



Appeal Decision

Site visit carried out on 22 March 2016

by Mrs J A Vyse DipTP DipPBM MRTPI

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

Decision date: 25 April 2016

Appeal Ref: APP/W1850/W/16/3141786

Land at Yarpole, Leominster, Herefordshire HR6 0BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr F P Price against the decision of Herefordshire Council.
 - The application No 150995, dated 30 March 2015, was refused by a notice dated 27 November 2015.
 - The development proposed is 6 No dwellings and 4 No garages.
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Decision

1. For the reasons that follow the appeal is dismissed.

Application for Costs

2. An application for costs was made by the appellant against Herefordshire Council. That application is the subject of a separate Decision of even date.

Procedural Matters

3. One of the Council's reasons for refusal refers to the absence of adequate detailed information in respect of archaeology, ecology, landscaping, flood management, land drainage and water capacity, and impacts to heritage assets and the existing public footpath. It sets out a list of development plan policies that would be offended by the development proposed in these regards, together with reference to the National Planning Policy Framework (the Framework).
4. Had the Council considered such information to be necessary in order to fully consider the impact of the development proposed it could, within a period of one month of receipt of the application, have given notice to the applicant that the information was required, as provided for by Article 5(2) of the Town and Country Planning (Development Management Procedure) Order 2015 (DMPO).
5. The application was received by the Council on 31 March but was not validated until 18 June 2015. Whilst an email to the appellant from the Council, dated 16 April 2015 sets out that part of the site is in Flood Zones 1 and 2¹ and requests details of the public right of way across the site, there is no indication that any request for the other information referred to in the reason for refusal was made by the Council at the time that the application was lodged, or at any time prior to its determination.

¹ As confirmed in the flood risk assessment and officer's report, the appeal site actually lies within flood zones 1 and 3

6. That said, it would appear that a protected species survey report (dated 12 March 2015) may well have been submitted with the application but, for whatever reason, was not seen by the planning officer. In addition, a flood risk assessment (dated 26 May 2015), drainage details (dated 20 September 2015) and a highway safety assessment (dated October 2015) were submitted prior to determination of the application. The application was also accompanied by detailed plans showing the layout and details of the dwellings proposed. An addendum highway safety assessment (dated December 2015) was submitted with the appeal and, in response to a direct approach by the appellant, the Council's archaeological advisor commented on the development proposed (7 December 2015). I have taken all that information into consideration in determining this appeal, since it is information on which the Council has had the opportunity to comment.
7. In order to try and address the Council's concerns in relation to visibility at the junction of the site access with the highway, the appellant mooted the possibility of relocating the access further to the south-east. In that location however, the access would lie outwith the application site. In any event, no amended proposal is before me on a formal basis for consideration. I confirm, in this regard, that I have considered the appeal scheme on the basis of the layout as originally shown.
8. A Neighbourhood Plan for Yarpole is in preparation. The officer's report sets out that the Plan is in its infancy and that it has not yet reached Regulation 16 stage. There is no suggestion in the Council's written statement, or in any other of the submissions, that the situation has changed to any material degree. Indeed, later correspondence from the Council (1 April 2016) confirms that the emerging Plan has not yet reached Regulation 14 stage. Accordingly, I can only afford it limited weight. That said, the Neighbourhood Plan Steering Group has made comments on the development proposed, which I have taken into account.
9. The planning application form suggests that there would be no interference with a public right of way. However, public footpath No YP6 passes diagonally across the appeal site, heading north-eastward from the western end of the road frontage, before turning north as it heads up to Pound House. Although the submitted layout allows for a route through the development proposed, the footpath would not be retained on the definitive alignment. Were the appeal to succeed, any permission could not be implemented unless and until a successful application for diversion of the footpath had been made. Should such an application be unsuccessful, that would have implications for implementation of the appeal scheme. I have, however, made my decision based only on the planning merits of the case.
10. Issue is taken by some of those objecting to the scheme, that the appellant did not instigate any discussion with the Parish Council or the Neighbourhood Plan Steering Group prior to submitting the application. Whilst that may be unfortunate, there is no statutory requirement for any such pre-application consultation and the absence of such is not a material planning consideration.
11. Although the Council's written statement indicates that there is a five year supply of housing land, referring to the recent adoption date of the Herefordshire Local Plan Core Strategy 2011-2031 (October 2015), the appellant draws attention to a more recent appeal decision for housing

development at Leintwardine², where the Inspector concluded, on the evidence before her, in particular the evidence relating to delivery of some of the sites relied on in the identified supply, that the Council could not currently demonstrate a robust five-year supply of deliverable housing to meet its identified needs. Although no mention of the housing land supply position is made in the Council's written statement, an appeal decision attached thereto³ also sets out that the Council cannot currently demonstrate a five year supply. Moreover, post-event correspondence from the appellant indicates that the planning committee has recently been advised that the Council cannot justify a five year supply⁴. In the absence of any evidence from the Council to rebut the Inspectors' conclusions on this in the appeal decisions referred, or to contest the appellant's understanding of advice currently being given the planning committee on the matter, I shall proceed on the basis that it cannot demonstrate a five year supply of housing land at the present time.

