



Costs Decision

Inquiry opened on 24 September 2024

Site visit made on 24 September 2024

by **David Prentis BA BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11th April 2025

Costs Application C in relation to Appeal Ref: APP/D0121/W/24/3343144 Land at Rectory Farm (North), Chescombe Road, Yatton BS49 4BZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by North Somerset Council for a full award of costs against Persimmon Homes Severn Valley. There is also an alternative application for a partial award of costs.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the development of up to 190no. homes (including 50% affordable homes) to include flats and semi-detached, detached and terraced houses with a maximum height of 3 storeys at an average density of no more than 20 dwellings per net acre, up to 500 sqm Class E floorspace, allotments, car parking, earthworks to facilitate sustainable drainage systems, orchards, open space comprising circa 70% of the gross area including children's play with a minimum of 1no. LEAP and 2no. LAPS, bio-diversity net gain of a minimum of 20% in habitat units and 40% in hedgerow units, and all other ancillary infrastructure and enabling works with means of access from Shiners Elms for consideration. All other matters (means of access from Chescombe Road, internal access, layout, appearance and landscaping) reserved for subsequent approval.
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Decision

1. The application for a full award of costs is refused.
2. The application for a partial award of costs is allowed in the terms set out below.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, 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.
4. The application and the response were made in writing.¹

The application for a full award

5. The application was made on substantive grounds. It was argued that the appeal was submitted in the knowledge that:

“...a similar proposal that complied with the LPA’s sustainable development strategy had been dismissed under the same national and local planning policy framework, having regard to the same bundle of benefits...”

¹ ID66 and ID70. The Council confirmed that it had no further comments on 7 March 2025 (ID72)

6. The point of this submission was that the appeal scheme, which conflicted with the spatial strategy, would have even less prospect of success. The “*similar*” proposal was an application for up to 75 dwellings at Lynchmead Farm, Weston-super-Mare.² However, there was no evidential basis for the assertion that the Lynchmead Farm appeal decision had, in fact, been dismissed having regard to the same bundle of benefits. Although the decision, and the High Court and Court of Appeal judgments that flowed from it, were discussed at the Inquiry, the Council did not suggest that the Lynchmead Farm appeal decision set a precedent that ought to be followed in this appeal. There was no analysis of the comparative benefits (or indeed the harms) before the Inquiry.
7. It was also argued that the appellant had, in effect, misdirected itself in relation to the flood risk sequential test. The point at issue was whether potentially reasonably available alternative sites should be discounted where they are controlled by, or are being promoted by, another party. For reasons set out in my appeal decision, I agree with the Council’s view that such sites should not be discounted. However, it does not follow that this was an appeal that should never have been made.
8. First, although I did not agree with the appellant’s arguments on this point, the appellant had an arguable case to make. Second, Costs Application C does not recognise that the appellant’s case was put in the alternative. The appellant argued that, even if the sequential test was not passed, the appeal should nevertheless be allowed on the balance of the planning merits. For reasons explained in my appeal decision, the approach to decision making in this case was informed by the High Court judgment in *Mead*.³ Thus, whether or not the appellant was right to rely on the evidence of Mr Jones (who dealt with options and promotion agreements) in the way it did, there was still an arguable case to make on the overall planning merits.
9. Furthermore, and in any event, as I have allowed the appeal it follows that a full award of costs based on the substance of the case would not be justified. I conclude that unreasonable behaviour in relation to the substance of the case has not been demonstrated.

