



Costs Decision

Site visit made on 6 November 2024

by C Carpenter BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2024

**Costs application in relation to Appeal Ref: APP/W2845/W/24/3343140
Land east of The Meadows, Old Stratford (Grid Ref Easting: 477964,
Grid Ref Northing: 240789)**

- 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 Jacob Taylor (RO Land) for a full award of costs against West Northamptonshire Council.
 - The appeal was against the refusal of planning permission for affordable residential development comprising 32 dwellings including public open space, localised land remodelling, flood storage, structural planting and access.
-

Decision

1. The application for an award of costs is 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 applicant considers the Council has exhibited behaviour that is both procedural and substantive in nature. The Council has not provided a response.
4. I shall address each of the applicant's points in turn.
5. Firstly, the applicant argues comments from the landscape officer (LO) were published after the Council took its decision – about a year after they were provided - and, even when they were published, they were not brought to his attention. He further contends members of the Planning Committee (PC) had not seen these comments when they made their decision, yet the Council has relied on them in the appeal.
6. On the evidence before me, the Council's LO provided comments on application Ref WNS/2023/0011/MAF on 2 June 2023. The applicant submitted an updated LVIA (Ref 9023.LVIA.003) during the application but this does not refer to the LO's comments. Neither the summary of comments received on the application nor the section on landscape impact in the Council's PC Report refers to the LO's comments. Nor do they appear to have been discussed by the PC. Therefore, on the balance of probability and in the absence of objective evidence to the contrary, I find it likely the LO's comments were not published until after the appeal was lodged. This was unreasonable behaviour on the part of the Council, resulting in additional costs to the applicant who had to commission further professional landscape advice to support the appeal.

7. Secondly, the applicant contends the Council changed its position on First Homes during the appeal, which led to lengthy discussions during drafting of the s106 agreement, resulting in additional legal costs.
8. The Council's PC Report does not raise the First Homes option or mention the First Homes Written Ministerial Statement of 24 May 2021 (WMS). There does not appear to have been mention of First Homes as an option during the PC meeting. The Council's appeal statement introduces reference to the WMS and associated PPG on First Homes, but nonetheless gives greater weight to the provisions of SNLP Policy LH3. Further, the Council states requiring 25 per cent First Homes "would have been unreasonable change in an advanced stage of progressing the site". The Council adds its preference is for the affordable housing mix as originally proposed, and the alternative obligation is provided to avoid the appeal being dismissed solely on this basis, in the event I was minded to give greater weight to the WMS.
9. Notwithstanding the Council's intention in providing an alternative obligation, raising the matter of First Homes for the first time at the appeal stage is unreasonable. This is because changing the tenure mix to include First Homes could have implications for scheme viability and deliverability, and even the Council does not find such a late variation would be justified. This unreasonable behaviour has caused the applicant to incur additional legal costs to be able to complete the legal agreement in a form the Council was prepared to accept.
10. Thirdly, the applicant states the Council invited the Lead Local Flood Authority (LLFA) to submit further comments in July 2024, which led the applicant to incur additional costs to review them.
11. On the evidence before me, the Council did invite comments from the LLFA in July 2024, after the appeal was lodged, even though LLFA comments had already been provided prior to determination of the application. The rationale for seeking the further comments is not clear, and I find it unreasonably caused the applicant to incur additional costs for further professional advice at the appeal stage.
12. Fourthly, the applicant argues the Council's appeal statement includes statements that are incorrect and identifies policy conflicts that had not previously been raised.
13. The Council's appeal statement includes an assertion that the appeal site does not adjoin a settlement, which is incorrect and contradicts other parts of its case. It also refers to conflict with SNLP Policies LH4 and LH5, which were not referenced in the reason for refusal, and I found in my appeal decision are not directly relevant to the appeal scheme. Nevertheless, the anomalies are few and more likely to be a product of human error than a deliberate change of position. It is also unlikely the applicant required a significant amount of time to address these points in his statement. I therefore find unreasonable behaviour has not occurred in this regard.
14. Fifthly, the applicant contends the principles of Probity in Planning¹ were not followed when the decision was made because: members of the PC did not raise concerns about the officer recommendation in advance of the meeting; the mover's motion was unclear and left to officer interpretation; there was no

¹ Local Government Association 2019

adjournment to discuss and agree reasons for refusal; no deferment was sought to test the reason for refusal; and officers were not given the opportunity to explain the implications of the contrary decision.

15. I have considered the transcript of the PC meeting submitted with the appeal. Although there is little to indicate the PC had raised its concerns with the officers prior to the meeting, the transcript does not demonstrate definitively that this did not happen. There does not appear to have been an adjournment to discuss the reason for refusal and there was no deferral. Nevertheless, the implications of a contrary decision were explained by officers and discussed by PC members. An officer also stated he had come prepared for a possible overturn and read out a possible reason to PC members. Moreover, the reason for refusal on the decision notice is broadly similar in substance and wording to that discussed with officers during the meeting. I therefore find no unreasonable behaviour has occurred in this regard.
16. Finally, the applicant contends PC members did not understand or correctly consider the requirements of key planning policies relevant to the decision, particularly Policy LH3 of the South Northamptonshire Part 2 Local Plan 2020 (SNLP); and they ignored advice from officers about affordable housing need and the benefits of the proposal.
17. Under section 38(6) of the Planning and Compulsory Purchase Act 2004, decisions must be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan Policies and other material considerations relevant to the proposal were set out in the PC Report. As decision-maker, the PC was not bound to accept the recommendation of officers, so long as it justified its decision and showed it to be reasonable. The reasons for the PC's decision are recorded in its reason for refusal, with reference to relevant development plan Policies.
18. On the transcript evidence before me, officers advised PC members during the meeting about relevant development plan Policies and other material considerations. They explained the position on affordable housing need at some length and addressed the weight to be afforded to provision of a wholly affordable housing scheme. Notwithstanding the differing views expressed by PC members about SNLP Policy LH3, the reason for refusal did not ultimately identify a conflict with this Policy. The question of compliance with the development plan read as a whole is a matter of planning judgement. When applying their judgement to this matter, the PC reached a different conclusion to officers, which they were entitled to do. My judgement in my decision was different to that of the PC, but despite this I do not find the PC acted unreasonably.
19. For the reasons given above, unreasonable behaviour that is procedural in nature resulting in unnecessary or wasted expense has occurred in respect of late publication of the LO's comments, the alternative First Homes planning obligation, and inviting further LLFA comments at appeal stage, and a partial award of costs is therefore warranted.

Costs Order

20. 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 West

Northamptonshire Council shall pay to Mr Jacob Taylor (RO Land), the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in contesting late publication of the LO's comments, the alternative First Homes planning obligation, and inviting further LLFA comments at appeal stage; such costs to be assessed in the Senior Courts Costs Office if not agreed.

21. The applicant is now invited to submit to West Northamptonshire 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.

C Carpenter

INSPECTOR