12. Subsequent to the site visit, a court judgement was handed down from the Court of Appeal (Civil Division) on appeal from the Administrative Court Planning Court⁵. It considers the proper interpretation and application of the National Planning Policy Framework, in particular paragraph 49, which advises that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a five year supply of housing land. The judgment interprets and applies paragraph 49 in a way that leaves flexibility with the decision maker to determine what policies fall within the ambit of paragraph 49 and how much weight to be given to them in the overall planning balance.
13. As set out in the officer's report, Yarpole is identified in the Core Strategy as one of a number of settlements that will be the main focus for proportionate housing development. I am advised that the emerging Neighbourhood Plan will eventually define the settlement boundary for Yarpole but, in the meantime, any application for residential development is assessed against its relationship with the built form of the settlement, with a presumption in favour of sustainable development.
14. The 0.49 hectare appeal site forms part of a larger area of arable farmland, on the south-eastern edge of Yarpole. It adjoins two modern single storey dwellings to the west, with former agricultural buildings now converted to residential use on the opposite side of the road. The site has a short road frontage, finishing adjacent to a small pumping station where there is a bend in the C1039, which runs through the village linking the settlement to Luston. Behind the pumping station, the site widens out, extending onto the arable field, the majority of the southern site boundary following a small watercourse with vegetated banks (Stony Brook) that winds across the fields. Vehicular access to the site is at the western end of the short road frontage, adjacent to the existing dwellings where the brook is crossed.
15. Given its location at the edge of a village that is identified for some additional housing development in the future, and its proximity to existing built

² Appeal Ref APP/W1850/W/15/3006428 Outline application for up to 45 dwellings Allowed 24 February 2016

³ Appeal Ref APP/W1850/W/15/3038241 Outline application for a bungalow Dismissed 4 February 2016

⁴ 4 April 2016

⁵ Mr Justice Supperstone [2015] EWHC 132 (Admin) Mrs Justice Lang [2015] EWHC 410 (Admin) Suffolk Coastal District Council and Hopkins Homes Limited and SSGLG, Richborough Estates Partnership LLP and Cheshire East Borough Council and SSGLG 17 March 2016 [2016] EWCA Civ 168

development, I agree with the Yarpole Group Neighbourhood Plan Steering Group⁶ and the Parish Council⁷ that, whilst the site may not have been put forward for consideration during the Neighbourhood Plan 'call for sites', and noting that it was not included in the Council's 2009 Strategic Housing Land Availability Assessment⁸, there is no reason why residential development on the site might not be acceptable in principle, subject to any practical issues being overcome. On that basis, I have not sought additional views on the judgement – it seems to me that the outcome of the appeal turns on its specific impacts, as opposed to a matter of principle.

Main Issue

16. I consider the main issue in this case to be whether the proposal can be considered as sustainable development, having particular regard to:

- flood risk and land drainage;
- the effect on the adjacent Conservation Area and on the character and appearance of the surrounding area more generally;
- highway safety;
- the setting of nearby listed buildings;
- ecology;
- and the effect on local services and infrastructure in the absence of a planning obligation.

Reasons for the Decision

Flood Risk and Land Drainage

17. A flood risk assessment (FRA) was submitted with the planning application. It demonstrates that the majority of the appeal site lies within Flood Zone 1. The dwellings proposed would be located on that part of the site. However, the proposed site entrance lies within Flood Zone 3. As acknowledged in the FRA, access and egress from the site may therefore be unsafe during a flooding event.

18. The FRA suggests that residents could safely leave the site during a flood event by heading north, away from the road, via the public footpath which runs across gently rising agricultural land from the north-eastern corner of the appeal site. The Environment Agency had no comment to offer on the application, on the basis of that safe alternative access. It is not apparent from the comments however, that the site or the footpath route was visited by anyone from the Agency. I consider the Land Drainage comments to be more helpful in this regard, given the dangers associated with flood events. The comments indicate that, whilst the footpath may provide safe access/egress for pedestrians, it would not provide suitable vehicular access. It is advised that the Council's Emergency Planning Department be contacted to discuss any requirements they may have in this regard. It is also suggested that further consideration may need to be given to flood depths and velocity in this area.

⁶ Undated correspondence submitted in response to the planning application

⁷ Correspondence in response to the planning application dated 26 July 2015

⁸ For reasons relating to access, flooding and lack of integration with the village, which matters I address below.

However, there is nothing to suggest that the Council sought the views of the Emergency Planning Department in order to establish whether or not the arrangement proposed was acceptable to them, or whether further information might be required. There is nothing to suggest either, that the appellant took the initiative and sought their comments (as he did in relation to archaeology).

19. The appellant suggests that concerns about emergency access during a flood event would be the same for every dwelling in Yarpole on the same side of the road through the village. That may well be the case. However, the development proposed would increase the number of persons potentially at risk. In the absence of any firm indication from the Emergency Planning Department that safe access for emergency vehicles would be available for future occupiers during a flood event, and with the precautionary principle in mind, I cannot be sure that future occupiers would be safe from the risks associated with flooding. There would be conflict in this regard with policy SD3 of the Core Strategy, which requires, among other things, that development is provided with safe pedestrian and vehicular access during flood events.
20. Moving on to drainage, Welsh Water has no objection to the development proposed. Whilst not objecting to the scheme, Land Drainage comments suggest that further information should be sought regarding the surface water drainage strategy for the development, prior to any grant of planning permission. I see no reason for that. A suitably worded condition could ensure that, prior to the submission of surface water drainage details, an assessment is carried out of the potential for disposing of surface water from the site by means of a sustainable drainage system in accordance with the principles set out in Government's Planning Practice Guidance. Where a sustainable drainage scheme is to be provided, the condition could require details providing information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; provide a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
21. In terms of foul drainage, there is no suggestion in the Land Drainage comments that it would not be possible to secure a suitable foul drainage scheme. However, the Council advises that the Addendum to the Herefordshire Local Plan Core Strategy Water Cycle Study suggests that there may be no current capacity at the local sewage treatment works. Be that as it may, Yarpole is identified as a location for future development, with the Neighbourhood Plan calling for prospective development sites. Moreover, the Land Drainage comments indicate that an alternative to connection to existing public sewers would be the use of an on site package treatment plant. I see no reason therefore, as to why drainage could not be dealt with by condition and find no conflict with Core Strategy policy SD4 in this regard. Whilst preferring that new development connects to existing mains wastewater infrastructure, the policy does allow for alternative provision such as that suggested.

Character and Appearance/Conservation Area

22. The appeal site is located adjacent to but outwith Yarpole Conservation Area.

From what I saw during my site visit, this generally inward looking rural Conservation Area is centred on the junction of Green Lane and the C1039, which runs through the village, linking the settlement to Luston. Clustered around the road junction are St Leonard's church and its separate timber framed bell tower, together with historic farm buildings, many of which have been converted to residential use. The mix of historic farm buildings, including listed farm houses, and smaller cottages reflect the rural history of the settlement. Whilst the Conservation Area also encompasses areas of open land around the edge of the village, that does not include the appeal site. It seems to me that the heritage significance of the Conservation Area derives from its identifiable rural village character and its historic core.

