

APPLICATION FOR COSTS

Blue Cedar Homes

Land South of Faraday House, Woodway Road, Sibford Ferris

1. The appellant's request an award of costs against Cherwell District Council on the basis of unreasonable behaviour. In submitting this application for costs, they rely upon the following paragraphs of the NPPG.
2. Paragraph 030 Reference ID 16-030-20140306 sets out the circumstances in which costs may be awarded. It identifies two areas, namely: -

**“ • a party has behaved unreasonably; and
• the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.”**

3. Paragraph 031 Reference ID 16-031-20140306 defines unreasonable behaviour which can be either: -

**“ • procedural – relating to the process; or
• substantive – relating to the issues arising from the merits of the appeal.”**

4. Paragraph 032 Reference ID 16-032-20140306 sets out what constitutes unnecessary or wasted expense and includes: -

“An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses...”

5. Paragraph 046 Reference ID 16-046-20140306 sets out when an award of costs might be made against a local planning authority.
6. Paragraph 049 Reference ID 16-049-20140306 sets out various examples where a local planning authority's behaviour will have costs awarded against them. This includes amongst other things: - (not exhaustive)

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- **preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.**
 - **failure to produce evidence to substantiate each reason for refusal on appeal**
 - **vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.**
 - **refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead**
 - **acting contrary to, or not following, well-established case law**
 - **persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable**
 - **not determining similar cases in a consistent manner**
 - **failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances**
 - **refusing to approve reserved matters when the objections relate to issue that should already have been considered at the outline stage**
 - **imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations**

- **requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations**
- **refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal**
- **not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.**
- **if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn”**

Comment

7. The appellant relies on the above guidance in the NPPG. The appellant believes that the Council has acted unreasonably. The appellant acknowledges that a Council can refuse an application against the advice of their professional planning officers provided that they have clear evidence to do so. The Planning Authority have not provided any evidence to justify their refusal reasons.
8. The appellants followed the advice in the NPPF by undertaking a formal pre-application enquiry of the Planning Authority (Appendix 1 of Statement of Case). Whilst they acknowledge that such advice does not prohibit the final decision of the Planning Authority it is apparent that: -
 - i. The advice concluded that the development was acceptable and that an application would be supported.
 - ii. The Planning Committee paid no regard to the fact that pre-application advice was sought and provided a positive response about the proposals.

9. Furthermore, there is a recent appeal decision on the land immediately adjacent to the appeal site which was allowed. At the time of allowing the appeal, the Council could demonstrate a 5 year supply of deliverable housing land. That is not the issue now where the Council agree that they can only demonstrate a 3.5 year supply, a deficit of over 2,000 houses i.e. a significant shortfall. Accordingly, the Planning Committee paid no regard to this position and the fact that significant and demonstrable harm should be demonstrated which outweigh the benefits of the scheme. The Planning Committee paid no regard to the benefits of the scheme as set out in the Statement of Case and undertook no assessment of the benefits against the harm.
10. It is well established that previous appeal decisions are capable of constituting considerations which are relevant to planning decision making. In North Wiltshire District Council v Secretary of State for the Environment [1992] 65 P. & C.R. 34 the Court of Appeal (Mann LJ, with whom Purchase LJ and Sir Michael Kerr agreed) explained that one important reason why previous decisions are capable of being material is that like cases should be decided in a like manner so that there is consistency in the appellate process, noting that consistency is self-evidently important to both developers and development control authorities and is also important for the purpose of securing public confidence in the operation of the development control system. The Planning Committee paid no due regard to the appeal decision and the appellant expects consistency in decision making.
11. Dealing with the reasons for refusal, they are unreasonable because: -
 - i. A proper analysis of the proposals reveals that the proposals are in line with the relevant policies in the Statutory Development Plan.
 - ii. As stated above, the Council accepts that they cannot demonstrate a 5 year supply of deliverable housing land and so paragraph 11(d) of the NPPF is engaged.
 - iii. The site will meet a clear and accepted need for retirement property in line with adopted policy and confirmed by the Council's Strategic Housing Officer.
 - iv. The 750 dwellings referred to across the Category A villages is not a target or ceiling. A matter accepted by the Planning Officer and previous other Inspectors. The Planning Committee believe that it is a ceiling or target.
 - v. The Council's own HELA concluded that the site was a suitable residential development site for up to 20 dwellings.

- vi. The proposals were the subject of discussion with the Planning Officer.
Changes were made to the scheme to reflect comments made. The adjoining appeal site is for 2 storey dwellings and there was no impact on the character and appearance of the area.
 - vii. The site is not within the Conservation Area nor are there any other designated heritage assets. Those comments about design are purely subjective and without foundation particularly as examples of single storey dwellings exist elsewhere in the settlement.
12. The appeal Inspector for the land to the south concluded that there would be no adverse landscape harm on the character of the area for the development of the site for 2 storey dwellings. Given that the appeal proposals are for bungalows, the same conclusion must equally apply. The Planning Authority did not contest the methodology or conclusions of the Landscape and Visual Technical Note submitted with the application.
13. The appeal proposals comply with all of the relevant Statutory Development Plan policies. There are no statutory objections to the proposals. Accordingly, the refusal reasons are unjustified and unreasonable. A full award of costs is requested against the Planning Authority. If a full award of costs is not awarded then the appellant would request a partial award of costs.