

SUPPLEMENTARY BUDGET
REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY
DIRECTION)



Hinckley & Bosworth
Borough Council

A Borough to be proud of

WARDS AFFECTED: ALLWARDS

1. **PURPOSE OF REPORT**

To seek agreement for the provision of a supplementary budget to fund full costs awarded to the appellant, David Wilson Homes, in respect of the planning appeal for development off Britannia Road, Burbage.

2. **RECOMMENDATION**

That Executive approves a **one off** supplementary budget of £27,149.25 to fund the costs application awarded against the Council. This will be financed from the General Fund from savings identified in year.

3. **BACKGROUND TO THE REPORT**

3.1 Two appeals by David Wilson Homes against the refusal of planning permission for a re-plan and substitution of housetypes on Plots 40-45 and 47-49 of planning permission 12/00154/FUL (Appeal A) and the erection of 9 dwellings and associated infrastructure (Appeal B) at land off Britannia Road, Burbage were allowed on 25 October 2013.

3.2 At the appeal an application for the full award of costs was made on behalf of the Appellant, David Wilson Homes. Details of this application follow:

3.3 *Appellant's Case*

The appellant contended that the Council had acted unreasonably, the Officer making the recommendation to the Council's planning committee was qualified in respect of both planning and urban design. The appellants also referred to the Council's withdrawal of the policy basis for its 2 reasons in respect of appeal B, and stated that Policy BE1 referred to in the reason for refusal in respect of appeal A had been taken into account in granting permission in 2011 and eventually in 2012. They further stated that the Council has a record of resisting development against the advice of their officers. The appellants stated it is notable that none of the Members who made the decisions in respect of the planning applications attended the Hearing to defend those positions. They stated that the purpose of the costs regime is not punitive, it is intended to instill a sense of discipline, to prevent Members making decisions against Officer advice without sound planning reasons for rejecting a proposal. They stated that no consideration was given by Members to impose a suitable condition to enable the development in respect of Appeal A to be permitted. They also noted that the decision notices say the local authority has attempted to work with the applicant in a positive and proactive manner and whilst officers had worked with the applicants, Members did not give substance to these words.

3.4 Further comments submitted by the appellant stated that there was a need to pursue the matter of need and quite properly the appellant considered the housing position as the reason for refusal went beyond Burbage by referring to the spatial vision for the Borough and the overarching intentions of the Framework.

3.5 *Council's case*

The Council refuted the claim for costs stating that it was not the case of Members seeking to maintain resistance to a scheme that had since been found to be acceptable but a genuine disagreement between Officers and Members relating to the weight to be attached to the impact of the end stop. Whilst the Development Control Manager did not take the view that the design argument was a strong one, it was not unreasonable of Members to come to a different conclusion. The matter of imposition of a condition to overcome the concerns was raised by the Inspector and the appellants have included this in their application for costs opportunistically.

3.6 With regards to Appeal B, the Council admitted that the simple maths involved indicates it would be difficult to substantiate and if the Council is required to pay costs in this case it ought not be required to pay the appellant's costs in respect of the huge expense associated with housing land supply. The Council also submitted that the proposed development would be located on a Greenfield site which local people and Members cherish. The Council considered that although the proposal would have small economic and social benefits the impact on the countryside would be disproportionately high. The test is could Members reasonably make this decision and it is considered that it is not unreasonable to expect some resistance.

3.7 *Inspector's Decision*

The Inspector considered the applications for costs in light of Circular 03/2009, she cited Paragraph B15 which says that planning authorities are at risk of an award of costs against them if they prevent or delay development which should clearly be permitted, and Paragraph B29 which gives examples of circumstances which may lead to an award of costs against a planning authority. Such examples include persisting in objections to a scheme, or part of a scheme, which has already been granted planning permission and not imposing conditions on a grant of planning permission where conditions could have effectively overcome the objection. Finally, she refers to paragraph B20 that states planning authorities are not bound to accept the recommendations of their Officers, however if Officers' professional or technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects.