23. The appeal site is separated from the edge of that historic core by two modern single storey dwellings. Although those buildings are within the Conservation Area, they do not appear to be of any historic interest. Former agricultural buildings, now converted to residential use, lie opposite the appeal site. Intervisibility however, is limited by existing vegetation along the brook. Moreover, notwithstanding that a public footpath runs through the site, the site is well screened in most public views and is not conspicuous in the wider countryside. In that context, it seems to me that the appeal site does not afford any experience of the Conservation Area as a heritage asset, nor does its current undeveloped state assist in understanding or appreciating the heritage significance of the Conservation Area. Moreover, development on the site would not impinge upon any sensitive views into or out of the Conservation Area that have been drawn to my attention. I find no conflict in principle in this regard, with policies LD1, SS6 and LD4 of the Core Strategy which seek, among other things, to conserve and enhance heritage assets and their setting.
24. The proposed dwellings (all of which are detached, with all but one being two storey - the dwelling on plot 6 having three storeys) are individually designed and would be constructed of brick, stone and render walls with traditional features and detailing, beneath plain clay tile or slate roofs. I do not agree with the Council that the designs submitted are suburban. Whilst it is unfortunate that the dwellings proposed on plots one and two do not have chimneys I consider that, in general, the detailed designs reflect the local rural vernacular - they have closed verges and gabled roofs; where dormer windows are included, they generally sit at eaves level; first floor accommodation is partially within the roof space and first floor windows on flat elevations are tucked beneath the eaves; front doors either have hoods above or, on the larger properties, open sided pitched roof porches are shown, all features found in the village.
25. I do share the Council's concerns however, in relation to the layout proposed. Firstly, it is not clear what has informed the eastern site boundary, which appears to follow an arbitrary stepped line across the open field. That to one side, I consider the cul-de-sac layout proposed, with each pair of dwellings sitting side by side separated by detached garages or parking spaces to be suburban in nature. There is nothing of the more rural, organic feel to the layout that characterises the group of dwellings opposite, which has more of a feel of being arranged around a courtyard. In my view, the layout proposed would present an unexpected and uncharacteristic suburban edge to this rural village and would result in harm to the established rural character and appearance of the area. In this regard, there would be conflict with Core Strategy policies SS6 and SD1, which together and among other things seek to

ensure that new development is well integrated, taking into account local context and site characteristics in order to promote local distinctiveness.

Highway Safety

26. Visibility to the west (right) on exit from the site exceeds 2.4 x 43 metres which I understand, on the basis of the information before me, to be acceptable to the local highway authority in circumstances such as this where the prescribed speed limit is 30 miles per hour (mph). However, just to the east of the proposed site access is a bend in the road, where it turns to head south. That restricts available visibility in that direction for exiting traffic to 2.4 x 33 metres. Absent any speed information to support a reduced Y-distance, the highway authority recommended refusal. That recommendation was dated 18 June 2015.
27. Section B of the Government's *Manual for Streets 2* (MfS2) provides guidance on geometric and other parameters for new and improved highways. Although it sets out numerical values, designers are encouraged to take a flexible approach to its interpretation and application based on experience and local circumstances. That flexibility gives designers an opportunity to relax visibility provision at priority junctions. MfS2 advises that examples of evidence that may support a reduction in visibility splays might include the surveyed 85th percentile wet weather speed of traffic on the main road at the site of a proposed junction, and the accident history of the site.
28. The appellant arranged for a speed survey, which was undertaken in September 2015. For traffic approaching from the south, it demonstrated an 85th percentile wet weather speed of vehicles of 25.1 mph. However, it transpired that the location of the survey was removed from the proposed access. As a consequence, the appellant arranged for a further survey to be undertaken. Shortly before that survey was carried out, and notwithstanding that it had been advised that a second survey was being undertaken, the Council determined the planning application. The later survey was carried out at the end of November and the results accompanied the appeal. It demonstrates an 85th percentile wet weather speed of 23.3 mph at the site access for traffic approaching round the bend from the south. That information does not amend the scheme before me in any way, it simply provides evidence to support the appellant's position.
29. The unchallenged evidence of the appellant is that there were no recorded personal injury collisions in the vicinity of the appeal site over the five year period 2010-2014. There is no evidence either, to suggest that there have been any since then. The highways evidence of the appellant is the speed of traffic approaching from the south is sufficiently restricted by the bend in the road such that the available visibility in that direction accords with the Government's guidance on such matters, as set out in *Manual for Streets*.
30. Whilst I recognise the concerns of the Council and others in this regard I conclude, based on the evidence before me and in the absence of any substantiated evidence to the contrary, that use of the access by vehicular traffic associated with the development proposed would not have an unacceptable impact in terms of highway safety, given the low traffic speed at the site entrance.

31. Other concerns related to the absence of any safe refuge for pedestrians on the route to the village from the appeal site, there being no footways. I saw that a significant proportion of existing properties within the village have no footway alongside the adjoining highway, including those properties opposite and adjacent to the appeal site. I also saw that there are grassed verges alongside the road which allow for pedestrians to 'step-off' the carriageway if necessary. Whilst not ideal, that is not unlike the situation in many rural villages. In addition, a public right of way currently runs through the appeal site leading directly onto the road. It seems to me that that would already introduce pedestrians onto this section of the carriageway. I am mindful, as set out above, that there is no substantiated evidence to suggest that the existing arrangement is particularly dangerous, or has resulted in accidents in the past. On that basis, and having regard to the limited scale of the development proposed, I am not persuaded that the scheme would pose an unacceptable risk in terms of pedestrian safety, or that it would have implications for integration of the appeal site with the rest of the village.
32. To conclude on this issue, I find no conflict with policy MT1 of the Core Strategy which requires, among other things, that development proposals should ensure that safe entrance and exit can be achieved and that the local highway network can absorb associated traffic impacts safely.

