any evidence in the Officer Report to Planning Committee, to suggest that the site comprises BMV land. Even if the Council did have concerns surrounding BMV land, it was evident at the time of its determination that the site was below the 2ha threshold as set out in Policy SWDP 13H. Nonetheless, as part of the applicant's appeal submission an ALCR was provided. This report clearly identifies the land comprising the site as Grade 3b, which is not BMV land. This report was available to the Council before it submitted its SoC, yet the Council still referred to land comprising the site as Grade 3 BMV land. In arriving at this position, the Council state at 2.4 of its SoC "The land is understood to be Grade 3 agricultural land". It does not state how this conclusion has been reached or on what evidence, contrary to that provided by the applicant. The Council later agreed that the site did not comprise BMV land in the SoCG dated 19 August 2024.
25. Overall, unreasonable behaviour has been demonstrated, which has prevented and delayed development that should clearly have been permitted, having regard to its accordance with the development plan. In each RfR there has been a failure to produce evidence to adequately substantiate each reason for refusal on appeal and evidence of vague, generalised and inaccurate assertions about the proposal's impact, which have been unsupported by any objective analysis. There is also evidence of the Council not determining similar cases in a consistent manner, with regard to RfR no's 1, 2 and 3. Furthermore, and with particular regard to RfR no's 4 and 5 there is also inaccurate information that has been provided by the Council to support its position. Finally, within RfR no.5 there is evidence of the Council not reviewing its case promptly following the lodging of the appeal, as part of sensible on-going case management.

Conclusion

26. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

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 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Malvern Hills District Council shall pay to Mr Rupert Parkin of Hamelin Partnerships 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.

The applicant is now invited to submit to Malvern Hills 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.

W Johnson

INSPECTOR