
Costs Decision

Hearing held on 6 December 2016

Site visit made on 6 December 2016

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 19th January 2017

Costs application in relation to Appeal Ref: APP/M1710/W/16/3154233 Land to the North of Station Approach, Four Marks, Hampshire GU34 5PZ

- 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 Matthew Jeal (Country Estates Hampshire) for a full award of costs against East Hampshire District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for development described as *'construction of nine dwellings (4x3 bed and 5x2 bed) with associated landscaping and parking on 'land to the north of Station Approach, Four Marks'*.
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Decision

1. The application for a full award of costs is refused but a partial award of costs is allowed.

The submissions for Mr Matthew Jeal

2. A costs application was submitted in writing at the Hearing and was also read out by Mr Litton QC, on behalf of the appellant. It was confirmed that the Council had received the application on the afternoon of Monday 5 December 2016, the day before the Hearing.
3. The appellant contends that the Council acted unreasonably when it refused the application on the material before it and/or it has continued to act unreasonably in defending the appeal. In particular, the three principal elements to the appellant's application are that: 1) when refusing the application the Council did not have any evidence before it to show that the proposed development was likely to cause the harm alleged to residential amenity; 2) That the Council, in defending the appeal has failed to substantiate its reasons for refusal with evidence; and 3) the Council have continued to make vague, generalised and inaccurate assertions about the proposal's impact and that this is not supported by objective evidence.

The response by East Hampshire District Council

4. The Hearing was adjourned to allow the Council to respond to the points raised and a response was made verbally. The Council contend that members considered that further work was necessary in order to satisfactorily demonstrate that there were no alternative uses for the site.
 5. Reason for refusal 1 was withdrawn within the timeframe for submission of further evidence within the appellant's statement of case. Furthermore, reason
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2 is not vague or generalised and that members had clear concerns over the potential impacts, which were identified and that it was an issue of future compatibility and not the current and observed experience that was of most concern. The Council contend that this was reasonable given a residential use was being proposed in such an environment.

Reasons

6. The Planning Practice Guidance ('PPG') advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. It also makes it clear that costs incurred during the application cannot be included in an award of costs, although behaviour during the life of the application may be taken into account in determining if costs should be awarded.
7. Importantly, it encourages local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case and not to add to development costs through avoidable delay. For clarity, I have dealt with each reason in turn.

Reason 1

8. The proposals clearly have a substantial history and in an attempt to reach a clear position, significant amounts of work were undertaken by both parties in terms of viability and marketing, above and beyond the requirements of the relevant development plan policies. This culminated in the appointment of Savills' following deferral of the proposal at an earlier committee meeting to independently review the proposal and previous work. This resulted in a clear recommendation for approval from the Council's officers on the basis that the applicant had demonstrated proof of financial unviability for industrial or business use and that the requirements of the relevant development plan policies and guidance had been satisfied.
9. In this case, the Council made its decision via a committee which had been presented with a detailed and comprehensive analysis of the appeal case prepared by its officers. There is no requirement for members of the committee to follow this recommendation but, as set out in the PPG and highlighted by the appellant, the Council must be able to justify its reason for taking a contrary view.
10. The principal parties agreed that there is no specific requirement within the development plan policies cited for the appellant to explore alternative options to assist in bringing forward an alternative employment use on the site or prove non viability¹. Moreover, there is little before me that clarifies why members took a different view insofar as the weight of evidence they had before them and the positive recommendation made by officers and advice given at the meeting that the proposal satisfied the relevant policies of the development plan and Council guidance.
11. I do not have the benefit of hearing the discussion at the Council's committee meeting and the minutes of the meeting provide only a brief outline of the proceedings. However, the minute is clear to me that there was little

¹ 7.5 of Statement of Common Ground dated 16 November 2016.

discussion on the substance and conclusions of the evidence and it would appear from the minute that the majority of members could not support the loss of the site given rates of housing growth, as opposed to any objective analysis of the findings and conclusions of the relevant assessments. Taking everything together, it was unreasonable for the Council to refuse the application on the basis of a lack of evidence regarding the potential to develop the site for economic uses.

