



Costs Decision

Hearing held on 26 September 2024

Site visit made on 30 September 2024

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 December 2024

Phase 4C Meon Vale, Wellington Avenue Nr. Long Marston, Stratford on Avon, CV37 8WD Costs application in relation to Appeal Ref: APP/J3720/W/24/3340417

- 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 Crest Nicholson Operations Ltd for a full award of costs against Stratford-on-Avon District Council.
- The appeal was against the refusal to grant approval to details required by a condition of an outline planning permission for up to up to 550 dwellings Use Class C3/C2 (Use Class C2 not to exceed 85 dwellings); a one-form entry Primary School (Use Class D1) with associated open space; a leisure village comprising up to 300 units of self-catering lodges and holiday homes (Use Classes C1/C3), ancillary facilities building(s) to incorporate reception and administration facilities (Use Class B1a), entertainment areas (Use Classes D1/D2) and retail uses (Use Classes A1/A2/A5), a touring caravan and camping site with up to 80 pitches and ancillary facilities building: the creation of landscaping, open space and ecological habitats; new accesses for vehicles, pedestrians and cycles; new internal highways; car and cycle parking; sustainable drainage measures; including storage ponds for surface water attenuation; provision of utilities infrastructure; earth bunds and all ancillary enabling works including demolition of buildings and structure and ground remediation.

Decision

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

The submissions for Crest Nicholson Operations Ltd

2. The costs application was submitted in writing and augmented orally at the hearing. Reserved matters (RM) should clearly have been granted having regard to the development plan, national policy and other material considerations. The Council's case for resisting approval rely on vague, generalised or inaccurate assertions about the proposal's impacts and its stance contradicts that taken in other phases of development.
3. There is a legally mistaken view that the quantum of development, already approved, should be substantially lowered so as to deliver a less dense form of development. If full costs are not awarded, in the alternative, the applicant seeks a partial award of costs in respect of objections based on market housing (MH) mix, integration of affordable housing (AH), car parking, drainage, and impact on the Local Wildlife Site (LWS).
4. The Council's second reason for refusal (RfR2) details conflict of MH mix with local plan policy but housing mix is not a RM. Housing mix arguments are irrelevant because it does not constitute a RM within this term's statutory

meaning¹ and it has not been reserved for subsequent approval by express condition on the outline planning permission (OPP). If the Council wanted to control MH mix, an OPP condition should have been imposed and no such condition has been imposed. The Council has not grappled with this legal situation and unreasonably raised a new argument about whether house sizes represent high quality design referring to a local plan design policy. The agreed Statement of Common Ground (SoCG) recognises housing mix is not a matter for determination at the RM stage. Therefore, this RM application cannot legally be refused on the basis that the proposed housing mix is contrary to policy.

5. The Council's RfR3 cites conflict of the scheme, particularly car parking requirements with local plan AH policy which require site dispersal to avoid clustering, and physical and visual integration, so that AH units are indistinguishable from MH units. The clear impression is that there has been a failure to adequately 'pepper pot' the AH. Time and effort to address these issues, including an Urban Design Review, has been undertaken and the Council's hearing statement now states no dispute with clustering and external appearance of AH units.
6. However, the Council's hearing statement now details an argument that community cohesion and integration is adversely affected by MH housing mix which is unrelated to the matters raised by RfR3. In any event, it is irrelevant because house mix cannot be controlled through RM. In terms of parking arrangements, the applicant has highlighted that the differences between AH and MH, are either non-existent or marginal, and have been accepted in other phases and certainly do not warrant a RfR.
7. RfR1 asserts car parking is insufficient due to dwelling studies, being attractive as bedrooms, generating greater parking requirements. However, the use of studies is a matter for the developer and customers. Local plan policy supports study provision to enable working from home, with no suggestion that studies will be treated as bedrooms to calculate parking. In any case, disputed housing types have two parking spaces, and the parking standards are not mandatory. No evidence has been provided to demonstrate any unacceptable highway safety or congestion issues. The Council's hearing statement raises lack of visitor parking, but the highway authority has raised no objections based on highway safety or congestion, and this requirement has not been applied to other phases of development.
8. RfR1 alleges drainage issues but no further details are provided in the Council's hearing statement. Raising issues that are capable of being addressed via a condition constitute unreasonable behaviour. The Drainage Officer raised no objections, with agreement that all drainage matters could be addressed by condition, and the agreed SoCG confirms no objections. The outline planning permission (OPP) confirmed the location of the drainage within the LWS which inevitably means trees would be lost. The Council suggests that other types of drainage would remove the necessity for the size of the drainage facility, but this would only lead to developable space for housing being unnecessarily wasted.
9. RfR1 cites unjustifiable impacts on the LWS but the planning officer acknowledges that OPP authorises engineering works and the removal of trees

¹ Town and Country Planning (Development Management Procedure) Order (DMPO) 2015.

within this area for the drainage. The subsequent LWS designation cannot undo the OPP. The Council's ecologist raised no objection to the scheme and no evidence has been produced to show unacceptable ecological impacts. It has also failed to provide an explanation as to why any impacts would not be inevitable consequences of what has been approved at the OPP stage. The matter has taken up unnecessary time and expense.

