

Costs Decision

Inquiry held on 10, 11, 12 and 13 January 2017

Site visit made on 11 January 2017

by Karen L Ridge LLB (Hons) MTPL Solicitor

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

Decision date: 20 March 2017

Costs applications in relation to Appeal Ref: APP/R3650/W/16/3150558 Former Weyburn Works, Shackleford Road, Elstead, Godalming, Surrey GU8 6LB

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by MMC Developments Limited for a full or a partial award of costs against Waverley Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of 69 new dwellings, including 21 affordable and a 60 bed care home, provision of a suitable alternative natural greenspace ('SANG'), alterations to accesses and associated works following demolition of buildings.
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Decision

1. The applications for a partial and/or full awards of costs are refused

The submissions for MMC Developments Limited

2. The application was made in writing and a written response to the Council's response was also in writing. I need not therefore set out the arguments at length. The Appellant applies for separate, partial awards of costs in relation to four matters. It is alleged that the Council maintained its position in relation to a 5 YHLS and maintained objections in relation to housing mix, employment land and the provision of a Locally Equipped Area of Play (LEAP) when it was unreasonable to do so. The application for a full award of costs is predicated on the basis that, having adopted an erroneous position on 5 YHLS, its decision making process was flawed and unreasonable.

The response by Waverley Borough Council

3. The response was made in writing and it is not necessary to set it out in full. The Council contend that the applications are completely without merit.

Reasons

4. The Planning Practice Guidance 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 costs in the appeal process.

The 5 YHLS

5. The Hewitt's Industrial Estate appeal decision¹ was issued on 5 January 2017, a few days before the opening of this Inquiry. In that appeal decision the Inspector made a number of findings about housing land supply which culminated in a finding that the Council did not have a 5 YHLS. The Appellant contends that the same case on housing land supply, which was unsuccessful before the Hewitt's Industrial Estate Inspector, was repeated in the current Inquiry.
6. The Council contend that it had re-evaluated its position following receipt of the Hewitt's decision letter and had come to the view that the Inspector had been under a misapprehension as to the interpretation of other appeal decisions in the district. Mr Woods gave evidence as to why the Council disagreed with the Hewitt's Inspector on the appropriate buffer. In particular he considered that the earlier Frensham Vale appeal decision² which concluded that the judgment on a 20% buffer was 'at least a borderline case' was not a conclusive finding that there had been a persistent under delivery.
7. The application of a 5% or 20% buffer is a matter of judgement. The Hewitt's decision letter is a material consideration. Given the similarities between the issues and arguments regarding 5 YHLS rehearsed in that decision letter, and its date of issue a few days before the current appeal Inquiry, it is something which should have given the Council serious pause for thought.
8. On reading the Hewitt's decision it is apparent that the contention regarding the interpretation of the two earlier appeal decisions (which had also concluded that a 20% buffer was appropriate) had been put before the Hewitt's Inspector. For the reasons the Inspector sets out at paragraphs 12 and 13 of the decision letter, those arguments were not accepted. The Hearing decision in which a 5% buffer was applied does not assist the Council since it predated the two Inquiry decisions which were before the Hewitt's Inspector and which had both come down in favour of a 20% buffer.
9. At this Inquiry the Council has advanced the same arguments on 'interpretation' that were before the Hewitt's Inspector. I have not examined those matters in my substantive decision given that I have independently come to the conclusion that application of a 20% buffer is appropriate. Whilst I agree entirely with the proposition that a Council is entitled to take a different view to that enunciated by an Inspector in a decision letter, it is incumbent upon an authority to have good reason to come to a different view for example in the face of new evidence or changing circumstances.
10. In this case, on the 5 January 2017 the Council were aware that its arguments on the application of a 5% buffer had been rejected for the third time in succession by appeal Inspectors. Given that there was essentially no new evidence or arguments to advance about the buffer at the current Inquiry, I conclude that it was unreasonable of the Council to continue to advocate a 5% buffer in this Inquiry. The question of the application of a 20% buffer was determinative of the issue of a 5 YHLS. I therefore conclude that the Council acted unreasonably in continuing to maintain that it had a 5 YHLS from the 5 January given all of the information available.

