IN THE MATTER OF:

SECTION 78 OF THE TOWN AND COUNTRY PLANNING ACT 1990

and

AN APPEAL BY TIDCOMBE HOLDINGS LLP AGAINST MID-DEVON COUNCIL'S REFUSAL OF AN OUTLINE PLANNING APPLICATION FOR UP TO 100 DWELLINGS TO INCLUDE THE CONVERSION OF TIDCOMBE HALL AND OUTBUILDINGS, PROVISION OF COMMUNITY GROWING AREA, PUBLIC OPEN SPACE, ASSOCIATED INFRASTRUCTURE, ANCILLARY WORKS AND ACCESS WITH ALL OTHER MATTERS RESERVED

PINS Ref: APP/Y1138/W/24/3358001
LPA Ref: 24/00045/MOUT

COSTS APPLICATION ON BEHALF OF THE APPELLANT

Introduction

1. This is an application for a full costs award to be made against the LPA on the basis that it has behaved unreasonably in refusing planning permission. The unreasonable behaviour has been "substantive" – i.e relating to the issues arising from the merits of the appeal. It is made at the earliest opportunity – as will be seen from what is set out above, the full paucity of the LPA's case was not revealed until the XX of its planning witness ('APA')

Relevant guidance

2. The relevant guidance is set out in the NPPG starting at para. 027 (16-027-20140306). The purpose of the costs regime (set out para. 028) includes encouraging LPAs to "properly exercise their development management responsibilities, 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. The guidance provides examples of the types of behaviour that may give rise to a substantive award against a local planning authority. The following examples of substantive unreasonableness listed in the PPG (at para. 049) are of particular relevance in this case:

    a. 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;

    b. The failure to produce evidence to substantiate each reason for refusal on appeal;

    c. Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective evidence.

    d. Not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination) … as part of sensible on-going case management.

4. These examples are expressly said to be not exhaustive (paras. 46 and 49). It is submitted that in addition to the above, it is also self-evidently unreasonable to pursue arguments that do not reach the threshold of respectability (i.e an argument that no reasonable inspector could possibly accept).

Submissions

5. This application is made on two alternative bases.

Development Plan Compliance

6. As set out above, the PPG requires parties to promptly review their case as part of sensible ongoing case management. As soon as the LPA realised (a) it

did not have a 5YHLS (b) its Action Plan was not going to deliver a 5YHLS and (c) that under the SM its supply would fall to circa. 2.1yrs, it should have conceded that planning permission ('PP') should be granted. To use the words of the PPG, at this point this development became one which should 'clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations'.

7. The LPA became aware of all three matters ((a) to (c) above) in April at the latest (publication date of its Action Plan). Had the LPA conceded at that point, the appeal may have been avoided altogether through a fresh application which the LPA could then have granted. At the very least, the costs of the appeal would have be reduced very significantly (the Action Plan was published 3 weeks before the deadline for submission of evidence, and a non-contested appeal could have been down-graded to written representations requiring minimal work).

8. Why should the LPA have conceded at that point? Because from that point on, its case became wholly untenable (i.e its reasons for refusal could not possibly stand up to scrutiny on the planning merits of the case). It should not have taken the XX of APA to reveal this, but that is precisely what the Appellant was forced to do.

9. Having left the matter wholly unclear in his written evidence, APA sought to suggest that TIV 13 was not triggered because S4 was not met. This argument is wholly unreasonable – the policy is crystal clear, and capable of only one meaning: if bringing forward allocations or outstanding planning consents does not deliver a 5YHLS, permit the contingency site so as to boost housing supply. It is not a difficult policy to understand. No reasonable decision-maker could accept APA's interpretation, namely that the policy means we should sit and wait indefinitely to see if a 5YHLS materialises at some indeterminate point in the future. No reasonable decision-maker could accept such an interpretation because (a) interpretation of planning policy is a matter of law, (b) the interpretation put forward by APA is wrong in law, and (c) it is wrong in law because it is perverse – it would empty the policy of any meaningful

content.

10. In his written evidence, APA more or less accepted as much because he stated that 'consideration of Policy TIV 13 is engaged and it is necessary to determine in this Appeal the extent to which the terms of Policy TIV 13 would or would not be met'. In his oral evidence he accepted that:

    a. If TIV 13 was complied with, the proposal complied with the DP read as a whole and should be granted, and

    b. There was no objection based on anything other than TIV 13(d) (all other criteria were met, and in particular TIV 13(a) would be met if 13(d) were met);

11. Having reached this stage the LPA needed to give focused attention to what the evidence demonstrated as regards impact on setting of the canal, Conservation Area (CA) and Tidcombe Hall ('TH').

12. Even on its own evidence, the harm was less than substantial ('LSH'), at the lower end for the CA. As regards TH, the LPA failed to give any consideration at all to the fact improvements to it would result in heritage benefits to both TH and the CA (as accepted by their own witness, Mr Muston). Even if it wanted to factor in harm to Tidcombe Farmhouse ('TFH'), which is not mentioned in TIV13(d) at all, that harm is inevitable if TIV 13 is to be utilised (neither the policy nor any witness suggested it should remain an agrarian field, and once that use is lost the harm to TFH inevitably follows). That may or may not be why the setting to TFH is not mentioned in the policy; all that matters is that it is not a policy requirement to protect its setting.

