



Costs Decision

Hearing held on 25 March 2025

Site visit made on 25 March 2025

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

Costs application in relation to Appeal Ref: APP/F2415/W/24/3358256

Land North of Broughton Way, Broughton Astley, Leicestershire LE9 6EX

- 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 Telford Five Ltd for a full award of costs against Harborough District Council.
 - The appeal was against the refusal of the Council to grant planning permission for outline application for the development of up to 17 self-build residential dwellings (access only to be considered).
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Decision

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

The Submission for Telford Five Ltd

2. An application for costs was made in writing prior to the Hearing. The basis of the applicant's costs claim is that the Council did not afford appropriate weight to the shortfall in the delivery of self-build and custom housing (SBCH), it did not substantiate each reason for refusal and provided inaccurate assertions about the potential effects of the development. Reference is also made to the refusal of planning permission on grounds that were capable of being dealt with by conditions and that the Council has inconsistently dealt with its decision-making. During the Hearing the applicant added orally to their costs claim in pointing out the delays caused by the failure of the legal services department.

The Response by Harborough District Council

3. The Council's rebuttal was submitted in writing in advance of the Hearing. It suggests that the Council considered the weight to be given to SBCH and gave full reasons for refusal, the applicant was aware of the need for a completed S106 following the previous appeal and the Council has proactively agreed to the resolution of biodiversity matters via a condition, removing the need for refusal reason 3. The Council further advises that the applicant has had 2 previous applications for similar proposals on the site refused and dismissed at appeal, and the current proposal has failed to address the reasons for refusal.

Reasons

4. 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.

5. It goes on to state that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the procedural handling of the case, and the substance of the matter under appeal.
6. The reasons set out on the Council's decision notice are clearly articulated and states the policies of the development plan and paragraphs of the National Planning Policy Framework (the Framework) that the proposal was considered to be in conflict with. The Council's committee report and statement of case explain the reasons for refusal in more detail. The apportionment of weight is a matter for the decision maker and it is clear that the Council gave significant weight to SBCH in its consideration of the proposal, but ultimately found it was insufficient to overcome the harm identified to the Area of Separation (AoS)¹.
7. I can see no evidence that the Council made inaccurate assertions regarding the effects of the development on the character and appearance of the area which is also a matter of judgement. Just because the Council held a different view to the applicant, does not mean it was wrong. In my decision I have found that the Council had legitimate concerns regarding this matter such that it was not unreasonable in its approach. Moreover, it took into account the 2 previous appeal decisions, which the applicant appears to have given little regard to. On the evidence before me, I am satisfied that the Council substantiated its reasons for refusal and it did not make vague or inaccurate assertions. Clearly there is a difference of opinion between the parties but that does not mean unreasonable behaviour has occurred.
8. Reason for refusal 3 on the Council's decision notice related to ecological matters, which the applicant considers could have been resolved by planning condition. The Council worked with the applicant to agree this matter prior to the Hearing, such that it did not seek to defend this reason for refusal. However, this was in part due to the receipt of some information including the District Level Licensing Document which the applicant only submitted during the appeal process. I therefore find the Council's actions to be positive rather than unreasonable in this regard. Moreover, it is clear that even if the Council's decision had not included an ecological reason for refusal, the proposal would still have been refused on the other substantive grounds. An appeal is likely to have followed anyway.
9. The applicant suggests that the Council has been inconsistent with its decision-making as the site is infill due to the planning permission granted for the major mixed-use development to the west and buildings and infrastructure to the east. In my decision I have determined that the proposal would not amount to infill, a view shared by the Council and previous Planning Inspector. The employment development has arisen as a result of an allocation for such use and this has not affected the AoS which is a separate designation. There is no evidence that the Council has been inconsistent in its decision-making. To the contrary, it has consistently refused residential development within the AoS.
10. It is understood that progression of the S106 was delayed, a matter which the Council has acknowledged is regrettable. However, neither party has presented clear evidence as to what contributed to the delays. I acknowledge that the S106 appears to have only been completed prior to the Hearing due to the tenacity of the applicant and this will have no doubt have been frustrating. Nonetheless, the applicant's own evidence indicates that there was communication with the Council's

¹ Paragraph 6.18 of the Council's committee report.

solicitor on numerous occasions during the application process, albeit not to their satisfaction. There is no evidence that the delay in progressing the S106 was as a result of conscious behaviour on the part of the Council. It also appears that the Council has been proactive in concluding the S106 during the appeal process, such that the appeal has not been prejudiced by it.

11. Taking these matters together, I find that unreasonable behaviour has not arisen. It therefore follows that unnecessary or wasted expense has not been incurred.

Conclusion

12. Although I understand the applicant's evident frustration with their perception of the Council's approach, insofar as is relevant to this costs application, based on all of the evidence before me, it has not been demonstrated that any action or inaction by the Council amounts to unreasonable behaviour as described in the PPG. An award of costs is not justified.

M Clowes

INSPECTOR