Listed Buildings/Archaeology

33. Unlike Conservation Areas, the setting of listed buildings is protected by statute. The setting of a heritage asset comprises the surroundings in which it is experienced and it can contribute to the heritage significance of the asset.
34. Lower House lies on the opposite side of the road to the appeal site, off-set a short distance to the south-west. It comprises a timber framed grade II listed farm house that dates from the C17 with later additions. There is no obvious intervisibility between the appeal site and the farmhouse. A short distance to the north-west of the appeal site is the grade II listed Manor House, which dates from the C15 with mid-C20 alterations, and its two storey grade II listed gatehouse which probably dates from the C13 with later remodelling and alterations, restored in 1972. Intervening vegetation and the modern bungalow properties referred to means that there is no intervisibility between the Manor House/Gatehouse and the appeal site. The grade II listed Pound House, a cross winged timber framed house dating from the C17, lies slightly outside the village to the north, some distance from the appeal site. Again, intervening vegetation and land form means that, so far as I could see, there is no intervisibility between the appeal site and the House.
35. From the information before me, and from my own observations during the site visit, it would seem that the special interest of those buildings derives from their history, architecture and historical development. Each stands in its own grounds. Even were the appeal site visible from the listed buildings, or vice versa, there is nothing to indicate, apart from any former agricultural use, that the land had any formal relationship or designed vistas across it related to them. Whilst the listed buildings can be appreciated in views from the road, those views would not change as a consequence of the development proposed. I am satisfied in this regard that the appeal site contributes little, if anything, to the heritage significance of those listed buildings. As such, the ability to appreciate and understand their past connection with agricultural use would

not be materially affected by development of the application site. I find, therefore, that the special interest and significance of the listed buildings, and their setting, would be preserved.

36. In relation to archaeology, the Council did not, it would appear, seek comments from the relevant officer at the time of the planning application. However, following the Council's refusal of permission, in part on the basis of the absence of archaeological information, the appellant sought comments directly from the Council's archaeologist. The advice provided (7 December 2015) confirms that the historic environment record does not reveal any recorded heritage assets either on or close to the appeal site, and that an initial appraisal of the site history and conditions does not reveal any particular potential for previously unrecorded finds on the appeal site. The comments confirm that no further or additional information is required in this regard.
37. To conclude on this issue, I find that the development proposed would not harm the special interest or significance of any listed building or other heritage asset. There would be no conflict therefore, with the related advice in the Framework, or with policy SS6 which, among other things, seeks to protect such interests.

Ecology

38. Although the Council's statement comments that it has considered all the technical reports and other information accompanying the application, there is no indication that it has considered the protected species survey report. Whether or not it was seen as part of the original application, it was clearly submitted with the appeal and the Council has had the opportunity to comment on the results.
39. The survey found that no 'important' hedgerows⁹ would be affected by the proposal and there was no evidence of any protected species within the site, concluding that the development proposed would have no impact upon any protected species that might be found in the local area. There is nothing to challenge the findings of that survey. In the absence of any substantiated evidence to the contrary, I am satisfied that the proposal would not have an adverse impact on any protected species. There is no conflict, in this regard with Core Strategy policy LD2, which requires that proposals should conserve, restore and enhance the biodiversity assets of the area.

Planning Obligation

40. One of the Council's reasons for refusal refers to the absence of a planning obligation, citing policies SC1 and ID1 of the Core Strategy and the Council's Supplementary Planning Document on Planning Obligations (SPD) – April 2008. Policy SC1 indicates, among other things, that new development which creates a need for additional social and community facilities that cannot be met through existing facilities will be expected to meet those additional requirements through either extension of existing provision, through the provision of new facilities, or by developer contribution. Policy ID1 states that, where necessary, developer contributions will be sought towards strategic infrastructure, adding that the SPD will provide details of the type and scale of obligations that may apply. The SPD confirms that any new development may

⁹ As defined by The Hedgerow Regulations 1997

require mitigation to make it acceptable and that such mitigation may be the subject of an obligation involving a contribution.

41. Consideration of planning obligations is to be undertaken in the light of the advice at paragraph 204 of the National Planning Policy Framework and the statutory requirements of Regulations 122 and 123 of the Community Infrastructure Levy Regulations. These require that planning obligations may only constitute a reason for granting planning permission where they are necessary to make the development acceptable in planning terms; are directly related to the development; are fairly and reasonably related in scale and kind to it; and, since April 2015, must not relate to a pooled contribution where more than five such contributions have already been collected.
42. Other than referring to the SPD and a recent Cabinet Minute (10 February 2016) which confirms that the policy compliant sections of the SPD should continue to be used for development management purposes and, among other things, that the need for planning obligations on housing development of five homes or less¹⁰ is currently suspended, the Council has provided no detailed information as to what specific contributions or other measures might be required as a particular consequence of the development proposed.
43. Policy H1 of the recently adopted Core Strategy, which post-dates the SPD, indicates that open market housing proposals comprising ten dwellings or more, or where the maximum combined gross floor space is more than 1000 square metres, will be expected to contribute towards meeting affordable housing needs. The appeal scheme comprises six dwellings, with the appellant confirming that the scheme is designed to have a maximum combined gross floorspace of 998.9 square metres. On that basis, and given the absence of any reference to policy H1 in the reason for refusal, I have no reason to suppose that the appeal scheme is required to make an affordable housing contribution at the current time.
44. With regard to other contributions, the SPD refers to matters such as transport, children and young people, open space, library facilities and recycling/refuse. However, the SPD appears, for the most part, to amount to a general tariff on development, with no information provided by the Council in this case as to whether, or how the SPD requirements relate directly to the development proposed. The Council has provided no information either, as to whether any of the elements referred to might be the subject of pooled contributions. Indeed, the Council's submissions are silent on exactly what is required from the appellant in this regard, notwithstanding that the appellant has stated a willingness to submit a planning obligation once the specific requirements are made clear and can be assessed against the relevant tests¹¹.
45. In the absence of the information referred to, I have no way of knowing whether or not there is a need for the development proposed to make additional provision infrastructure/services/facilities. Had the appeal been acceptable in all other regards, I would have required further information on this. As it stands, I cannot conclude that the development proposed would not result in any harm in relation to its impact of local infrastructure and services etc or that there would be no conflict with policies SC1 or ID1.

