
Costs Decision

Site visit made on 6 February 2025

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 April 2025

Costs application in relation to Appeal Ref: APP/Y3940/W/24/3348191 Land West of Sand's Lane, Rowde, Nr Devizes, Wiltshire SN10 2QW

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972 (as amended), section 250(5).
 - The application is made by Rowde LVA LLP for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of outline planning permission for outline planning application for up to 50 dwellings, new community building and associated car park, public open space and associated infrastructure with all matters reserved for future consideration except for access.
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Decision

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

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 Council's Officer's Report explained in detail why the proposed development was considered to be unacceptable with regards to the principle of the proposed development and its effect on the locally distinctive character of the transitional edge of the settlement. The Officer's Report also assessed the necessary infrastructure requirements for the proposed development, including affordable housing. All these matters were carried through into the Council's decision notice.
4. The Council's decision notice mentioned that the proposed development would constitute unsustainable development, but it did not specifically refer to the concerns raised in the Officer's Report that the occupiers of the new dwellings would likely be reliant on the use of private vehicles for access to day-to-day employment, facilities and services.
5. Nevertheless, the reasoning in the Officer's Report was detailed enough to enable the appellant to consider this matter in-depth at the appeal stage. This reasoning included an analysis of the range of employment, services and facilities available at Rowde, which took account of the representations of local residents on this matter. Analysis of the availability of bus services in the area was also provided. All of this fed into the Officer's finding that the site cannot be considered sustainable.
6. Moreover, even if I were to find that the lack of a specific mention of sustainable transport (rather than sustainability in general) in the Council's decision notice constituted unreasonable behaviour, if that behaviour had not occurred and this specific matter had been included in the Council's decision notice, it would still have been required to be contested at the appeal stage, as in fact occurred. This means

that no unnecessary or wasted expense in the appeal process has occurred in relation to this matter.

7. As explained in detail in the associated appeal decision, the site is not a suitable location for the proposed development, having particular regard to the spatial strategy in the development plan and the accessibility of services and facilities, the proposed development would have an unacceptable and harmful effect on the character and appearance of the area, and it would not make adequate provision for necessary on-site and off-site infrastructure.
8. As explained in detail in the associated appeal decision, whilst paragraph 11 d) ii. of the National Planning Policy Framework (the Framework) is engaged, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
9. Taking all of the above into account, it is clear that the Council did not fail to produce evidence to substantiate each reason for refusal on appeal, and did not make vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
10. Although the Council's Officer's Report found that paragraph 11 d) ii. of the Framework was not engaged at that time, the associated appeal decision explains that, even taking account of paragraph 11 d) ii. of the Framework and the Council's shortfall in housing land supply of approximately 2.03 years, the proposed development is unacceptable. The Council's reasons for refusal given in the Council's decision notice reflect the harm identified at the appeal stage, and that the proposed development would not make adequate provision for necessary on-site and off-site infrastructure. As such, it follows that the Council did not prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
11. Given the range of adverse impacts arising from the proposed development as identified in the associated appeal decision, this is not a case where the appeal could have been avoided altogether, or the issues to be considered could have been narrowed. As explained in detail in the associated appeal decision, a Travel Plan and a planning condition requiring electric vehicle charging points to be provided on site would not adequately mitigate the concerns identified with respect to sustainable transport. Hence, the Council did not refuse planning permission on a planning ground capable of being dealt with by conditions.
12. The Council's appeal statement recognised that paragraph 11 d) ii. of the Framework is engaged and assessed the proposed development in this light. Upon publication of the revised Framework in December 2024, the Council again reviewed their case, as shown by their e-mail of 20 January 2025 to the appellant. This e-mail demonstrated that the Council took account of the shortfall in housing land supply, but maintained their position that the proposed development is the wrong development in the wrong location. Considering my overall conclusion in the associated appeal decision that planning permission should not be granted for the proposed development, the Council's stance was not unreasonable. I therefore

consider that the Council did properly review their case following the lodging of the appeal.

Conclusion

13. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and an award of costs is not warranted.

Alexander O'Doherty

INSPECTOR