The application for a partial award

10. The application alleged unreasonable behaviour on procedural grounds, relating to a report by Brookbanks dated September 2023 (the Brookbanks FRA)⁴. In my appeal decision I identify the three flood risk reports that were discussed at the Inquiry. The Brookbanks FRA was the second of those reports. It was not submitted to the Council as part of the application. Nevertheless, it was part of a sequence of documents dealing with the evolution of the scheme design and the assessment of flood risk. The Council first asked to see the Brookbanks FRA on 21 June 2024. A further request was made on 27 June 2024, stating that the document appeared to be fundamental to agreeing common ground on flood risk matters. Another request was made on 1 July 2024.
11. On 2 July 2024, the appellant wrote to the Council asking for all references to the Brookbanks FRA to be struck out, on the basis that it had not been submitted. Despite that, Mr Mirams (the appellant’s witness on flood risk) did refer to the Brookbanks FRA in his proof of evidence. The appellant did not actually produce

² CD 12 - APP/D0121/W/22/3313624

³ CD J1 – Mead Realisations Ltd v SoS LUHC [2024] EWHC 279 (Admin)

⁴ ID 28

- the Brookbanks FRA until the evening of Day 1 of the Inquiry, after the Council had referred to their failure to provide it in its opening statement.
12. In his proof of evidence Mr Mirams stated that the Brookbanks FRA was prepared to reply to comments raised by the Environment Agency (EA) and to better understand the impact of proposed ground raising on tidal flooding, including flood risk on adjoining land. In my appeal decision, I noted that appellant did not seek to rely on the Brookbanks FRA, which it regarded as having been overtaken by subsequent discussions with the EA and a Flood Risk Technical Note (Rappor, January 2024). Nevertheless, I found that it was a material consideration in that it provided information about how the flood risk modelling and mitigation had evolved during the course of the project. Moreover, the Brookbanks FRA provided information about the undefended scenario which needed to be taken into account.
 13. At the Inquiry, and in its response to this application for costs, the appellant sought to downplay the importance of the Brookbanks FRA, describing it as of no more than historic importance. I disagree. I consider that the Brookbanks FRA was an important material consideration which the Inquiry needed to take into account.
 14. One of the examples of unreasonable behaviour which may result in an award of costs given in PPG is only supplying relevant information at appeal when it was requested, but not provided, at application stage. In this case, the Council's request was made after the application stage but in advance of the date for submission of proofs of evidence and statements of common ground. In my view that was a reasonable time to make such a request.
 15. The appellant argues that the Brookbanks FRA was provided well before the Inquiry resumed, which was on 7 January 2025. However, that misses the point that the document should have been provided when it was first asked for. The Council was denied the opportunity to address the Brookbanks FRA in its proofs of evidence.
 16. I consider that the appellant's failure to provide the Brookbanks FRA until after the Inquiry had opened amounted to unreasonable behaviour. This resulted in the Council incurring unnecessary expense in assessing and commenting on what was, in effect, new evidence during the course of the Inquiry. In addition, as discussed in my decision on Costs Application B, a significant proportion of Day 7 was taken up by procedural arguments about flood risk and what was, or was not, new evidence.
 17. The picture was complicated by the need for the Council to engage a consultant (Mr Cage) to give the Council's evidence on flood risk.⁵ However, that does not alter the fact that the Brookbanks FRA should have been provided in advance of the Inquiry. The appellant's failure to disclose the Brookbanks FRA added significantly to the time taken up with procedural matters on Day 7. Moreover, in order to allow the rest of the evidence to be heard, it was necessary for me to institute a written procedure to enable the Council and the appellant to provide evidence in relation to the speed of inundation.
 18. The basis for the partial award is those additional costs incurred due to the submission of the document during the Inquiry. I consider that the appellant should, acting reasonably, have provided the document by 2 July 2024 at the latest. If that

⁵ Inspector's note – this was due to the Council's original witness being unavailable for reasons unrelated to the Inquiry.

had happened, the Council would have incurred some costs in responding to it as part of its overall evidence on flood risk. This is reflected in the terms of the Costs Order.

19. I conclude that unreasonable behaviour has been demonstrated and that this has caused the Council to incur unnecessary expense in the appeal process. A partial award of costs is justified.

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 Persimmon Homes Severn Valley shall pay to North Somerset Council the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in assessing the Flood Risk Assessment by Brookbanks dated September 2023 and dealing with it at the Inquiry excluding any such costs that would have been incurred if the said document had been provided on or before 2 July 2024; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Persimmon Homes Severn Valley, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Prentis

Inspector