¹⁰ The SPD, relying on policy H9 of the old UDP, states that in main villages, on schemes of more than six houses or on sites of more than 0.2 hectares, the indicative target for affordable provision is 35%.

¹¹ Correspondence dated 22 March 2016

Other Matters

46. The Council takes issue with the absence of landscaping details. However, it is usual in my experience, other than perhaps in particularly sensitive or highly constrained locations, for such matters to be dealt with by condition. There is no evidence from the Council to demonstrate why further landscaping information is required at this stage, or why it could not be dealt with by condition. I have no reason to suppose that dealing with this matter by condition would not be appropriate in this instance were the appeal to succeed, or that there would be any harm in this regard.

Overall Planning Balance and Conclusion

47. Paragraph 19 of the Framework advises that significant weight should be placed on the need to support economic growth through the planning system. I have no doubt, in this regard, that construction costs associated with the proposed development and the jobs it might support, together with additional local spend by future occupiers would be an economic benefit. Moreover, the provision of six new dwellings adjacent to a village that the Core Strategy identifies as being a sustainable location for new housing at a time when the Council cannot demonstrate a five year supply of housing land, is a social benefit. However, that is tempered slightly by the absence of any site specific information which would allow me to conclude as to whether the impact of the development proposed on local services, facilities and infrastructure would require mitigation.
48. With regard to environmental considerations, I have found that whilst there would be no harm to the significance of heritage assets, there would be some harm in terms of general character and appearance as a consequence of the layout proposed, albeit that such harm is limited. More significantly though, there are unresolved concerns about access for emergency vehicles during a flood event.
49. In the overall planning balance, I consider that the limited harm to character and appearance, the potential harm as a consequence of the absence of any planning obligation and, with the precautionary principle in mind, the potential risk to life as a consequence of the absence of any detailed information relating to access to the site for emergency vehicles during a flood event, significantly and demonstrably outweigh the benefits that I have identified when assessed against the development plan and the policies of the Framework taken as a whole. On that basis, I find that the proposal does not represent sustainable development and thus does not benefit from the presumption in favour of such. Accordingly, for the reasons given above, I conclude that the appeal should not succeed.

Jennifer A Vyse

INSPECTOR



Costs Decision

Site visit carried out on 22 March 2016

by **Mrs J A Vyse DipTP DipPBM MRTPI**

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

Decision date: 25 April 2016

Costs application in relation to Appeal Ref: APP/W1850/W/16/3141786 Land at Yarpole, Leominster, Herefordshire HR6 0BA

- 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 Mr F P Price for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for 6 No dwellings and 4 No garages.
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Decision

1. For the reasons that follow the application for an award of costs succeeds in part, in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance (planning guidance) advises that, 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.
3. The Council's decision sets out four reasons for refusal: highway safety; layout and design; absence of detailed information in relation to archaeology, ecology, landscaping, flood management, land drainage, water capacity and impacts to heritage assets and the existing public footpath; and the absence of a planning obligation. The planning guidance advises that local authorities are at risk of an award of costs against them if they behave unreasonably with respect to the substance of the matter under appeal, for example by failing to produce evidence to substantiate each reason for refusal on appeal (my emphasis).

Highway Safety

4. As set out in the related Appeal Decision, visibility to the left on exit from the proposed site access does not meet the usual standard for the prevailing speed limit. Although a speed survey was undertaken prior to determination of the application, it transpired that it had not been done in the correct location. The appellant therefore commissioned a further survey.
 5. It would seem that the Council was aware of the imminent re-survey but, despite the appellant having agreed to an extension of time for determination of nearly six months, the Council proceeded to a decision in any event. In support of its position, the Council advises that, at the time the application was determined, a potential alternative access arrangement was being considered by the appellant but, since it involved land outwith the appeal site, with the access crossing an open field, it was deemed to be an unacceptable
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arrangement in any event. Consequently, the Council was of the view that the revised speed survey data, whatever it showed, would not change the outcome of the application.

6. However, the planning application has not been formally amended at any stage to include any alternative access arrangement and the appeal is based on the same layout as that the subject of the plans on which the Council's decision is based. It is also clear that the revised speed survey relates to that access, not to the posited alternative. The Council confirms that highway safety issues are fundamental to the overall acceptability of the proposed development and that it has had regard to all the Technical Reports and other information provided. It is hard to understand therefore why, having been provided with the information sought, namely speed information to support the reduced Y-distance, the Council did not seek further advice from the local highway authority and did not address the submitted evidence in its statement.
7. On the basis of the information before me, I have found that the reduced Y-distance is appropriate in the circumstances demonstrated by the revised speed survey. That survey did not result in any proposed change to the scheme, it simply provided evidence to address the Council's safety concerns in relation to the limited visibility splay available. The Council has not produced any evidence to demonstrate that it has taken the later survey data into account. In essence, it has failed to substantiate its pursuance of this reason for refusal at appeal and its behaviour has, therefore, been unreasonable.

Layout and Design

8. Although the officer's report asserts that the design of the dwellings proposed, and the layout, is suburban in nature and thus is not in keeping with the rural location of the site (there is no mention in this section of the report to the Conservation Area, even though impact on heritage assets is a concern in one of the other reasons for refusal) there is no assessment by the Council of that character. Absent such an assessment, it is not clear how, in the Council's view, the character would be harmed by the layout or design of the dwellings proposed. There is no further discussion on this matter either, in the Council's written statement. Although I came to the same view as the Council in terms of the layout, the Council did not produce evidence to substantiate its ongoing concerns in relation to the design of the dwellings. Therefore, in pursuing this element of the related reason for refusal, its behaviour has been unreasonable.

