
Costs Decision

Site visit made on 2 May 2017

by Lesley Coffey BA Hons BTP MRTPI

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

Decision date: 14 June 2017

Costs application in relation to Appeal Ref: APP/J0350/W/16/3164440 Spring Cottage, Slough SL1 2DQ

- 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 S Mann for a full award of costs against Slough Borough Council
 - The appeal was against the refusal of the Council to grant planning permission for the erection of 8 x 2 bed and 1x3 bed flats and 1x 4bed detached house (previously approved under application ref:P/00475/007) with associated parking, cycle storage and refuse store with access off Upton Park in Slough.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. 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 or wasted expense in the appeal process.
 3. The appeal proposal is materially different from the scheme for 4 dwellings permitted in May 2014 in several respects, including the number and type of dwellings proposed and the traffic generated by the proposal. Therefore the Council did not fail to determine similar cases in a consistent manner, or fail to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances.
 4. The costs application also alleges that the Council failed to produce evidence to substantiate each reason for refusal, made vague, generalised or inaccurate assertions about the impact of the proposal, and acted contrary to well-established case law.
 5. The appellant argues that the Council's approach to the determination of the appeal scheme was flawed in that the committee report stated that the site was unallocated in the development plan, situated within a conservation area, immediately adjacent to a registered historic park and garden, and adjacent to a designated nature conservation site and the Green Belt, and therefore was not normally a location where the Council would wish to see any development.
 6. Although the Council did state that it was an area where it would not generally wish to see any development, the decision turned on the proximity of the site
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to the listed park and the conservation area. There was no suggestion within the committee report or the appeal statement that the proposal was unacceptable in principle due to the fact that the site had not been allocated or was located within a conservation area. The reasons within the report related to the effect of the proposal on the conservation area and the listed park. This approach is consistent with the statutory duty under Section 72(1) of the Planning (Listed Buildings & Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area, and the requirement within paragraph 132 of the Framework to accord great weight to the conservation of designated heritage assets. Therefore the reference to the fact that the site was not allocated was not determinative. Moreover, the Council did not fail to determine the application in accordance with the development plan.

7. The appellant alleges that the Council introduced the issue of the design and materials of the proposal at the appeal stage. The Committee report does address the scale and size of the proposal and its relationship to the conservation area. Its appeal statement is an amplification of the Council's case in relation to the effect of the proposal on the conservation area and the relevant planning policies, as well as a response to the comments in the appellant's statement.
8. Although the committee report referred to the Green Belt and the relevant development plan policy, neither the committee report, nor the Council's appeal statement suggest that the appeal site is located within the Green Belt, or that the proposal is unacceptable in terms of Green Belt policy. I am therefore satisfied that the Council's approach to this matter was not incorrect as a matter of planning law.
9. The history of the site provides useful background information to the appeal proposal and earlier schemes and the scale of development previously found to be acceptable. The second reason for refusal referred to the more intensive use of the site by comparison with the previous proposal and the negative impact on the conservation area and historic park and garden. Although the reason for refusal could have been worded more coherently, it is clear that it sought to balance the more intensive use of the site arising from the appeal scheme against the permitted scheme and noted that unlike previous 'enabling developments' it did not provide the heritage benefits that would have delivered by some of the earlier permissions.
10. The reason for refusal included a statement of fact in respect of previous schemes, but also referred to the negative impacts of the proposal on the conservation area and Herschel Park. The proposal was not refused due to an absence of heritage benefits. The Council's appeal statement elaborates on what it considers to be the adverse effects of the proposal on the conservation area. I therefore do not consider the second reason for refusal to be inconsistent with the *South Lakeland DC v Secretary of State for the Environment and another [1992]* in that the Council found that the proposal would not leave the character or appearance of the conservation area unharmed.
11. I disagree that the Council did not take account of the fallback position. The committee report refers to the differences between the most recently permitted scheme and the appeal proposal and explains why the appeal scheme was

