



---

## Costs Decision

Inquiry held on 3 -6, 10,11 December 2024

Site visit made on 5 and 9 December 2024

by **Helen Hockenhull BA (Hons) B.PI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29<sup>th</sup> January 2025

---

**Costs application in relation to Appeal Ref: APP/P3420/W/24/3350245**

**Land north of Mucklestone Wood Lane / east of Rock Lane, Loggerheads, Market Drayton, Staffordshire, TF9 4RJ**

---

### Decision

1. The application for an award of costs is refused.

### Procedural matters

2. The application for costs was made in writing before the end of the Inquiry. Due to time constraints, I agreed for the Council's response and the appellant's final comments to be provided in writing in accordance with an agreed timetable. The Inquiry was then formally closed in writing.

### Submission by applicant

3. A full award of costs is sought on substantive grounds. It is submitted that the Council has prevented or delayed development which should clearly be permitted having regard to the development plan. The proposal received a positive Officer recommendation, but the Committee decided to refuse permission. The fact that the Council withdrew the first reason for refusal is evidence of unreasonable behaviour.
4. The applicant brings my attention to four examples of unreasonable behaviour. Firstly, that the Council failed to produce evidence to substantiate each reason for refusal, particularly in relation to the planning balance. Secondly, that vague generalised or inaccurate assertions about the proposals impact unsupported by objective analysis has been made in relation to the finding of substantial harm to the Grade II listed building. Thirdly, that the Council acted contrary to, or not following, well established case law, namely the Palmer case<sup>1</sup>, in relation to the assessment of heritage harm and fourthly, that the Council has not determined similar cases in a consistent manner, with reference to the emerging Local Plan allocation of the site.

### Response by the Council

5. The Council considers it has not acted unreasonably and has not caused the applicant any unnecessary or wasted expense. It is submitted that it is incorrect to state that the appellant's evidence to the Inquiry on the level of harm in respect to heritage assets, landscape, visual impact and Best and Most Versatile Agricultural

---

<sup>1</sup> Palmer v Herefordshire Council & Another [2016] EWCA Civ 101

Land (BMVAL) was exactly the same as was before the Planning Committee. In terms of the heritage balance the applicant simply restates its position on heritage harm. The criticism of the Council's planning witness's view with regard to heritage harm is unwarranted .

6. In relation to consistent decision making, the examples in Planning Practice Guidance (PPG) of 'determining similar cases in a consistent manner' clearly do not relate to an emerging local plan. The evidence base for the emerging plan assesses the appeal site differently. The applicant's point about the compliance with the allocation policy goes nowhere, as only limited weight is attached to the emerging plan. It is wrong to submit that permission should have been granted by the Council's Planning Committee because of the alleged compliance with the proposed site allocation policy. This point also fails because at the time the Council made their decision the emerging plan was at an earlier stage.
7. The applicant's allegations primarily concern evidence and developments that post-date the Committee's decision and that could not have impacted on its decision to refuse planning permission. Even if the Council acted unreasonably in the evidence given at the Inquiry, the application would have been contested in any event by the Rule 6 Party. The applicant does not explain the assumption that the Inquiry would not have taken place but for the unreasonable behaviour.

## Reasons

8. 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.
9. It is acknowledged that the appeal scheme was refused contrary to Officer recommendation and that the Council decided to withdraw the first reason for refusal concerning accessibility. Rather than being an example of unreasonable behaviour, I would argue this was a reasonable position to take to try to reduce the Inquiry sitting time and ensure an efficient process.
10. It is accepted that the planning balance adopted by the Council's planning witness was different to that of the planning officers in their report. The Council's planning balance turns on the assessment of the impacts and the level of harm to the historic asset. The Committee members view was different to that of Officers. Therefore, a different planning balance was to be expected as the witness was representing the views of the Planning Committee.
11. The Council took the view that the less than substantial harm to the heritage asset was at a moderate level and that this should be attributed substantial weight in the planning balance, the highest level of weight. I agree with the applicant that this raises the question of what weight could then be given to harm to an asset of greater significance.
12. The applicant references the Palmer case and argues that the Council's position conflicts with this established case law. The judge in that case found that the desirability of avoiding harm to a high category heritage asset must be greater than that of avoiding a similar harm to a less important asset. This approach accords with the Framework in paragraph 212 which states that great weight should be

- given to an asset's conservation, (and the most important the asset the greater the weight should be).
13. Given the above, I find that the Council has failed to follow established caselaw, and that this is an example of unreasonable behaviour. The question then is whether this has resulted in the applicant incurring unnecessary or wasted expense in the appeal process.
  14. The matters discussed above, much of which emanate from oral evidence in cross examination, had no relevance to the Planning Committee's decision to refuse planning permission. The appellant would still have needed to appeal, and an Inquiry would have been held. There would therefore have been no additional cost implications for the applicant at the appeal as a result of this unreasonable behaviour.
  15. The Council make the point that even if they had acted unreasonably at the Inquiry, the appeal would still have been contested by the Rule 6 Party and the Inquiry would have taken place in any event. Even if there was unreasonable behaviour at the event itself, the Inquiry would have continued, and the applicant would have had to present their case. This would have no bearing on the costs incurred in the appeal process.
  16. The Council refused planning permission even though the site forms a draft allocation in the emerging Local Plan. The PPG states that not determining similar cases in a consistent manner could be an example of unreasonable behaviour. However, an emerging local plan is not a 'similar' case in the same way as another planning application or an appeal decision.
  17. Furthermore, the evidence base supporting the sites allocation in the emerging local plan, does not provide the same level of technical assessment as the appeal submission. Whilst Members had no expert evidence before them of any harm at the time of their decision, it was still open to them to refuse planning permission if they took a different view based on their local knowledge. It is also relevant that the emerging plan would have been at an earlier stage at the time that the Council made their decision. There were, and continue to be, objections to the allocation such that only limited weight could be given to it.
  18. It was therefore not unreasonable, that planning permission should be refused even though the site is allocated in the emerging plan. The Council have not prevented or delayed development which should clearly have been permitted. I acknowledge that the Council's planning witness accepted that at reserved matters stage, an appropriate scheme could be submitted. It is not unreasonable to take this view, depending on the nature of a subsequent submission.
  19. In summary, the decision of the Council does not result in inconsistency in decision making and does not constitute unreasonable behaviour in the terms of the PPG.

## **Conclusion**

20. Given the above, whilst I have found unreasonable behaviour in respect of part of the applicant's claim, I find that unnecessary or wasted expense in the appeal process, as described in the Guidance, has not been demonstrated.

*Helen Hockenfull*      INSPECTOR