10. RfR1 cites unjustifiable impacts on landscape but none of the matters raised by the Council can reasonably justify a refusal to approve the RM. The eastern boundary hedge is recently planted with little or no ecological value and can be replaced. The OPP does not refer to it with no requirement for retained hedges or trees. Within the LWS, loss of trees is inevitable because this is where the drainage is shown on the OPP. For additional street trees, the applicant put forward a design with street trees but this was rejected due to refuse vehicle operation constraints and their scheme deletion was agreed on the basis of a eastern boundary hedge treatment. Given this, the Council cannot now object to the lack of street trees.
11. If the Inspector accepts the above points, or even some of them, nothing remains of the Council's case that could possibly justify RM refusal. The Council's raises non-points in its desire to see a less dense form of development, with considerably more landscaping, trees, and ecological features related to drainage. It fails to appreciate that the OPP requires a specified quantum of development to be delivered. If the Council wants to see a much looser form of development, it must demonstrate how that can be delivered given the approved quantum of development at OPP stage.
12. The Council hearing statement, paragraph 5.44, suggests that the scheme design and layout should demonstrate how the site can adequately accommodate the quantum of development. It details that the OPP is not detailed and is not a guarantee that 110 houses can fit acceptably into the site. As a matter of law, the opposite is true, by granting the OPP for 110 dwellings, the Council accepted that the site can acceptably accommodate this quantum of housing and provide an acceptable layout and design.
13. At OPP stage, the Council must seek information about the quantum of development, which of necessity means that it must consider whether the quantum applied for is acceptable. The DMPO Article 5(3) (applications for outline planning permission) requires as a minimum, applications should always include information on the amount of development for each use. Planning Policy Guidance (PPG)² states that information about the proposed use or uses, and the amount of development proposed for each use, is necessary for the consideration of an application for outline planning permission.
14. Paragraph 5.45 of the Council's hearing statement is looking for the applicant to bring forward a much lower quantum of development. Its shopping list set out in the same paragraph cannot be delivered without significantly reducing the quantum of development. At no point has the Council explained how it can have everything it now wants, and how the developer can deliver the 110 houses.

² PPG para. 034 Ref ID 14-034-20140306.

The response by Stratford-On-Avon-District Council

15. The response was made orally at the hearing and confirmed in writing after the event. The costs application is a re-run of the applicant's arguments on the main appeal and contains numerous legal points by the applicant's barrister which are not for a cost application. The applicant does not agree with the Council decision, which is why they have appealed, and this is not a reason for a costs award. The applicant has to show unreasonable behaviour by the Council, either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
16. The Council has not raised vague, generalised or inaccurate assertions about the proposals. The application was refused in accordance with the development plan and national policy, and it has substantiated each RfR at appeal with reasonable arguments. None of the matters within the RfRs could have been conditioned and the Council has dealt with the case law and appeal decisions raised by the applicant. The Council has not behaved unreasonably as defined in the PPG.
17. There was an objection from the Local Lead Flood Authority (LLFA) when the application was determined as referenced in the Council's appeal statement. The applicant continued to engage with the LLFA directly after this point and its hearing statement includes further drainage proposals and refers to communication with the LLFA. This represents an evolution of the scheme, post-determination. The Planning appeals: procedural guide, advises that appeals should be determined on the same basis as the original and should not be used to evolve a scheme.
18. The highways authority submitted a response in December 2023 which raised a concern about the adequacy of parking where they stated on street parking could impede the flow of traffic within the site. This could especially be an issue when refuse vehicles are travelling through the site. Parking levels should be to a suitable level and parking and garage spaces (if being used for parking) should be a suitable dimension to ensure they meet the needs of residents. This will mean residents will use their allocated parking spaces and not potentially park on-street. The applicant should consider parking levels and the size of parking spaces and garages on future developments and not allow what has been approved on this application to set a precedence on future developments within Warwickshire.
19. The Council has worked proactively with the applicant and provided sufficient opportunity to resolve the numerous technical queries. The application was received in late July 2021 and during its determination received 22 amendments with multiple plans and documents, which were sent out in 12 amendments. The Council has considered this application consistently with the other phases, 4A, 4B, 4D and 4DE, taking into account the specific characteristics of the sites, and changes to local policy including the adoption of Development Requirements Supplementary Planning Document towards the end of the period.
20. The Inspector's pre-hearing directed that a list of participants is provided. The Council was not notified of the applicant's participants and was not notified of the legal representation. As the hearing is a structured discussion led by the

Inspector, the attendance of legal representation is not necessary and an unnecessary expense. The applicant submitted a lengthy costs application in the afternoon of the day before the hearing. Given this, the Council did not have sufficient time to consider this application before the commencement of the hearing. The applicant has used the barrister to draft the costs application in which he has made further legal arguments and appended appeal decisions. Adding to their case in this manner is contrary to the advice in the planning appeals: procedural guide and outside the time frame for the submission of information set by the Planning Inspectorate.

