SECTION 78 OF THE TOWN & COUNTRY PLANNING ACT 1990

AN APPEAL IN RELATION TO LAND BOUNDED BY HOAD WAY AND M4, AND HIGH STREET, THEALE

BEFORE: Inspector J P LONGMUIR

APPEAL REFERENCE: APP/W0340/25/3360702

APPELLANT'S COSTS APPLICATION

INTRODUCTION

1. This application for costs is pursuant to a substantive issue, rather than a procedural one. This application is for ***partial award of costs*** against the West Berkshire District Council. The application proceeds on the basis of one simple ground on the first reason for refusal.

2. The focus of this application is the first reasons for refusal. This is repeated as follows:

> 1. *"The application site comprises some 5.4 hectares of greenfield land outside of, but adjacent in part, to the settlement of Theale, a Rural Service Centre. Policy ADPP1 of the West Berkshire Core Strategy 2006-2026, states that within the countryside only appropriate limited development will be allowed focusing on addressing identified needs and maintain a strong rural economy. The proposed development does not specifically support the rural economy nor is it limited in scale. The supply of employment sites across the district for the next 10 years will be successfully managed through the Local Plan Review with a commitment from the Council to revisit this to ensure adequate longer term delivery up to 2041. As such the short term needs for commercial space are adequately met and there is no immediate need for sites.*
>
> *The significant scale of the use and built form is far from limited and is not considered to be compatible with the nearby residential uses. Policy CS9 of the West Berkshire Core Strategy seeks to ensure that uses are compatible. The proposal introduces a large scale commercial use immediately adjacent to an otherwise predominantly residential area with associated amenities. The existing pattern of uses in the surrounding area maintains a greater separation and distinction between the residential settlement of Theale and the commercial area to the south, which would be eroded by the proposed development.*
>
> *Accordingly the proposal fails to comply with Policy ADPP1 and CS9 of the West Berkshire Core Strategy 2006-2026 and the economic objective of the NPPF which seeks to ensure that new development is in the right place."*

REGULATIONS & GUIDANCE

3. Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 provides,

"*where planning permission is refused, the notice* ***must state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision."*** [emphasis added]

4. The Planning Inspectorates guidance to planning appeals states the following,

"1.3.2. *The reasons for refusal should be* ***clear and comprehensive and if the elected members' decision differs from that recommended by their planning officers it is essential that their reasons for doing so are similarly clear and comprehensive.*** *Clear reasons for refusal will help continued discussions and may mean that agreement can be reached.*[1]

5. These passages are highly relevant to this case as set out below.

6. The National Planning Practice Guidance (NPPG) document provides guidance as to the actions and behaviour which can be determined to be unreasonable by any party.

7. The NPPG indicates that parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process, for example in providing all the required evidence and ensuring that timetables are met.

8. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.

9. The NPPG indicates that costs may be awarded where:

a) a party has behaved unreasonably; and

b) the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

[1] **Procedural Guide: Planning Appeals – England, Updated March 2021**

10. The word *"unreasonable"* is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774. Unreasonable behaviour in the context of an application for an award of costs may be either:

    1) procedural – relating to the process; or

    2) **substantive – relating to the issues arising from the merits of the appeal.**

11. What counts as unnecessary or wasted expense? Costs may include the time spent by a party, in preparing for an appeal and attending the appeal event, including the use of consultants to prove detailed technical advice, expert and other witnesses. **Again, this is highly relevant in the present case.**

12. The aim of the costs regime is to; encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timelines and in the presentation of full and detailed evidence to support their case. **Similarly pertinent where the Council is relying on mere commentary.**

13. The costs regime exists to discourage unnecessary appeals by encouraging all parties to consider a revised planning application or schemes which meet reasonable local objections.[2]

14. Guidance encourages LPAs to exercise their development management responsibilities properly, to rely on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay.[3] **This is self-evidently directly germane.**

15. A full award of appeal costs can mean the party's whole costs for the statutory process, including the preparation of the appeal statement and supporting documentation. It also includes the expense of making the costs application.[4]

[2] Paragraph: 028 Reference ID: 16-028-20140306
[3] *Ibid*
[4] Paragraph: 040 Reference ID: 16-040-20140306

16. Awards against a party may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal – here it is the latter. The type of unreasonable behaviour that may give rise to a substantive award against a local planning authority includes,

- *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.*[5]

17. The submissions contained in the opening remarks in relation to costs are not repeated. The submissions below seek to give expression to all the three Grounds set out above.