Absence of Information

9. The third reason for refusal states that, in the absence of detailed information in relation to various matters, the appellant failed to identify and adequately assess the potential impacts of the development proposed and how such impacts could be avoided, mitigated or managed.
10. The application was received by the Council on 31 March but was not validated until 18 June 2015. Had the Council considered the information referred to, to be necessary in order to fully consider the impact of the development proposed, it could have given notice to the applicant that the information was required, as provided for in Article 5(2) of the Town and Country Planning (Development Management Procedure) Order 2015 (DMPO). Whilst an email from the Council, dated 16 April 2015 sets out that part of the site is in Flood

Zones 1 and 2¹ and requests details of the public right of way across the site, there is no indication in the submissions before me that any request for the other information referred to in this reason for refusal was made by the Council at the time that the application was lodged, or at any time prior to its determination.

11. Archaeology: There is no explanation as to why the Council did not consult its archaeological adviser as part of its consultation process on receipt of the application, given that the extent and nature of the development proposed is abundantly clear from the plans submitted. In any event, the appellant sought comments directly from the relevant officer following refusal of the application, which comments were submitted with the appeal. Those comments confirm that the historic environment record does not reveal the presence of any recorded heritage assets either on or close to the appeal site, and that an initial appraisal of the site history and conditions does not reveal any particular potential for previously unrecorded finds. It concludes that no further or additional information is required in this regard. There is no reference to those comments in the Council's written statement. It simply states that, had the appellant consulted with the Parish Council and the wider community, the potential for archaeological remains would have been raised and could have been addressed. The Council has not produced any evidence to substantiate its pursuance of this part of this part of the reason for refusal at appeal and I consider its behaviour to have been unreasonable in this regard.
12. Ecology: The appellant maintains that a protected species survey report (dated 12 March 2015) was submitted with the application. It was, however, clearly submitted with the appeal. Other than stating that the Council has no record of having received the survey with the application, there is no assessment of the findings of that survey in its written appeal statement. The survey found that no 'important' hedgerows would be affected by the proposal, with no evidence of any protected species within the site, concluding that the development proposed would have no impact upon any protected species that might be found in the local area. The Council has not produced any evidence to substantiate its pursuance of this part of this part of the reason for refusal at appeal and I consider its behaviour to have been unreasonable in this regard.
13. Landscaping: It is far from unusual, in my experience, other than perhaps in particularly sensitive or highly constrained locations, for the matter of landscaping to be dealt with by condition. There is no evidence from the Council, either in the officer's report or the written statement, to demonstrate why further information is required on this at this stage, or why it could not safely be left to be dealt with by condition. The Council has not produced any evidence to substantiate its pursuance of this part of the reason for refusal at appeal and I consider its behaviour to have been unreasonable in this regard.
14. Flood management/land drainage/water capacity: A flood risk assessment (FRA) was submitted with the planning application. Whilst the dwellings proposed would be within Flood Zone 1, the site access lies within Flood Zone 3. The FRA acknowledges, in this regard, that access and egress from the site may therefore be unsafe during a flooding event. Whilst the Council's Land Drainage section accepts that residents could safely leave the site on foot during a flood event, heading north via the public footpath, concerns are raised

¹ As confirmed in the flood risk assessment and officer's report, the appeal site actually lies within flood zones 1 and 3

about vehicular access. It advised that the Council's Emergency Planning Department should be contacted, to discuss any requirements they may have in this regard. It also suggested that further consideration may need to be given to flood depths and velocity in this area. However, there is no evidence to suggest that the Council went on to seek further comment in this regard, in order to establish whether or not the arrangement proposed was acceptable to the Emergency Planning Department, or whether further information might be required. No information was provided on this at appeal, even though it formed part of the reason for refusal. As a consequence, I find the Council's behaviour in this regard, to have been unreasonable.

15. Additional drainage details were provided by the appellant prior to determination of the application by the Council and Welsh Water, who was consulted, raised no objection. However, whilst not objecting to the scheme, the Land Drainage comments suggest that further information be sought prior to any grant of planning permission, regarding the surface water drainage strategy for the development. My reading of those comments is that there is no suggestion that the site could not be drained satisfactorily. Rather, further testing is required to assess whether a sustainable drainage system could be employed. In the event that ground conditions prevented utilisation of such a system, the comments suggest restricting run-off rates to pre-development greenfield rates. I am not persuaded that further information is required on this, prior to determination of the application. The Council has produced no substantiated evidence to demonstrate why this matter could not have been dealt with by condition, or to support its pursuance of this part of the reason for refusal at appeal. I therefore consider its behaviour to have been unreasonable in this regard.
16. Similarly, in terms of foul drainage, there is no suggestion that it would not be possible or practicable to secure a suitable foul drainage scheme. Whilst the Council suggests that there may be no current capacity at the local sewage treatment works, the Core Strategy does identify Yarpole as a location for future development, with the Neighbourhood Plan calling for prospective development sites. Moreover, the Land Drainage comments indicate that an alternative to connection to existing public sewers, would be the use of an on site package treatment plant. There is no indication that the Council has considered dealing with the matter by condition and it has not produced any evidence to substantiate its pursuance of this part of the reason for refusal at appeal. I consider its behaviour to have been unreasonable in this regard.
17. Heritage assets: Paragraph 128 of the National Planning Policy Framework indicates that local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. No such request appears to have been made when the application was lodged, or at any time since. Be that as it may, paragraph 129 confirms that local planning authorities should also identify and assess the particular significance of any heritage asset that may be affected by a proposal, including development that may affect the setting of an asset.
18. Although the list descriptions for three listed buildings in the locality were submitted with the questionnaire, there is no indication in the Council's submissions that it consulted on the heritage impact of the appeal scheme in this regard. Neither do the Council's submissions include any indication as to what it considers the special interest or significance of those assets to be,

whether the appeal site lies with their setting and, if it does, what impact the development proposed might have on the heritage significance of those assets.

