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## Costs Decision

Inquiry opened on 17 November 2020

Site visit made on 24 November 2020

**by Richard Clegg BA(Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> February 2021**

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### **Costs application in relation to Appeal Ref: APP/P1805/W/20/3245111 Land at Whitford Road and Land at Albert Road, Bromsgrove**

- 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 Catesby Estates Ltd & Miller Homes Ltd for a full award of costs against Bromsgrove District Council.
  - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for: on site A (land off Whitford Road), provision of up to 490 dwellings, class A1 retail local shop (up to 400m<sup>2</sup>), two new priority accesses onto Whitford Road, public open space, landscaping, and sustainable urban drainage; on site B (land off Albert Road), demolition of the Greyhound public house, provision of up to 15 dwellings, a new priority access onto Albert Road, landscaping, and sustainable drainage.
  - The inquiry sat for four days: 17-20 November 2020.
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### **Decision**

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

#### **The submissions for Catesby Estates Ltd & Miller Homes Ltd**

2. The application was made in writing<sup>1</sup>: the gist of the submissions is as follows. A local planning authority (LPA) will be at risk of an award of costs if there is no proper basis for resisting the grant of permission, and/ or if it fails to produce reasonable evidence to substantiate its opposition. The application relies on advice by the LPA's consultants that there was no basis for a highways objection, evidence which did not show that the Members were correct to allege that there would be a severe impact, and evidence which was withdrawn, partial, or based on an incorrect use of guidance or misunderstanding. The LPA's highways witness was not correct about the implications of the guidance in Junctions 9 User Guide relating to intercept corrections and minor changes, and it was considered that the approach to the A38 enhancement programme had been misunderstood. Even if it were said that the reasons for the Members' views went beyond the evidence of the LPA's witness at the inquiry, there are no proper points from Whitford Vale Voice (WVV) which indicate that permission should be refused.
3. The case related to paragraph 109 of the National Planning Policy Framework, and the LPA had to produce evidence relating to that alleged level of harm. There had been a lack of substantial evidence, and the inquiry should not have

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<sup>1</sup> The costs application is an annex to CD O29.

had to take place. It was necessary for a planning witness to appear for the Appellants, and a full award of costs was sought.

### **The response by Bromsgrove District Council**

4. The gist of the LPA's response is as follows. Members were not obliged to accept the advice of officers. There had been a range of advice from different sources, including from WVV. In the light of the 2015 appeal decision (relating to site A), there was some scepticism about the position of the Local Highway Authority (LHA), and greater credibility concerning the views of WVV. There was nothing unusual about consultants providing evidence to substantiate a reason for refusal.
5. Without effective mitigation the impact of the development would be severe in highways terms, and it had been for the Appellants to demonstrate that that impact could be mitigated.
6. Evidence from the LPA's highways witness had only been amended or withdrawn in response to late information from the Appellants, despite their earlier submission of rebuttal evidence. That had been an entirely reasonable approach to take. The LPA's highways witness had not withdrawn his view about the Junctions 9 guidance, and there had been no misunderstanding about the A38 enhancement programme. The concession about the Hanover Street junction was in response to the late submission of a swept path analysis, and the position about queueing from the pedestrian crossing on Rock Hill was accepted when the correct information was submitted. Insofar as deflection at the Fox Lane junction was concerned, the LPA's position was correct.
7. Errors and omissions had been identified in the Appellants' evidence. The work referred to should have been carried out. Evidence from the highways witness related to the reason for refusal. The LPA had made reasonable concessions, and took no lesser points.
8. A full award of costs was sought, but transport was not the only matter for consideration. Worcestershire Acute Hospitals NHS Trust was a Rule 6 party, and there were matters raised by WVV which were unrelated to the LPA's case. It had been the Appellants' choice to call a planning witness.

### **Reasons**

9. Paragraph 16-028 of Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
10. The delay of development which should clearly be permitted and failure to produce evidence to substantiate reasons for refusal are given in PPG (at paragraph 16-049) as examples of unreasonable behaviour which may give rise to a substantive award of costs against an LPA. In this case, an appeal was lodged on the ground of non-determination. The LPA had previously considered the planning application, which had been recommended for approval, and had deferred a decision pending the receipt of further detailed information. An email from the LPA to the Appellants' agent identified further information sought, much of which concerned highways matters (Core Document F2.10). The planning application was reconsidered by the Planning Committee following submission of the appeal, when it was still supported by the officers, but the Committee resolved that it would have refused planning

permission for a single reason relating to the impacts on highway safety and the road network.

11. It is the case that Members are not obliged to accept the recommendations of their officers, and it is not unusual for LPAs to be represented by consultants at appeals. However an LPA must produce evidence to substantiate its objection. The LPA argued that if adequate mitigation were not provided the impact of the development would be sufficiently severe to warrant dismissal of the appeal. Its highways witness produced a detailed critique of various aspects of the Appellants' modelling and the off-site highway works. In respect of the Fox Lane junction, it was argued that deflection on the north-east arm would be inadequate, with inappropriate mitigation, and that capacity would not be within acceptable thresholds, reference being made to the Rock Hill south-west arm. The position taken on capacity did not take into account the worse situation predicted for the Fox Lane arm in the 2017 and 2030 baselines, and it does not indicate that there would be a severe residual cumulative impact on this part of the road network
12. Insofar as other junctions are concerned, the thrust of the LPA's evidence was that the adequacy of mitigation had not been demonstrated or that it had not been demonstrated that the cumulative impacts were not severe. That approach of calling into question the Appellants' highways work falls short of substantiating the LPA's objection. It is the LPA's position that the proposed development would have an unacceptable impact on highway safety and that the residual cumulative impacts on the road network would be severe. A conclusion to that effect is not, though, reached merely by criticising the Appellants' highways work. Evidence was required to positively support the position taken, and it was unreasonable of the LPA not to substantiate its objection.
13. The appeal proposal is consistent with the Development Plan considered as a whole. Indeed, as an allocated town expansion site, site A has a key role to play in meeting housing requirements in Bromsgrove. Following dismissal of the previous appeal, fresh highways material was submitted and neither the LHA nor consultants acting on behalf of the LPA objected to the proposal. The planning application was recommended for approval, and, in resisting the grant of planning permission, I find that the LPA acted unreasonably in delaying development which should clearly have been permitted.
14. A number of matters other than highways have been considered during the course of the appeal. The opportunity to take other matters into account at appeal stage (many of which were previously raised during the course of the planning application) does not lessen my concern about the LPA's behaviour.

## **Conclusions**

15. I conclude that the LPA behaved unreasonably in delaying development which should clearly be permitted and in failing to produce adequate evidence to substantiate its objection to the proposed development. This led to unnecessary expenditure by the Appellants in pursuing the appeal, and I conclude that a full award of costs is justified.

**Costs Order**

16. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Section 7(2) and Schedule 3 of the Countryside and Rights of Way Act 2000, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bromsgrove District Council shall pay to Catesby Estates Ltd & Miller Homes Ltd the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. Catesby Estates Ltd & Miller Homes Ltd are now invited to submit to Bromsgrove District 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.

*Richard Clegg*

INSPECTOR