- considered to have a greater impact. The appellant suggests the reference to the percentage increase in the number of units is misleading, however, the committee report also refers to the footprint and height of the proposed building, and the increased levels of activity associated with it. The Council provided further evidence in relation to these matters in its appeal statement.
12. The committee report and reasons for refusal suggest that the impact of the proposal on ecology and increased activity associated with the appeal proposal would be harmful to the character of the conservation area. There is no substantive evidence to support this part of the first reason for refusal in either the committee report or appeal statement. It is addressed at paragraphs 4.4, 4.5, 4.7, 4.10 and 4.11 of the appellant's statement, but I note that paragraphs 4.4, 4.5 and 4.7 essentially repeat evidence provided elsewhere in the appellant's statement.
 13. The highway comments on which the Council relied took full account of the evidence submitted by the appellant. However, the highway officer had regard to the particular circumstances of the site, and reached a different conclusion from the appellant as to the impact of such movements. The Council's reliance on the professional view of its officers in relation to his matter does not represent unreasonable behaviour.
 14. Although Core Policy 4 promotes the provision of family dwellings, in accordance with the definition within the glossary to the Core Strategy, it does not preclude flats in urban areas. In its appeal statement the Council states that the surrounding area is suburban in character and assesses the proposal against the policy requirements for suburban areas. However, it does not provide any justification for this view which would appear to be at odds with both the committee report and the reason for refusal, both of which imply that the site comes within an urban area. The Council therefore failed to assess the proposal against the policy as a whole. It also stated that Core Policy 4 is underpinned by the SHMA, but makes no reference to the findings of the much more recent SHMA. Although numerous appeal decisions were submitted to support the Council's position, these generally related to suburban areas, rather than urban areas where the appeal site is located. I therefore conclude that the Council failed to provide sufficient evidence to substantiate this reason for refusal.
 15. The reason for refusal in terms of ecology referred to the loss of trees, the lack of an up-to-date survey and the more intensive use by comparison with the previously permitted scheme. It is unclear from the submitted evidence whether the previous survey was undertaken in January 2013 or January 2014, nevertheless it would seem that the survey was not submitted at the time of the application. An up-dated survey was submitted with the appeal, but for the reasons given in the decision, I found that the proposal would be likely to have an adverse effect on biodiversity. I therefore do not consider that the Council acted unreasonably in relation to this reason for refusal.
 16. It is evident from the consultation responses at the time of the application that there were outstanding issues in terms of the drainage of the site and the capacity of the existing sewerage infrastructure. The committee report also identified that site as coming within Flood Zone 3b of the Council's Slough Borough Council's Strategic Flood Risk Assessment, whereas the site lies entirely within Flood Zone 1. Moreover a Flood Risk Assessment was submitted

at the time of the application. In its appeal statement the Council acknowledged that matters in relation to drainage could be addressed by way of a suitably worded condition.

17. I conclude that the Council behaved unreasonably in relation to the sixth reason for refusal which related to drainage issues. In the light of the information submitted by the appellant at the time of the application and the comments received from Thames Water and the Drainage Officer it was evident that this matter could have been addressed by way of a condition. As a consequence the appellant has incurred unnecessary expense in terms of the need to submit an additional report in relation to drainage and also paragraphs 4.53- 4.57 of his appeal statement.
18. Overall I conclude that the Council failed to provide evidence to substantiate the third reason for refusal in relation to the provision of flats on the site, and the sixth reason for refusal in relation to drainage issues. I consider that this represents unreasonable behaviour and has given rise to unnecessary or wasted expense.
19. The Council also failed to fully justify its first reason for refusal in so far as it related to noise and general activity and the impact of the proposal on ecology on the character of the conservation area and setting of the Herschel Park. However, these issues were covered elsewhere in the appellant's statement and I do not consider that this gave rise to wasted expense.
20. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a partial award of costs is justified.

Costs Order

21. 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 Slough Borough Council shall pay to Mr S Mann, the costs of the appeal proceedings limited to those costs incurred in preparing the appellant's statement and supporting information in relation to the third and sixth reasons for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
22. The applicant is now invited to submit to Slough Borough 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.

Lesley Coffey

INSPECTOR