21. The LPA would therefore respectfully ask that the appellant's application for an award of costs is refused.

Reasons

22. 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.
23. At the hearing, time was given to the Council to respond to the points in the cost application which involved liaison with its lawyers. This resulted in the written rebuttal submission read out at the hearing which was later submitted. The applicant's cost application has been assessed on guidance within the PPG and not the merits of the proposal. There is no procedure stopping the applicant employing legal representation and, in this appeal, there were legal issues around what the OPP permitted and what constituted RMs.
24. The PPG sets out examples of behaviour that may give rise to a substantive award against a Council; preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy, and 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; acting contrary to, or not following, well-established case law; and refusing to approve reserved matters when objections relate to issues that should already have been considered at the OPP stage
25. The Council evidence put forward that housing mix has been dealt with similarly in other phases of Meon Vale and at a late stage, the applicant indicated housing mix could not be considered under this RM stage. However, this cannot override the statutory provisions of the DMPO and by definition, housing mix does not come within the scope of RMs under the DMPO. Housing mix influences the number of housing units and should have been considered in the OPP, that accepted the principle of residential development for up to 110 dwellings as set out in the OPP. The Council's appeal statement and hearing evidence reiterated housing mix arguments contrary to well-established law and consequently, the Council's behaviour was unreasonable and has resulted in the applicant incurring wasted expense in addressing RfR2.
26. The RfR3 stated that AH and MH has not been sufficiently detailed or integrated, particularly in relation to parking space treatments for terraced rows. In its appeal statement and at the hearing, the Council detailed parking treatment differences between the two tenures. It cited examples of different

- treatments and whilst I disagree overall, see paragraph 14 of the main decision, an element of subjective judgement is required and as such, unreasonable behaviour has not been demonstrated in dealing with parking treatment as a factor affecting AH and MH integration.
27. However, there is ambiguity in this RfR in that it is not clear what other aspects of the scheme, apart from the car parking, result in the AH and MH not been sufficiently detailed or integrated. The applicant has had to spent time and expense to understand this before the hearing. In its appeal statement, the Council indicated that the clustering of AH and their external building design/materials is not in dispute. The Council advanced an argument about the impact of the scheme of community cohesion and integration, based on larger MH units at the expense of smaller MH units, and the resultant pressure that this put on the AH. No evidence substantiated this argument and the harm arising, and importantly, the issue related to housing mix not covered by RMs. For all these reasons, the Council has shown unreasonable behaviour resulting in unnecessary expense in defending this RfR on these matters.
 28. RfR1 focused on the impact of the proposal on the character and appearance of the area. The Council's appeal statement detailed harm from inadequate car parking provision, landscaping, drainage proposals within the Public Open Space and Local Wildlife Site and legibility in urban design terms, in comparison with other phases of development. However, the OPP has secured a quantum of residential development, up to 110 dwellings, on the appeal site as agreed in the SoCG. As such, the Council must have been satisfied that 110 dwellings could be acceptably accommodated on the site and in defending its RfR, it has failed to have regard to this planning overview.
 29. In this regard, to satisfy the Council objections, any scheme would inevitably have greater undeveloped areas significantly reducing the permitted quantum of housing development. In this regard, there would be need for significantly greater space for increased parking, both for residents and visitors, landscaping, drainage and retention of a wildlife site without attenuation pond. The comments of the LLFA, highways authority and negotiations undertaken do not address this outcome of the Council's objections. Such unreasonable behaviour has resulted in unnecessary and unreasonable expense for the applicant.
 30. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of preparing and presenting evidence to address the RfRs, as indicated, apart from the parking arrangements for affordable housing compared to the market housing, and on this basis, a partial award of costs is therefore warranted.

Costs Order

31. 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 Stratford-on-District Council shall pay to Crest Nicholson Operations Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing and presenting evidence for this appeal, as described above in respect of the RfRs, such costs to be assessed in the Senior Courts Costs Office if not agreed.

32. The applicant is now invited to submit to Stratford-on-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.

Jonathon Parsons

INSPECTOR