¹ CDC/07 APP/R3650/W/15/3141255

² CDC/06 APP/R3650/W/15/3008821.

11. I now turn to examine the consequences of a refusal to concede a 5 YHLS. Irrespective of whether or not the Council has a 5 YHLS I have concluded that the un-weighted Green Belt balancing exercise needed to be done. The series of questions in relation to this issue were separate from and independent of the issue of a 5 YHLS. In addition the conclusions on two of the issues on which I found against the scheme, housing mix and the LEAP provision, did not involve policies for the supply of housing. In the final analysis it is the questions surrounding green belt policy which have been determinative in this appeal.
12. For a partial application to succeed the unreasonable behaviour complained of has to result in the Appellant incurring unnecessary costs. In this case I have found that it became unreasonable after 5 January to continue to promote the idea of a 20% buffer. Therefore any work undertaken prior to that date in relation to HLS issues was reasonable and necessary. After 5 January and at the Inquiry Mr Woods and Mr Purser dealt with a great deal of planning evidence, of which the question of the buffer and the 5 HLS was a relatively small part. In the circumstances I conclude that the Appellant has not been put to material, unnecessary additional expense by the unreasonable failure of the Council to concede a 20% buffer after the 5 January.

Housing Mix

13. I have agreed with the Council's objections in relation to the housing mix. The merits of this issue are independent of the issue of a 5 YHLS. As I have already indicated, it is arguably all the more important that an appropriate housing mix is secured in the face of an undersupply so as not to disproportionately affect those households requiring smaller units. It follows that I totally reject any suggestion that the Council behaved unreasonably in this matter.

Loss of Employment Land

14. The Council conceded several points including the likelihood of redevelopment of the site and accepted that the site could not be used for employment purposes in its current condition. Its objection was based on a narrow point regarding the provision of a car park for the adjoining Tanshire Park. Whilst I have disagreed with the Council, I accept that it put forward a respectable case in relation to this matter. The Hewitt's decision letter made findings in relation to the potential surplus of employment land. That was contextual information providing a picture as to the current demand and supply situation in the district. In this case the Council's objections were based on a particular set of facts in terms of a local need specific to the appeal site location.

LEAP

15. I have found against the Appellant on this matter for the reasons set out. I conclude that the Council's objections were reasonable, supported by evidence and they won the day.

Application for a full award

16. The application for a full award is predicated on the Council's unreasonable behaviour in refusing to acknowledge the lack of a 5 YHLS. Whilst I have agreed that the Council did act unreasonably in its refusal to concede the lack of a 5 YHLS after 5 January, for the reasons also set out I conclude that this

failure was not determinative of the appeal and did not result in the Appellant incurring unnecessary additional costs.

17. I would also add that I concluded that the LP green belt and AONB policies were out of date by virtue of being policies for the supply of housing. However given that these policies are closely aligned with national policy I only made a relatively modest reduction in weight³. The Council's case on inappropriate development and openness was fully reasoned and entirely reasonable.
18. I do not accept that the Council's approach to the decision making structure set out in paragraph 14 of the National Planning Policy Framework was flawed. Mr Woods advanced the Council's case on the basis that the proposal constituted inappropriate development in the Green Belt and as such he concluded that the proposal did not pass the limb 2 test. Mr Williams clearly set out the Council's approach to the correct decision making process. The process advocated by the Council accords with that which I have adopted.

Formal Decision

19. For all of the above reasons I conclude that there has not been unreasonable behaviour on the part of the Council leading to unnecessary costs being incurred by the appellants. A full award of costs has not been justified.

Karen L Ridge

INSPECTOR

³ Paragraph 126 Appeal Decision