19. With regard to the Conservation Area, other than a plan showing the Conservation Area boundary, the Council provides no assessment of its character and appearance, even though its written statement asserts that the character and appearance of the Conservation Area would be harmed. In any event, the appeal site lies adjacent to but outside the Conservation Area. The statutory protection afforded to Conservation Areas relates to the character and appearance of land and buildings within them². No statutory protection is afforded to the character and appearance of the setting of Conservation Areas. That said, where a development lies within the setting of a heritage asset, the Framework requires that an assessment be made of the effect of that development on the heritage significance of the asset. Whilst the appeal site clearly lies within the setting of the Conservation Area, the Council provides no indication as to what it considers that heritage significance to be. Moreover, whilst the written statement refers to the historical context of the settlement and views into the Conservation Area, these are not explained or assessed anywhere in the Council's evidence.
20. This is a detailed application, the plans submitted including elevations of the dwellings proposed and a site layout. I see no reason therefore, why the Council could not come to a view on the impact of the development proposed in terms of heritage assets. The Council has not produced any evidence to substantiate its pursuance of this part of the reason for refusal at appeal and I consider its behaviour to have been unreasonable in this regard.
21. Public footpath: A public footpath passes diagonally across the appeal site. Although the submitted layout allows for a footpath route through the proposed development, that is not on the current alignment. It is not clear what additional information the Council required in this regard. I recognise that no formal application for a Diversion Order accompanied the planning application. However, whilst the absence of any Order could have implications for implementation were the planning application to have succeeded, it would not have prevented the Council from coming to a view on the planning merits of the development proposed. The Council has not produced any evidence to substantiate its pursuance of this part of the reason for refusal at appeal and I consider its behaviour to have been unreasonable in this regard.

Absence of a Planning Obligation

22. Policy SC1 of the Core Strategy indicates that where new development creates a need for additional social and community facilities that cannot be met by existing facilities, it should make provision to meet those needs. Policy ID1 refers to the need for more strategic contributions, advising that the Council's Supplementary Planning Document on Planning Obligations (SPD) provides further details. However, other than re-stating that no contributions are provided for, neither the officer's report, the Council's appeal statement, nor subsequent correspondence provides any details as to what contributions or other measures are required as a particular consequence of the specific development proposed. Neither is there any information in terms of any infrastructure projects that might be the subject of pooled contributions. I quite recognise that there may be implications that the appeal scheme would

² Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990

need to address. However, the Council has produced no evidence to substantiate its continued objection in this regard, which behaviour is unreasonable.

Conclusion

23. In providing little if any evidence substantiate the reasons for refusal on appeal, I find the Council's behaviour to have been unreasonable. However, for any application for costs to succeed, such behaviour needs to have involved an applicant in unnecessary or wasted expense.
24. In relation to flood risk, I am unable to conclude, on the basis of the information before me, that future occupiers would be safe from the risk of flooding having particular regard to access to the site by emergency vehicles during a flood event. In relation to the layout proposed, I have found that there would be some harm to the character and appearance of the area. Lastly, I am unable to conclude, on the basis of the information before me, whether there is a need for a planning obligation to secure contributions to address possible harm in terms of increased pressure on infrastructure and local services and facilities etc (although I recognise on this latter point that the absence of an obligation stems from the lack of information provided by the Council, not the appellant).
25. On these particular matters, whilst the Council's behaviour was unreasonable, the appellant has not incurred unnecessary or wasted expense, given my findings as set out in the substantive decision. In all other matters however, I have found in favour of the appellant. It follows, therefore, that the appellant has been put to unnecessary expense in pursuing those other matters at appeal and a partial award of costs is justified.

Costs Order

26. 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 Herefordshire Council shall pay to Mr F P Price, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with the matters raised by the reasons for refusal, with the exception of flood risk, site layout and the planning obligation.
27. The applicant is now invited to submit to Herefordshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Jennifer A Vyse

INSEPECTOR



IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/4149/2016

BEFORE DR E.FRANEY, ACO LAWYER, IN EXERCISE OF POWERS DELEGATED BY
THE PRESIDENT OF THE QUEEN'S BENCH DIVISION IN CPR PART 54.1A

IN THE MATTER OF THE Local Government Act 1972
Section 250 (5)

and

IN THE MATTER OF THE Town and Country Planning Act 1990
Sections 78, 322 and Schedule 6



ORDER

UPON READING the Order of the Secretary of State for Communities and Local Government dated 25th April 2016 in exercise of his 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 powers enabling him in that behalf ordering that Herefordshire Council shall pay to Mr F P Price, the costs of the appeal proceedings limited to those costs incurred in dealing with the reasons for refusal, with the exception of flood risk, site layout and the planning obligation; such costs to be assessed in the Senior Courts Costs Office if not agreed.

IT IS ORDERED THAT the said Order of the Secretary of State for Communities and Local Government as to costs be made an Order of this Honourable Court and that Herefordshire Council shall pay to Mr F P Price, such costs as therein ordered to be assessed.

Dated: 31st August 2016

By the Court

Original to:-

John Needham Associates
Architects & Planners
22 Broad Street
Ludlow
Shropshire
SY8 1NG

Ref: APP/W1850/W.16/3141786



Costs Decision

Site visit carried out on 22 March 2016

by Mrs J A Vyse DipTP DipPBM MRTPI

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

Decision date: 25 April 2016

Costs application in relation to Appeal Ref: APP/W1850/W/16/3141786 Land at Yarpole, Leominster, Herefordshire HR6 0BA

- 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 Mr F P Price for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for 6 No dwellings and 4 No garages.
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Decision

1. For the reasons that follow the application for an award of costs succeeds in part, in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance (planning guidance) advises that, 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.
3. The Council's decision sets out four reasons for refusal: highway safety; layout and design; absence of detailed information in relation to archaeology, ecology, landscaping, flood management, land drainage, water capacity and impacts to heritage assets and the existing public footpath; and the absence of a planning obligation. The planning guidance advises that local authorities are at risk of an award of costs against them if they behave unreasonably with respect to the substance of the matter under appeal, for example by failing to produce evidence to substantiate each reason for refusal on appeal (my emphasis).