3.8 With regards to Appeal A, the Inspector considered that the Council did not adequately demonstrate why the layout would be harmful and no substantial evidence to support this view in terms of a formal assessment of the design merits of the scheme was put forward. As such she considers the Council acted unreasonably as it failed to produce relevant evidence to support the decision in all respects. Further, she considered there is evidence that the Council has persisted in objecting to development on the larger site, in addition no consideration had been given to whether or not the imposition of an appropriate planning condition would satisfy the Council's concerns in this respect. As such she considered the Council acted unreasonably by persisting in its objection and because it would have been possible to impose a condition on any approval.

3.9 With regards to Appeal B, the Inspector noted that the Council confirmed that there is an identified need within Burbage for residential development. The Council sought to pursue part of its first reason for refusal which referred to the proposed development as being unsustainable, in particular the impact of the proposed development of this Greenfield site on the character and appearance of the area, however no substantial evidence was provided in its statement or at the hearing to support this view. Having regard to the need for new housing within Burbage and the economic benefits of the proposed development the Inspector considered the Council failed to demonstrate why it considered the impact on the countryside would be disproportionately high in this case. As such she considered the Council acted unreasonably, as it failed to produce relevant evidence to support the decision in all respects.

- 3.10 In terms of the Council's second reason for refusal referred to there being no residual housing requirement for Burbage; the Inspector noted the simple calculation carried out at the Hearing to show that this was not the case. However, she contends that given the wording of the first reason for refusal is was reasonable for the appellants to consider whether or not the Council had a 5 year land supply of housing land. Had the Council's position been made clear following the submission of the appellant's grounds of appeal rather than at the hearing this work could have been aborted. She therefore considers that the award of costs should include the work undertaken by the appellants in this regard.
- 3.11 The Inspector therefore invited the appellant to submit their full costs to the Local Authority for payment.
- 3.12 The Local Authority received the costs claim dated 27 January 2014 enclosing full details of the costs incurred. In summary these are:

Marrons	£13,967.10
No. 5	£9,050.00
David Wilson Homes	£4,132.15
Total	£27,149.25.

4. **FINANCIAL IMPLICATIONS (KP)**

- 4.1 The Council has a total net budget for the administration of appeals for 2013/2014 of £149,740. This includes a budget of £46,310 specifically for legal costs.
- 4.2 Given the level of the proposed payment and forecasts to the year end, there is insufficient amounts within the appeals budget to finance the costs incurred. A supplementary budget is required. In line with financial regulations, supplementary budget requested between £25,001 and £50,000 require approval of Executive.
- 4.3 It is recommended that this supplementary budget is **one off** and is funding by the General Fund from savings identified in 2013/2014.
- 4.4 A proposal to set up an appeals reserve to manage costs associated with the appeals process was taken to Scrutiny Commission in November 2013. Establishment of this reserve will be proposed as part of the 2014/2015 budget setting process.

5. **LEGAL IMPLICATIONS (MR)**

- 5.1 The TCPA 1990 empowers the SoS to make costs awards for all proceedings under the Planning Acts.
- 5.2 Circular 03/2009 provides guidance on the award of costs in proceedings under the Planning Acts, the aim of which is to increase the discipline of parties when taking action within the planning system through financial consequences for those parties who are adjudged to have behaved unreasonably and caused unnecessary or wasted expense.
- 5.3 It represents current national policy on the awarding of costs and is fully taken into account by the SoS and inspectors where costs are at issue

6. **CORPORATE PLAN IMPLICATIONS**

6.1 The Council needs to manage its performance through its Performance Management Framework in relation to appeals.

7. **CONSULTATION**

7.1 None

8. **RISK IMPLICATIONS**

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

8.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of Significant (Net Red) Risks		
Risk Description	Mitigating Actions	Owner
Financial implications to the Authority in defending appeals	Take into account the risk in refusing planning applications and the likely success of an appeal	Nic Thomas / Tracy Miller

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

9.1 None

10. **CORPORATE IMPLICATIONS**

10.1 None

Background papers: Appeal Decision, Costs Decision, Costs Claim dated 17 January 2014.

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