13. The evidence before the LPA (its own evidence) clearly and incontrovertibly demonstrates that the harm to the setting of heritage assets mentioned in the policy has been minimised – it was not possible for it to be any lower. In addition, the LPA should have accepted that TIV 13 was allocated on the express understanding that there would be harm to the setting of these assets

(this was made clear in the SHLAA and the SA for the DP).

14. It is clear from both the written and oral evidence of APA that he gave no consideration to the above matters. To say he relied on the evidence of Mr Muston is not good enough – Mr Muston could not and did not make any assessment of whether TIV 13(d) was satisfied. He gave expert evidence on the level of harm. Whether that level of harm amounted to a breach of TIV13(d) having regard the above matters was a planning judgment that had to be made by the LPA, through APA. There is nothing in his written evidence to suggest he exercised that judgment, and his XX revealed that he had clearly never applied his mind to this critical task. He appears to have reasoned that the existence of harm was sufficient to breach TIV13(d). Alternatively, the Appellant submits that if he did reach the judgment that the level of harm was sufficient to fail TIV 13(d) (and it is not clear that he did reach this judgment), it is a judgment that is perverse – it cannot and did not stand up to scrutiny.

15. This is development that clearly complies with the DP, it should clearly be permitted, and this should have been obvious to the LPA as far back as April.

NPPF Compliance

16. Even if it was remotely tenable for the LPA to conclude that the proposals breached TIV 13(d), the LPA had to ask whether they failed the tilted balance given that there was no 5YHLS and the tilted balance was engaged. If the LPA was going to argue that the tilted balance was not engaged, or that if engaged it was failed, they had produce evidence to this effect to this inquiry (i.e it had to substantiate its case with credible arguments that would stand up to scrutiny).

17. APA gave the impression in his written evidence that footnote 7 was engaged, that this in turn engaged NPPF para.11(d)(i), and thus the tilted balance never engaged (see his para. 6.2). But this was always wrong, because he failed to properly understand and apply the NPPF – 'conflict with the interests listed in Footnote 7' (his words) is not sufficient to disengage the tilted balance. The

test (insofar as relevant to this case) is that heritage policies had to provide a 'strong reason' to refuse permission. The case law is clear that to answer this question, it is necessary to carry out the balancing exercise in NPPF215. If that exercise is passed, the tilted balance in para.11(d)(ii) must be applied.

18. As APA conceded in XX, he never carried out the NPPF 215 balancing exercise. When he was forced to apply is mind to that exercise, he readily conceded that the balancing exercise in NPPF215 was passed – low levels of substantial harm to two designated heritage assets (TH being irrelevant to this exercise) could not possibly be said to outweigh all of the public benefits of these proposals.

19. This in turn had the consequence that (as he accepted) he had not applied the tilted balance (this is clear from his written evidence at para. 6.2). This leads to the inescapable conclusion that the LPA failed to do what it should have done in April, namely ask whether the adverse impacts of these proposals significantly and demonstrably outweigh all the benefits. It did not apply the right test in April, and it did not apply the right test at this inquiry. It has never applied the correct policy test for determining this application, and it has failed to call evidence to substantiate its refusal. That would have required a professional planning witness to give evidence that the tilted balance was failed. APA did not and could not provide that evidence because he has never applied his mind to the tilted balance.

20. The LPA's failure to judge and decide this application by reference to the correct, well understood and well established policy test is a clear example of unreasonable behaviour.

21. To succeed in its costs application the Appellant does not need to show that **had** the LPA applied the correct test it would have granted planning permission. However, and for the avoidance of doubt, the Appellant submits that had the LPA applied the correct test, the only reasonable conclusion open to the LPA would have been that the tilted balance was passed. This is so because having accepted (via APA) that the para.215 balance is passed, it is

impossible to see what additional harms come into play in the para.11(d)(ii) exercise that would lead to that test being failed – a test deliberately and heavily tilted in favour of permission. The only remaining harms are to TH, a non-designated heritage asset which is going to have significant improvements made as a result of this proposal and be saved from almost inevitable decay and loss, and (even on the LPA's case) landscape harms which are confined to the site itself and visual impact which is localised to the immediate environs of the site (harms accepted and 'baked into' the policy decision to release the site in the event of no 5YHLS).

Conclusion

22. For all of these reasons it is submitted that the LPA acted unreasonably in failing to keep its case under review. It should have reviewed its case in April, and accepted that the proposals complied with the DP read as a whole. Alternatively, it should have applied the tilted balance, which (if it acted reasonably) would inevitably have led to the conclusion that its refusal was indefensible. In the further alternative, the LPA has failed to substantiate its reason for refusal at appeal.

23. This is a clear case of an LPA that has stuck its head in the sand and prevented or delayed development which it should clearly have permitted. It is respectfully requested that the LPA be ordered to pay in full all of the costs incurred by the Appellant in connection with and arising from the LPA's refusal to concede in April that planning permission should be granted.

Satnam S Choongh
Chatura Saravanan
No. 5 Chambers
5th June 2025

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