
Costs Decision

Site visit made on 10 January 2017

by Paul Jackson B Arch (Hons) RIBA

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

Decision date: 15th May 2017

Costs application in relation to Appeal Ref: APP/D3830/W/16/3158782 Challoners, Cuckfield Road, Ansty RH17 5AG

- 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 Copperwood Developments for a full award of costs against Mid Sussex District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for erection of 9 No. dwellings with association parking, landscaping and access.
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Decision

1. The application fails and no award of costs is made.

Reasons

2. The appellant submits that the Council behaved unreasonably by a) failing to co-operate with the other party or parties; b) delay in providing information or other failure to adhere to deadlines; c) preventing or delaying development which should be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; and d) not determining similar cases in a consistent manner. The Council responded in writing and further comments were received from the appellant which I have taken into account.
3. Planning Practice Guidance (PPG) indicates that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

The failure to co-operate

4. The alleged failure to co-operate with another party or parties relates to the process during the period when the application was being considered by Council officers between 17 May when the application was made valid and 16 September 2016 when the appeal was submitted and the decision was taken out of the Council's hands. PPG advises that costs applications may relate to events before the appeal was made, but costs unrelated to the appeal are ineligible. In this case, delays occurred in connection with trees and overshadowing; site access and visibility splays; and comments from Southern Water. Subsequent decisions on nearby sites (the subject of an addendum to the planning statement, submitted by the appellant on 11 July 2016) would also have been relevant. The Council requested additional time to consider the proposal on 18 July, more than 8 weeks after the application date of 11 May.
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This was not accepted by the appellant. The appellant's agent then submitted a change to the access on 4 August in order to address the concerns of overshadowing on plot 1. The appellant's agent further wrote on 25 August 2016 with examples of nearby applications which were considered to support their case.

5. I have given careful consideration to all the conflicting points made by the appellant and the Council and the copies of email correspondence, but find that both parties carry responsibility for the failure of the Council to reach a decision within the statutory period. The difficulties with trees and overshadowing were in my view reasonably predictable matters which had been foreshadowed by the Council in pre-application discussions when it was stated that the scheme (for 8 dwellings at that time) was unacceptable because it was too dense and too high on the edge of the village. In particular, the appellant's suggested change to the location of the access (submitted for 'thoughts' but not formally submitted) on 4 August including altered visibility splays were significant matters that would need further consultation with those affected. Further difficulties were then identified on plot 5, where the amenity area was under another tree. After this was removed from the scheme, a further revised layout was submitted for comment on 12 August. Given these changes and the inevitable problems that can occur during holiday periods, which can affect both sides, I do not find any unreasonable behaviour on the Council's side that would have led to the need to submit an appeal against non-determination only a month later. My opinion on this is reinforced by the Council officer's assurance that his report would be written up by 22 September, a few days after the appeal was submitted.

Delay in providing information

6. Given the circumstances outlined above, whilst there were delays in responding to requests for information, there was not such a significant lack of correspondence from the case officer to justify submitting the appeal when it was. It seems to me that the changes to the layout and the location of the access and the ongoing consultations, together with other cases that the appellant thought helpful, were all constructive and potentially optimistic from the appellant's point of view and despite the poor prognosis from the pre-application discussions, could potentially have led to a recommendation for approval. The Barn Cottage appeal decision in particular was issued on 11 July and would have been particularly relevant to the appellant's case. On the face of it, the appellant's refusal to accept an extension of time only a week later appears hasty. Council officers clearly would have needed time to assess the implications. Moreover they did not at that time have a resolution of the overshadowing issues which ultimately led to a significant change to the scheme.

Preventing or delaying development which should be permitted and not determining similar cases in a consistent manner

7. The lack of a 5 year supply of housing land means that the second limb of paragraph 14 of the NPPF is engaged but it does not follow that the benefits of the proposal may not be significantly and demonstrably outweighed by the adverse impacts. The appellant would have been aware that the Council had provided very firm pre-application advice that there were significant disadvantages to a scheme with 8 dwellings on this site on the edge of the

settlement adjacent to a public footpath. It was likely that a scheme for 9 houses with no other significant changes would not be favourably received. The assessment of sustainability has to encompass the social, economic and environmental roles. The clear policy direction, expressed in the LP, the emerging MSDP and at that time emerging NP was to protect the landscape setting of rural settlements and build smaller dwellings to meet local needs. Each application has to be decided on its own merits and whilst other applications were decided favourably during the period that this proposal was under consideration, there are distinct differences between the schemes, not least their locations relative to the centre of the village and the built up area boundary in the LP and as revised in the NP. No unreasonable behaviour has been shown to have occurred in respect of this matter.

Conclusion

8. For the above reasons, the application fails.

Paul Jackson

INSPECTOR