12. It is evident that there was on-going dialogue between the parties following the reason for refusal as the appellant sought to clarify what such alternative options may be. Amongst other things and as set out in the appellant's statement of case, this included an expression of interest for grant funding for the extension of the Invest for Growth initiative. Furthermore, the Council's statement also confirms that *'the appellant's statement of case shows that further work was carried out to consider alternative options to enable economic development and that none of these are feasible options. The Council has considered this work and concurs with the findings'*.
13. Additional enquiries were also made regarding the potential acquisition of the land by the Council but this was ruled out by the Council on the basis that the site would not be available on a freehold basis. There is some discrepancy between the various correspondence submitted which includes a letter from the Council dated 9 June 2016 which states that *'the Invest for Growth initiative remains a possibility'* and the Council's statement which states the Council became aware the bid was not going to be prioritised at the end of May 2016. There is also further evidence in the form of emails between the Council's Economic Development Officer and the appellant on the 16 and 17 June 2016 relating to additional information in this respect and I note that no further correspondence or discussion on this matter has been submitted by either party or appears to have taken place. The appellant also waited a reasonable length of time following the decision of the Council and this last correspondence before submitting the appeal on 11 July 2016.
14. I am mindful that there were third party objections on these grounds and it was a therefore a matter which the appellant may well have needed to briefly comment on in the statement of case and at the Hearing. However, by the time the appellant heard of the Council's intention to withdraw, in November 2016, evidence to address this reason for refusal had been prepared in full, in the form of the appellant's statement of case. The failure to withdraw the reason earlier in the appeal process and the lack of further engagement meant that the appellant had no alternative but to address the issue in their statement of case. If the Council had withdrawn it earlier, or indeed not imposed it at all, this work would not have been required. The unreasonable action of the Council has therefore caused the appellant to incur unnecessary and wasted expense and a partial award of costs is justified.

Reason 2

15. I find the Council's second reason for refusal to be complete, specific and relevant to the application. It also clearly states the relevant policies of the development plan and national planning policy to which it relates. The Council's concerns were based on a number of factors that overall, led the committee to conclude that the site would not be a suitable site for housing as it would not be compatible with surrounding land uses. Although the appellant

felt compelled to write to the Council on 14 April 2016 to clarify concerns, this does not mean refusal on these grounds was unreasonable and I note that the appellant accepts that the Council's response provided sufficient information for the appellant to address this reason in terms of noise, general disturbance and safety.

16. I do not find the lack of an objection on these grounds from either the Council's Environmental Health Officer or the relevant highway authority to be determinative. To my mind, a judgement is required regarding not only the current situation that exists at the time but also the potential for that to change in the future. I do not consider that this was an 'unspecified fear' of the potential effects as suggested by the appellant, rather, a precautionary approach given the location of the site and the sensitive nature of the development proposed.
17. Although the appellant considers that this has not supported by any objective analysis, given the substance of the Council's concerns, I did not find the Council's evidence to be vague, generalised or contain inaccurate assertions. Although I have drawn a different conclusion on the effects of the proposal in my decision, such concerns are often difficult to qualify and technical data in the form of noise and traffic surveys are not the only determinative methods of assessing the effects of 'disturbance'. This also relies on subjective judgements and a consideration of all relevant factors, some of which cannot solely be judged in terms of decibel readings or trips generated. As such, the matter is one of disagreement between the parties which could have only been resolved at appeal.
18. I therefore conclude that for these reasons, unreasonable behaviour resulting in unnecessary expense in the appeal process has not been demonstrated insofar as the second reason for refusal is concerned. For this reason a full award of costs is not justified.

Costs Order

19. 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 East Hampshire District Council shall pay to Mr Mathew Jeal (Country Estates Hampshire), the costs of the appeal proceedings limited to those costs incurred in preparation and submission of evidence relating to the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
20. The applicant is now invited to submit to East Hampshire District 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.

Richard Aston

INSPECTOR