



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 A 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 Persimmon Homes Severn Valley for a partial award of costs against North Somerset Council.
 - The Inquiry was in connection with an appeal against a failure to give notice within the prescribed period of a decision 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 partial award of costs is allowed in the terms set out below.

Reasons

2. 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.
3. The application was for a partial award of costs in respect of two matters, the first putative reason for refusal, relating to the spatial strategy, and the fourth putative reason for refusal, relating to the safeguarding of part the site for a primary school. On 16 August 2024, the Council confirmed that it would not pursue the fourth putative reason for refusal. In each case, the appellant contends that there was unreasonable behaviour in relation to the substance of the case.
4. The application was made in writing during the Inquiry. The Council's response and the appellant's reply were also made in writing.¹

First putative reason for refusal - spatial strategy

5. The putative reason for refusal alleges conflict with North Somerset Core Strategy (NSCS) Policies CS14 and CS32. These policies are discussed in more detail in

¹ ID40, ID50 and ID63

my appeal decision. In summary, Policy CS14 seeks to direct most new housing development to Weston-super-Mare, the Weston Villages and the main towns of Nailsea, Portishead and Clevedon. Amongst other matters, Policy CS32 stipulates that residential development adjacent to a service village should not comprise of more than about 25 dwellings. The reason for refusal included the following:

“The proposed development of up to 190 dwellings would deliver a scale of development that is contrary to the spatial strategy for the development plan, which permits sites of up to around 25 dwellings adjoining the settlement boundaries of service villages.”

6. The Council’s statement of case said this:

“The Council will demonstrate that, as part of the settlement hierarchy for the District, Yatton and the other service villages are not suitable for large scale urban expansion.”

7. In fact, the Council did not offer any evidence that Yatton is unsuitable to accommodate the proposed scale of development, other than the fact of being a proposal for more than 25 dwellings. On the contrary, as I noted in my appeal decision, the Council agreed that Yatton has a range of shops and services, health and community facilities, pre-school and primary education provision, recreation and play spaces and local employment opportunities. It also accepted that the site is a suitable and sustainable location in terms of accessibility and that there would be no transport impacts that cannot be satisfactorily mitigated.
8. Policy CS32 includes a number of qualitative criteria. The Council did not dispute that all of those either would be complied with or could be complied with at reserved matters stage. In an appeal decision relating to Rectory Farm, Yatton² (to the south of the appeal site) the Inspector found that compliance with the qualitative criteria of Policy CS32 was a relevant consideration in deciding what weight to attach to a conflict with the policy solely in relation to the number of dwellings proposed.
9. In an appeal decision at Moor Road, Yatton³ the Inspector noted that it was common ground that the NSCS does not include a Framework-compliant assessment of local housing need. For that reason, the Inspector found that Policies CS14 and CS32 were out-of-date. That is an important finding, even though the Council was not alleging conflict with Policies CS14 and CS32 in that case. Moreover, the situation has not changed. In this case, the Council and the appellant agreed that Policies CS14 and CS32 are out-of-date, regardless of the housing land supply position.⁴
10. The question that arises is whether the fact that a proposal is for more than 25 dwellings is a reasonable basis (on its own) for refusing planning permission in circumstances where:
- a) no other planning harm has been identified; and
 - b) it is acknowledged that Policy CS32, and the spatial strategy underpinning it, are out-of-date regardless of the housing land supply position.

² CD I11 - APP/D0121/W/21/3286677 (June 2022)

³ CD I9 - APP/D0121/W/21/3285343 (April 2022)

⁴ Statement of Common Ground, paragraph 3.1.6

11. The Council's response to the application for costs was to say that Policy CS32 could be relied on because there was a strong objection to the proposal in terms of flood risk, which is one of the matters listed in footnote 7 to the National Planning Policy Framework (the Framework). To my mind the Council had a reasonable basis for arguing that the tilted balance should be disengaged due to flood risk. However, that is a separate point. The key issue for this costs application is whether reliance on a policy which was accepted to be substantively out-of-date, (as opposed to being deemed out-of-date by virtue of housing land supply), was a reasonable basis for refusing planning permission in the first place. That judgement has to be made in all the circumstances of the appeal, including the previous appeal decisions referred to above.
12. In my opinion, given all those circumstances, the Council ought (acting reasonably) to have concluded that refusing permission purely on the basis of the number of dwellings proposed would not be justifiable. PPG makes clear that it is for the Local Planning Authority to produce evidence to substantiate each reason for refusal. The Council did not substantiate the first putative reason for refusal.
13. I conclude that advancing the first putative reason for refusal amounted to unreasonable behaviour. This caused the appellant to incur unnecessary costs in preparing evidence and in dealing with this matter at the Inquiry.

Fourth putative reason for refusal - primary school

14. A section of the appeal site is safeguarded for a primary school under Policy SA8 of the Site Allocations Plan. Policy DM68 of the Development Management Policies states that land and buildings in existing use, last used for, or proposed for use for a sporting, cultural or community facility are protected for that purpose unless the land is allocated for another purpose in another planning document.
15. The reason for refusal took account of a consultation response from Children's Services, summarised in the officer's report, which stated that, although there is currently school capacity in Yatton, projections show that the number of children generated from local developments will exceed the number of spaces in the future. The response went on to say that Chestnut Park school was built to accommodate children living in developments that have been built in the vicinity of that school and that the allocation for a Primary School at Rectory Farm is not for the developments around Chestnut Park school, but for the relocation of Yatton Infant and Junior Schools.
16. As discussed in my appeal decision, the appeal scheme is in conflict with Policy SA8. On the basis of the consultation response, it appears that the Council had an arguable case in relation to Policy SA8 and Policy DM68 at the time the putative reasons for refusal were settled. This was clearly a matter that the appellant was going to need to address in its evidence. I held a case management conference on 18 July 2024 at which I asked whether either party intended to submit any numerical assessments of the projected need for primary school places in Yatton. In the interests of effective case management, I was seeking to encourage discussion between the respective experts and to avoid a situation where new technical reports emerged at a late stage in the pre-inquiry process.
17. Mr Hunter's proof of evidence is dated 23 August 2024, which is after the Council advised that the reason for refusal was no longer being pursued on 16 August 2024. The appellant says that the Mr Hunter's proof was virtually complete on

16 August 2024. It seems reasonable to assume that any numerical assessment contained in the proof was indeed largely complete, no doubt as a basis for the meeting that took place. Having considered the information, the Council withdrew the reason for refusal later that same day.

18. The Council is not to be criticised for engaging in discussions with a view to narrowing the matters in dispute. Having considered the material submitted, it reviewed its case in a timely manner. In my view that was not unreasonable behaviour. The conditions for an award of costs have not been met in relation to the fourth putative reason for refusal.

Costs Order

19. 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 North Somerset Council shall pay to Persimmon Homes Severn Valley, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in preparing evidence in relation to the first putative reason for refusal and in dealing with that reason for refusal at the Inquiry; such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to North Somerset 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.

David Prentis

Inspector