SUBMISSIONS

18. The background to this case will already be familiar to the Inspector and so the details contained in the closing submissions are not repeated.

19. There are documents on which the costs application will seek to rely primarily to support these submissions, they include,

a) The opening and closing submissions on behalf of the Appellant;

b) The evidence as presented by the Appellant's experts;

20. For the following reasons, the Inspector is invited to give ***partial*** awards against the Council in favour of the Appellant for their unreasonable conduct. The core submission underpinning this application is the Council's failure to review its position in light of the evidence presented at the inquiry in relation to **RFR1**. Given the substantial concessions made in evidence under cross-examination, the Council ought to have acted reasonably and withdrawn its first reason for refusal.

[5] Paragraph: 049 Reference ID 16-049-20140306

21. I turn to the salient points now clear and which put the first reason for refusal in context.

22. **First,** each and every component of the first reason for refusal has not withstood scrutiny. Since the Decision Notice, West Berkshire has adopted the LPR which explicitly accepted that it does not provide for its objectively assessed needs, with the land required to meet the need being identified as a 'minimum'. This fact alone should have prompted the revisiting of this reason for refusal with a view to considering withdrawing it. To persist and to close the inquiry in this context is completely unreasonable.

23. **Second,** it is common ground that Theale is a Rural Service Centre, and this fact has not changed since the adoption of the LPR. The settlement hierarchy (SP3), as accepted by Ms Kirk, restricts development outside of the settlement boundary, but it does not seek to preclude it. On the contrary, appropriate development meeting an identified need will have 'potential' appropriate to the character and function of the settlement. It is common ground that Theale is an accessible and sustainable location for this type of development.

24. **Third,** the claim that the proposal does not '*specifically support the rural economy'* has been totally abandoned. Ms Kirk accepted, fairly, that the development will support the rural economy and Ms Dutfield was not asked a single question about this. Whether or not a development such as this one is 'limited in scale' is a qualitative judgement that must have regard to the type of development sought, its purpose, function and ultimately needs / objectives. The Appellant has advanced a robust case that the scale of this proposal is appropriate and proportionate, having reduced the scheme from its previous iteration. The Council has failed to provide a policy objection or an operational reason that supports the proposition that the development should be smaller in scale.

25. In so far as the landscape and character points relating to scale is concerned, this is completely unrelated to the complaint around the first reason for refusal.

26. **Fourth,** since the Decision Notice, and the adoption of the LPR, the Council's supply of sites has become *worse* not better. ESA1 now will not be meeting the needs identified, justifying further the concerns raised by the examining Inspector about that particular allocation. The extent of shortfall since the beginning of the inquiry has increased by 20,000sq ft to the now agreed 60,000sqft, a change *during* the inquiry. A scrutiny of the

HELAA and the requirements of each ESA site also demonstrates significant challenges for each site to overcome to meet policy. Therefore the optimism of a '10 year supply' in the RFR1 when assessed in the cold light of day raises major doubts. Only further underlining the importance of the appeal proposals to the District.

27. **Fifth,** the first RFR relies on a future review to bring forward more sites. This optimism suffers from three fundamental flaws. The first is Mr Pestell made clear the '*Council's cupboard of sites is bare'* now. They struggled to have sites come forward for allocation despite numerous "calls for employment sites" to which Mr Pestell referred, they're struggling now, and it is only logical to assume that the struggle shall continue for at least the next few years. The only realistic way to make a dramatic change in circumstances would be for West Berkshire to start contemplating development in the National Landscape. Second, whilst there is some sort of commitment to review within five years, there is absolutely no comfort that the Inspector can take from such a hollow promise subject to many variables. As Ms Kirk accepted, there is no local development scheme relating to when a review will start, be examined or be adopted. She accepted that the housing provided for in the LPR is substantially less than the need calculated by the new Standard methodology. The Council is about to start a call for sites but finding new employment and housing sites is a heavily constrained district will not be quick or easy.