Highway Safety

4. As set out in the related Appeal Decision, visibility to the left on exit from the proposed site access does not meet the usual standard for the prevailing speed limit. Although a speed survey was undertaken prior to determination of the application, it transpired that it had not been done in the correct location. The appellant therefore commissioned a further survey.
 5. It would seem that the Council was aware of the imminent re-survey but, despite the appellant having agreed to an extension of time for determination of nearly six months, the Council proceeded to a decision in any event. In support of its position, the Council advises that, at the time the application was determined, a potential alternative access arrangement was being considered by the appellant but, since it involved land outwith the appeal site, with the access crossing an open field, it was deemed to be an unacceptable
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arrangement in any event. Consequently, the Council was of the view that the revised speed survey data, whatever it showed, would not change the outcome of the application.

6. However, the planning application has not been formally amended at any stage to include any alternative access arrangement and the appeal is based on the same layout as that the subject of the plans on which the Council's decision is based. It is also clear that the revised speed survey relates to that access, not to the posited alternative. The Council confirms that highway safety issues are fundamental to the overall acceptability of the proposed development and that it has had regard to all the Technical Reports and other information provided. It is hard to understand therefore why, having been provided with the information sought, namely speed information to support the reduced Y-distance, the Council did not seek further advice from the local highway authority and did not address the submitted evidence in its statement.
7. On the basis of the information before me, I have found that the reduced Y-distance is appropriate in the circumstances demonstrated by the revised speed survey. That survey did not result in any proposed change to the scheme, it simply provided evidence to address the Council's safety concerns in relation to the limited visibility splay available. The Council has not produced any evidence to demonstrate that it has taken the later survey data into account. In essence, it has failed to substantiate its pursuance of this reason for refusal at appeal and its behaviour has, therefore, been unreasonable.

Layout and Design

8. Although the officer's report asserts that the design of the dwellings proposed, and the layout, is suburban in nature and thus is not in keeping with the rural location of the site (there is no mention in this section of the report to the Conservation Area, even though impact on heritage assets is a concern in one of the other reasons for refusal) there is no assessment by the Council of that character. Absent such an assessment, it is not clear how, in the Council's view, the character would be harmed by the layout or design of the dwellings proposed. There is no further discussion on this matter either, in the Council's written statement. Although I came to the same view as the Council in terms of the layout, the Council did not produce evidence to substantiate its ongoing concerns in relation to the design of the dwellings. Therefore, in pursuing this element of the related reason for refusal, its behaviour has been unreasonable.

Absence of Information

9. The third reason for refusal states that, in the absence of detailed information in relation to various matters, the appellant failed to identify and adequately assess the potential impacts of the development proposed and how such impacts could be avoided, mitigated or managed.
10. The application was received by the Council on 31 March but was not validated until 18 June 2015. Had the Council considered the information referred to, to be necessary in order to fully consider the impact of the development proposed, it could have given notice to the applicant that the information was required, as provided for in Article 5(2) of the Town and Country Planning (Development Management Procedure) Order 2015 (DMPO). Whilst an email from the Council, dated 16 April 2015 sets out that part of the site is in Flood

Zones 1 and 2¹ and requests details of the public right of way across the site, there is no indication in the submissions before me that any request for the other information referred to in this reason for refusal was made by the Council at the time that the application was lodged, or at any time prior to its determination.

11. Archaeology: There is no explanation as to why the Council did not consult its archaeological adviser as part of its consultation process on receipt of the application, given that the extent and nature of the development proposed is abundantly clear from the plans submitted. In any event, the appellant sought comments directly from the relevant officer following refusal of the application, which comments were submitted with the appeal. Those comments confirm that the historic environment record does not reveal the presence of any recorded heritage assets either on or close to the appeal site, and that an initial appraisal of the site history and conditions does not reveal any particular potential for previously unrecorded finds. It concludes that no further or additional information is required in this regard. There is no reference to those comments in the Council's written statement. It simply states that, had the appellant consulted with the Parish Council and the wider community, the potential for archaeological remains would have been raised and could have been addressed. The Council has not produced any evidence to substantiate its pursuance of this part of this part of the reason for refusal at appeal and I consider its behaviour to have been unreasonable in this regard.
12. Ecology: The appellant maintains that a protected species survey report (dated 12 March 2015) was submitted with the application. It was, however, clearly submitted with the appeal. Other than stating that the Council has no record of having received the survey with the application, there is no assessment of the findings of that survey in its written appeal statement. The survey found that no 'important' hedgerows would be affected by the proposal, with no evidence of any protected species within the site, concluding that the development proposed would have no impact upon any protected species that might be found in the local area. The Council has not produced any evidence to substantiate its pursuance of this part of this part of the reason for refusal at appeal and I consider its behaviour to have been unreasonable in this regard.
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about vehicular access. It advised that the Council's Emergency Planning Department should be contacted, to discuss any requirements they may have in this regard. It also suggested that further consideration may need to be given to flood depths and velocity in this area. However, there is no evidence to suggest that the Council went on to seek further comment in this regard, in order to establish whether or not the arrangement proposed was acceptable to the Emergency Planning Department, or whether further information might be required. No information was provided on this at appeal, even though it formed part of the reason for refusal. As a consequence, I find the Council's behaviour in this regard, to have been unreasonable.

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Conclusion

23. In providing little if any evidence substantiate the reasons for refusal on appeal, I find the Council's behaviour to have been unreasonable. However, for any application for costs to succeed, such behaviour needs to have involved an applicant in unnecessary or wasted expense.
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Costs Order

26. 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 Herefordshire Council shall pay to Mr F P Price, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in dealing with the matters raised by the reasons for refusal, with the exception of flood risk, site layout and the planning obligation.
27. The applicant is now invited to submit to Herefordshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

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