



## Costs Decision

Hearing Held on 6 June 2017

Site visit made on 6 June 2017

**by Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 12 September 2017**

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### **Costs application in relation to Appeal Ref: APP/Y3940/W/17/3167012 Land at The Grange, Devizes Road, Hilperton, Wiltshire BA14 7QY**

- 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 Charlcombe Homes Ltd for a full award of costs against Wiltshire Council.
  - The hearing was in connection with an appeal against the refusal of outline planning permission for erection of 30 dwellings.
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### **Decision**

1. The application for an award of costs is allowed in the terms set out below.

### **Procedural Matters**

2. As I clarified in my appeal decision, the description in the third bullet point of the above header is taken from the original planning application form and the parties agree and have confirmed that the proposal has been amended to relate to up-to 26 dwellings. I determined the appeal on that basis.
3. I have taken into account the Government's Planning Practice Guidance (PPG), issued on 6 March 2014, in reaching my decision.

### **The submissions for Charlcombe Homes Ltd**

4. The contents of the applicant's appeal statement demonstrate that it is a gross factual inaccuracy of the Western Area Planning Committee Members to claim that there is a 5 year housing land supply (5 year HLS). The position about the Council not having such a supply is made clear both in the Planning Committee Report, and the contents of the most up to date Housing Land Supply Statement published in November 2016. The Councillors were all provided with a Briefing Note which made the position abundantly clear. To take a stance that is totally contrary to such a clear factual position is grossly unreasonable, and a clear inaccurate assertion.
5. The contents of the Planning Committee Report again make it abundantly clear there are no grounds whatsoever to refuse planning permission on the claimed issue of educational harm, with officers clearly pointing out to the Councillors that a contribution through CIL would be sufficient to meet the modest education needs of this development.

6. The Council has relied on vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis. The outcome is that the Council has prevented development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations. This unreasonable stance by the Council to refuse such a positive application is even more acute given the Government's firm focus to boost significantly the supply of housing.
7. The applicant also made further verbal submissions at the Hearing adding, amongst other things, that the Committee made a decision based on incorrect facts. It is submitted that the subsequent adoption of the Chippenham Site Allocations DPD may or may not have vindicated the Councillors' decision but the Committee did not exercise its responsibility correctly in determining the application.

### **The response by the Council**

8. The Council has not behaved unreasonably in a substantive manner as suggested. It is not uncommon for Council Committee Members to overturn a planning officer's recommendation, but the application was determined on its planning merits and took into account the up to date development plan, national policy and other material planning considerations.
9. As demonstrated in the Council's up to date published (March 2017) Housing Market Supply Statement, the North and West Housing Market Area can demonstrate a supply of deliverable housing in excess of the 5% buffer for this area. The fact that this document is now available to support the Council Committee Members' decision is material to the determination of this application and the costs case. As such it is considered that the Members' stance to take a contrary position to the case officer's recommendation was justifiable and correct in this instance. Whilst Members conclusions were reached at a slightly different path than the evidence that now stands for consideration, the updated survey does confirm that Members were correct in their decision making process.
10. In respect of educational harm, it is acknowledged that the Council has proactively identified appropriate solutions to the provision of both primary and secondary school education contributions in relation to this site. However, Committee Members quite rightly identified that the development proposal is contrary to the content of Core Policy 29 which requires adequate secondary school provision to be in place prior to the approval and delivery of additional housing on unallocated Greenfield sites. It was further identified that the lack of objection from the Council's education officer did not override the requirements of adopted policy.
11. The Wiltshire Core Strategy (the Core Strategy) identifies that the housing numbers for Trowbridge Town include Hilperton and it is therefore considered that taking the wording of Core Policy 29 to mean that Hilperton is included within Trowbridge Town then the application would be contrary to this policy until such time as the improved secondary school provision is in place in accordance with the strategic site at Ashton Park. To reach an alternative conclusion would undermine the wording of the policy and the strategic objectives and vision of the Core Strategy as a whole.

12. Therefore in policy terms the development of this site would be contrary to the provisions of Core Policies 1, 2 and 29 of the Core Strategy, which is the conclusion that the Members of the planning committee reasonably reached. The Council's Appeal Statement of Case clearly demonstrates why the Council refused planning permission and clearly substantiates each reason for refusal. As such, it is considered that the Council did not unreasonably refuse planning permission or behave in an unreasonable way.

### **Reasons**

13. The PPG advises that, irrespective of the outcome of the appeal, costs may only 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.

14. In terms of the first issue relating to 5 year HLS, the substantive evidence at the time the Council made its decision pointed to the Council not being able to demonstrate such a supply. Despite this, the Council made its decision in respect of this issue based on an assumption that permissions since the base date of April 2016 for housing land supply figures could be used to show a 5 year HLS, contrary to officer advice.

15. The basis for considering there to be a 5 year HLS was therefore flawed. Nevertheless the appeal has drawn out that a 5 year HLS does exist, albeit that the evidence at the time of making the decision indicated otherwise. Furthermore, I found in my appeal decision that the proposal would be unacceptable for the reasons given. The Council's determination of the application has therefore not proven to have delayed an acceptable form of development of the site.

16. Notwithstanding the above, in respect of the second issue concerning provision for education needs relating to the proposed development, there is insufficient evidence to indicate that the Council took full and proper account of the proposed mitigation measures in the form of a financial contribution. Regardless of the wording of Core Policy 29, officers made it clear that there was a solution in this case to ensure the objectives of providing adequate education for the development in question could be met. In those circumstances it was unreasonable for the Council to refuse planning permission in respect of this issue.

### **Conclusion**

17. For the above reasons, despite the shortcomings of the Council in its determination of the application, I find that it did not behave unreasonably in terms of the first issue relating to 5 year HLS. However, I find that it did behave unreasonably in terms of the second issue concerning education provision. As such, in respect of that second issue the appellant's costs in pursuing that aspect of the appeal were unnecessarily incurred and wasted. For this reason, and having regard to all other matters raised, a partial award of costs is justified.

### **Costs Order**

18. 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

Wiltshire Council shall pay to Charlcombe Homes Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the second issue referred to above; such costs to be assessed in the Senior Courts Costs Office if not agreed.

19. The applicant is now invited to submit to Wiltshire 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.

*Andrew Dawe*

INSPECTOR