Planning Inspectorate

Appeal Decision

Site visit made on 13 August 2025

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2025

Appeal Ref: APP/N1025/W/25/3362579
Land off Little Hallam Hill
Grid Ref Easting: 446287; Grid Ref Northing: 340581

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Village Partnerships Ltd (in liquidation) against the decision of Erewash Borough Council.
- The application Ref is ERE/0522/0020.
- The development proposed is full planning permission for the erection of affordable homes (Class C3), together with associated parking, landscaping, drainage, the layout of roads, footways and other associated works.

Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for costs has been made by Village Partnerships Ltd (in liquidation) against Erewash Borough Council and is the subject of a separate decision.

Main Issue

3. The main issue is whether the financial contributions towards secondary school places and open space are necessary to make the development acceptable in planning terms, having regard to the viability of the scheme.

Reasons

4. Policies 18 and 19 of the Erewash Core Strategy, adopted March 2014 (the CS), and Policy H9 of the Erewash Local Plan Saved Policies 2005 (amended 2014) (the SP), collectively establish the principle that new development must be supported by the provision of infrastructure necessary to meet the needs it generates. These policies require development proposals to directly provide or contribute financially towards infrastructure such as education, community facilities, open space and healthcare, ensuring that the impact of growth is properly mitigated.

5. These policies are supported by the Developer Contributions (S.106) Supplementary Planning Document (the SPD), which identifies the infrastructure needs of the Borough, assesses the viability of new housing development to meet those needs, and provides guidance on expected contributions. These policies and guidance are aligned with paragraphs 58 and 59 of the National Planning Policy Framework (the Framework), and the Planning Practice Guidance (PPG) on Viability, which confirm that planning obligations must be necessary to make the

development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.

6. The Council's officer report explains that the financial contributions sought have been calculated using standard formulae set out in the SPD, which supports the relevant development plan policies. For greenfield sites in Ilkeston, the SPD identifies indicative contributions per dwelling of £2,300 for primary education, £2,400 for sustainable transport, and £300 for open space. Although these figures are not prescriptive, they provide a benchmark for assessing site-specific needs.

7. In this instance, Derbyshire County Council (DCC), as the Local Education Authority, confirmed that there is sufficient capacity in local primary schools and therefore no contribution is sought for primary education. However, a specific and evidenced need for additional secondary school places at Ilkeston Enterprise Academy has been identified, with a contribution of £109,488.28 sought to mitigate this impact. This figure, whilst higher than the SPD's indicative education contribution of £59,800, is justified by up-to-date capacity assessments. Furthermore, when combined with the £7,800 sought for open space improvements, the total contribution remains below the SPD's indicative overall contribution of £130,000, due to sustainable transport contributions not being sought in this case.

8. The appellant has not disputed the methodology used to calculate these contributions, nor challenged the necessity of the infrastructure itself. It has, however, noted that in more recent applications on the site, DCC has not sought contributions towards secondary school places. Nonetheless, this appeal must be determined based on the specific evidence provided. In this case, the evidence before me demonstrates that the secondary school contribution is necessary to mitigate the impact of the development, and the amount required has been quantified. No updated position has been provided to suggest otherwise, and I am provided with no compelling evidence to dispute the requested figures. Based on the available evidence, I am satisfied that the contributions sought would align with the provisions of the development plan, the Framework, and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

9. The officer report also acknowledges a request from the NHS for a healthcare contribution of £7,698. However, it concludes that this request would not meet the relevant legal tests. Accordingly, this contribution is not pursued and does not form part of the Council's case.

10. In reviewing the appellant's Financial Viability Assessment (FVA) and the associated evidence, I note uncertainty in the build cost figures relied upon by both the appellant and the Council. In their review of the FVA, the Council's appointed assessors based their appraisal on the assumption of a 'JCT' contract priced at £3.675m. However, the appellant has advised that they have no knowledge of this contract. The effect of the Council's assumption was to exclude certain costs noted in the appellant's FVA, as they were assumed to be included within the JCT figure as part of the overall construction cost. Whilst this approach made the scheme appear more viable, it appears to have been based on inaccurate information.

11. By contrast, the appellant's construction cost evidence is derived from a dated cost plan indexed against industry standards, with additional allowances for associated costs. Whilst the build costs appear to align with industry benchmarks, the figures

are not secured by a binding contract or firm pricing. Furthermore, the appellant has factored in a 10% profit margin, despite acknowledging that a margin of 6-8% would ordinarily be considered reasonable for an affordable scheme. Whilst the risks associated with challenging market conditions are acknowledged, this higher assumption, combined with the reliance on indexed rather than fixed costs, introduces ambiguity which limits the weight that can be attached to the appellant's FVA.

12. The PPG is clear that where up-to-date policies set out the contributions expected from development, such schemes should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. Any such assessment should be supported by appropriate evidence, with assumptions that are transparent and reasonable. The PPG also emphasises that viability should not compromise sustainable development, and that the price paid for land is not a justification for failing to comply with policy requirements.

13. In this case, the evidence of both main parties lacks clear, consistent and robust cost evidence, undermining confidence in the FVA. I therefore attach only limited weight to its conclusions in determining the appeal.

14. The appellant has submitted a Unilateral Undertaking which seeks to secure all 26 proposed units as affordable housing. This represents a significant benefit, particularly in the context of the Council's lack of a five-year housing land supply. However, in addition to my previous findings in relation to the FVA, the scheme would rely on grant funding to be delivered. No compelling evidence has been provided to demonstrate the likelihood of such funding being secured. This raises concerns about the deliverability of the scheme and undermines the weight that can be attributed to its benefits.

