

Costs Decision

Inquiry opened on 6 June 2017

Site visit made on 9 June 2017

by David Prentis BA BPI MRTPI

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

Decision date: 17 July 2017

Costs application in relation to Appeal Ref: APP/R3650/W/16/3163124 35 Frensham Vale, Lower Bourne, Farnham GU10 3HS

- 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 Bargate Homes Limited for a full award of costs against Waverley Borough Council.
 - The Inquiry was in connection with an appeal against the refusal of outline planning permission for the erection of up to 46 dwellings together with vehicular access, car and cycle parking and landscaping (all matters reserved except access) following demolition of existing dwelling (revision of WA/2014/1890).
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Decision

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

The submissions for Bargate Homes Limited

2. The application was made in writing and was for a full award of costs. In summary, there were three elements to the application. First, it was argued that the Council had persisted in objections to elements of the scheme which a previous Inspector had found to be acceptable. The Inspector who considered a previous appeal on the same site (*the Appeal A Inspector*) had considered the issue of harm to the character of the countryside and concluded that there would only be limited harm. On any fair reading of the decision this matter, which was now the sole reason for refusal, did not amount to a reason for refusal on its own. The Council was wrong to seek to characterise the first reason for refusal as an 'in principle' reason. This argument amounted to a re-writing of the reason.
 3. Second, the Council had prevented development which clearly should have been permitted. The Council accepted that the tilted balance set out in paragraph 14 of the Framework was engaged. Given the social and economic benefits of the scheme, and the absence of environmental harm, no reasonable planning authority could properly have concluded that the balancing exercise justified refusal. Third, the Council had failed to substantiate its reason for refusal. It had not called substantive landscape evidence from a suitably qualified professional. This is particularly striking given that the Council sought to go beyond the findings of the Appeal A Inspector.
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The response by Waverley Borough Council

4. The response was made in writing and may be summarised as follows. In relation to the first ground, planning policy considerations have changed dramatically since the determination of Appeal A. The neighbourhood plan was now at a very advanced stage and the local plan was reasonably advanced. The Council now considers that it can demonstrate a 5 year housing land supply. These changes justify the Council taking a different view as to the 'in principle' acceptability of the proposal. The appellant has not criticised as unreasonable the Council's reliance on the neighbourhood plan, the emerging local plan or the housing land supply position as material considerations. Moreover, it was open to the Council to disagree with the Appeal A Inspector in relation to the degree of landscape harm. The appellant had not felt itself bound by the previous Inspector's decision and had continued to maintain that there would be landscape enhancement despite this argument having been rejected by the Appeal A Inspector.
5. The response to the second ground relies on the Council's closing submissions on the merits of the appeal. The proposal represents a fundamental breach of the extant and emerging development plan. In relation to the third ground, there was no obligation on the Council to obtain expert landscape evidence. The planning officers and the Council's witness were experienced planning professionals used to making informed judgements on landscape impacts. The Council had only disagreed with the Appeal A Inspector in relation to the degree of harm. The Council's evidence had regard to the previous appeal decision. The appellant's landscape evidence had been tested in cross examination which identified a number of flaws in the assessment.

Reasons

6. Planning Practice Guidance (the Guidance) states that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
7. The Guidance gives examples of behaviour which may give rise to a substantive award against a local planning authority. These include persisting in objections to elements of a scheme which an Inspector has previously indicated to be acceptable. That is not the case here because the Appeal A Inspector found that there would be

'an overall negative outcome on the local landscape as a result of the introduction of significant built form within the largely undeveloped site'.

8. Whilst it is right to point out that the Appeal A Inspector found the degree of harm to be limited, this was nevertheless a clear finding of harm. It was not unreasonable for the Council to argue that the degree of harm would be somewhat greater. Indeed, for reasons explained more fully in my appeal decision, I agree with the Council on that point.
9. The Council chose not to call a landscape expert. Instead it relied on a qualified and experienced Chartered Town Planner to give evidence on all aspects of its case. By the nature of their role, town planners are used to receiving reports from experts in landscape and other topics which they take account of in forming recommendations on development proposals. In this case there were

no unusually technical landscape issues to resolve. The Council's landscape evidence was briefly stated but it clearly had regard to relevant material, including the previous appeal decision. The Council's witness was able to answer questions put to him in cross-examination in relation to his own evidence and the appellant's landscape and visual appraisal. Consequently, I do not think the Council acted unreasonably in relation to the landscape evidence.

10. For reasons explained in my appeal decision I have concluded that the appeal should not be allowed. It follows that this is not a case where the Council has prevented development which should have been permitted. For all of the above reasons, the application for costs should not succeed.

David Prentis

Inspector