28. Third, even if we were to give the Council the benefit of doubt: i.e. this is a freshly adopted plan, a review will be forthcoming, and sites will be found – this still does not support the maintaining of the first reason for refusal.

29. It was for the Council to support its assertion in RfR1 that it had a 10 year supply of sites capable of being delivered. It was not good enough to rely on one sentence in the Examiner's Report when no evidence had been before the EiP of the delivery rates of the allocated sites. The only evidence of delivery was the HEELA which for 4 of the six sites only said that they were "potentially deliverable" i.e. within the first 15 years of the plan period.

30. **Sixth**, the Council's delegated report failed to properly reflect the comprehensive consultation response from its economics team. The consultation response (ID7) identified significant benefits from the proposal and expressed its firm support. Indeed, Ms Kirk accepted that these compelling remarks had not fairly been reflected in the summary contained in the delegated report. The officer also regarded the site to be in a highly sustainable location, demonstrating substantial support for the proposal. Mr Pestell told the inquiry that the site would make a 'meaningful contribution' to the need and that it was not 'possible to deny' the benefits of the location off a motorway junction.

31. Ms Kirk changed her position in relation to the relevance of DM35. In her PoE she clearly said that DM35 was not relevant which was why she did not assess the appeal proposals against that policy. In cross-examination, she said it was relevant, and then purported to rely on criterion (c), only to accept that was concerned with the incompatibility of the land uses in particular and not necessarily its scale.

32. **Seventh,** the final two complaints of RFR1 relates to nearby uses being incompatible, and the development being immediately adjacent to a residential area. In so far as the development is said to be in close proximity to residential uses, there are no amenity points pursued by the Council. Indeed, for people to seek work at the appeal site from nearby homes would be a benefit, not a harm. DM35(c) is not support for the proposition that proposals are 'incompatible' if sited near to other uses. The appeal site is on the other side of the Bath Road to the Arlington Business Park, and on the other side of the M4 sites the Pincents Kiln Industrial Park. This is a really bad point to maintain.

33. In light of the above, it is very difficult to understand why the principle of development reason for refusal one is maintained. It is one thing for it to have had merit at the time it was written in August 2024, but almost a year later, following the adoption of the LPR, in the face of overwhelming evidence, it is very difficult to maintain it now with any credibility. This is unreasonable.

CONCLUSION

34. The Appellant regrets the need to make this costs application. It is unfortunate that the Council failed to review its position in light of the significant change in circumstances, the concessions fairly made by Council officers, and the need for parties to a public inquiry to behave reasonably. This is an ongoing expectation throughout the inquiry and especially so when the facts have significantly shifted.

35. The Appellant has been put unnecessary work and expense addressing an indefensible reason for refusal. The Appellant has spent a significant amount of time and resources instructing an expert to address the issue of principle, need, supply and ultimately having to justify this development. This could have been prevented if the Council acted reasonably and not delay a development which should clearly be permitted.

36. The Appellant has had to spend time on the issue during the inquiry, cross examining on it and presenting evidence to address the weak concerns raised. The vast majority of the Council's case was vague, generalised or inaccurate assertions unsupported by objective analysis. Mr Anthony Watkins on behalf of Panattoni has had to present evidence, explain and set out how the development will contribute to the rural economy, the level of skills and employment that will be available to the local community, and generally seeking to justify that this type of development is appropriate for this location.

37. All of this has been unnecessary and it would have been unavoidable but for the unreasonable conduct of the Council. For all these reasons, as supported in the closing remarks, an award of partial costs is justified.

JOHN LITTON KC
HASHI MOHAMED

Landmark Chambers
180 Fleet Street
25 June 2025