15. In any event, no completed mechanism has been provided to secure the infrastructure contributions. Therefore, the key issue is whether those contributions are necessary to make the development acceptable in planning terms, taking into account the benefits of the proposal and all other material considerations, including viability.

16. The provision of affordable housing alone does not constitute sustainable development if the infrastructure necessary to support that development is not secured. The Framework makes clear that infrastructure delivery is a fundamental component of sustainable development. Paragraph 8 identifies the social objective of the planning system as supporting strong, vibrant, and healthy communities by ensuring that development is accompanied by accessible services and open spaces that reflect current and future needs. Paragraph 35 further states that plans should set out the contributions expected from development, including for education, health, transport, and other essential infrastructure. These provisions reinforce the principle that development should not proceed in the absence of the infrastructure necessary to support it, and that securing such infrastructure is integral to delivering sustainable development as defined by the Framework.

17. Having regard to all relevant policies, guidance, and material considerations, I find that the delivery of 26 affordable homes carries substantial weight in favour of the proposal, particularly in light of the Council's shortfall in housing land supply. However, this benefit is tempered by the uncertainty surrounding the scheme's

deliverability and the extent to which those benefits would be realised. Crucially, given the limited weight I attach to the FVA, the absence of any mechanism to secure the financial contributions necessary to mitigate the development's impact on local infrastructure represents a significant and unresolved harm. The infrastructure required to support the development has been clearly identified and quantified, and its delivery is integral to ensuring that the proposal constitutes sustainable development. Applying the tilted balance under paragraph 11.d) of the Framework, I find that the adverse impacts of granting permission without securing the necessary infrastructure contributions would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

18. Accordingly, I conclude that the financial contributions sought are necessary to make the development acceptable in planning terms, and it has not been convincingly demonstrated that it would be unviable to deliver these contributions. In their absence, the development would fail to mitigate its impacts, would place unacceptable additional pressure on services, and would not constitute sustainable development. The proposed development would therefore conflict with Policies 18 and 19 of the CS, Policy H9 of the SP, the guidance in the SPD, and the provisions of the Framework and PPG, the aims of which have previously been set out.

Conclusion

19. For the reasons given above I conclude that the appeal should be dismissed.

P Storey

INSPECTOR

Planning Inspectorate

Costs Decision

Site visit made on 13 August 2025

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2025

Costs application in relation to Appeal Ref: APP/N1025/W/25/3362579
Land off Little Hallam Hill
Grid Ref Easting: 446287; Grid Ref Northing: 340581

- 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 Village Partnerships Ltd (in liquidation) for a full award of costs against Erewash Borough Council.
- The appeal was against the refusal of full planning permission for the erection of affordable homes (Class C3), together with associated parking, landscaping, drainage, the layout of roads, footways and other associated works.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The PPG makes clear that costs may only be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It is not sufficient to demonstrate unreasonable behaviour alone. There must be a clear link between that behaviour and the incurrence of unnecessary costs.

4. As detailed in the accompanying appeal decision, the Council's decision to refuse planning permission was based on the applicant's failure to secure financial contributions towards infrastructure, specifically secondary education and open space, which were considered necessary to make the development acceptable in planning terms. The Council's officer report set out the policy basis for these contributions. The report also explained that the contributions had been calculated using standard formulae and were supported by consultation responses from, among other parties, the local education authority.

5. The applicant argues that the Council failed to properly apply the tilted balance under paragraph 11.d) of the National Planning Policy Framework (the Framework), and it is acknowledged that the officer report did not explicitly set out this process. However, the accompanying appeal decision has undertaken the balance in full, including the application of paragraph 11.d), concluding that the adverse impacts of granting permission without securing the necessary infrastructure contributions would significantly and demonstrably outweigh the benefits, when assessed against

the policies in the Framework taken as a whole. Therefore, although the Council did not explicitly refer to the application of the tilted balance in its decision-making, the outcome of the appeal confirms that the refusal was justified on planning grounds.

6. The applicant also contends that the Council relied on a viability assessment that referenced a JCT contract which did not exist. Whilst the appeal decision acknowledged that this raised questions about the robustness of the Council's independent viability review, it also found the applicant's own Financial Viability Assessment to be insufficiently robust. As a result, the viability evidence presented by both main parties was afforded only limited weight in the appeal. Additionally, concerns regarding the scheme's deliverability further reduced the weight that could be attributed to its benefits.

7. It is agreed that the Council could have more clearly articulated the planning balance and the presumption in favour of sustainable development in its decision. However, the absence of this explicit analysis does not, in itself, constitute unreasonable behaviour that directly led to unnecessary or wasted expense. The applicant was aware of the Council's position on infrastructure contributions, and this disagreement meant the prospect of an appeal was a likely foreseeable outcome. The applicant chose to appeal the decision in full knowledge of the dispute over viability and the absence of a completed legal agreement.

8. The PPG states that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted, or if they rely on vague, generalised or inaccurate assertions. In this case, the Council's refusal was based on specific, quantified infrastructure requirements supported by adopted policy, guidance, and consultation responses. The refusal was not vague or unsupported, and the appeal decision confirms that the development could not be considered acceptable without those contributions.

9. In summary, whilst there may be an argument for some procedural shortcomings in the Council's decision-making, there is insufficient evidence to demonstrate that this resulted in unnecessary or wasted expense in the appeal process. The appeal was always likely, given the unresolved dispute over viability and the absence of a completed mechanism to secure the contributions. The appeal decision confirms that the development would not have been acceptable in planning terms without those contributions, and that the refusal was ultimately justified.

Conclusion

10. For the reasons given above, I conclude that the application for an award of costs should be refused.

P Storey

INSPECTOR