
Costs Decision

Hearing held on 16 & 17 June 2017

Site visit made on 17 June 2017

by Siân Worden BA MCD DipLH MRTPI

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

Decision date: 27 September 2017

Costs application in relation to Appeal Ref: APP/R0335/W/2016/3163349 Warfield Park, Warfield, Bracknell RG42 3RG

- 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 Warfield Homes for a full award of costs against Bracknell Forest Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of land adjoining Warfield Park for the siting of up to 82 mobile homes (according with the definition of a caravan), suitable alternative green space (SANG), and informal open space, together with access improvements, landscape and diversity measures.
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Decision

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

The submissions for Warfield Homes

2. The application was made in writing prior to the hearing. At the hearing the appellant added that the Council must substantiate each reason for refusal with evidence. Where reasons are contrary to officer recommendation it must spell out why it has rejected that recommendation. The Council had not called any professional evidence with regard to the character and appearance of the area to justify refusing the proposal. To the contrary, the only witness did not put forward his own views but the Council's case; his views were those set out in the Council's committee report.
3. Where a planning balance has to be carried out the Council's refusal needs to be taken in the light of all considerations. The Council's decision was not based upon the extent of its housing shortfall and that was not a reasonable stance. There was no evidence that the Council had acknowledged the benefits of the proposal including those for biodiversity and housing for a specific need. There was no up-to-date assessment by Council members applying the planning balance properly to support the reason for refusal.
4. The question of housing supply needs to be addressed in the light of the law. The Council didn't address the matter of housing for older people. It was up to the Council who it called as a witness; it could have selected one who agreed that there was harm. The appellant also drew attention to paragraphs in appeal decisions at the London Russian Ballet School (Ballet School)¹.

¹ APP/N5660/W/16/3151091 and APP/N5660/Y/16/3151092

The response by Bracknell Forest Borough Council.

5. The Council responded to the appellant's initial application in writing and addressed its further points orally at the hearing. The Council had been providing evidence for two days in support of the reason for refusal but was not required to provide professional evidence. The quality of landscape is a matter which is perceptible to non-experts. The officer's report to committee had identified the harm in its summary, conclusion and at the beginning. The planning balance is a matter of judgement. The committee disagreed with professional officers; that is how the democratic system works otherwise all decisions would be made by officers.
6. The Council's statement took account of the environmental benefits and the Council also took into account the housing shortfall and housing benefit.

Reasons

7. 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 expense in the appeal process.
8. The appellant considers that the locational and character and appearance elements of the reason for refusal are unreasonable. Despite the proposals, including amendments to them, having been developed with and supported by officers the committee was entitled to take a different view. The Council's witnesses defended its case with appropriate evidence at the hearing.
9. It was not necessary for the Council to provide a professional witness for the matter of character and appearance; practicing town planners such as the Council's witness are used to, and capable of, properly analysing the potential effect of development on a landscape. It was made clear during the hearing that the witness was presenting the Council's case rather than his own opinion. The Council's highways officer was also present at the hearing and contributed to the discussion as to whether the appeal site was in a sustainable location.
10. The officer's report concluded that the proposed development on a greenfield site would harm its countryside character and appearance. It also considered that the appeal site was not in a sustainable location. In weighing up the scheme's benefits the officer's report referred to the proposal's contribution towards making up the current shortfall of housing provision, including affordable housing, in the light of the absence of a 5YS. It also noted the waiting list of people wanting to move onto the existing Park site and that the proposed development would address a need in the locality.
11. The environmental benefits, foremost the SANG and open space, were addressed in the report. An up-to-date assessment and planning balance were provided at the hearing. The Council did not, therefore, fail to produce evidence to substantiate each reason for refusal on appeal. All in all I do not consider that the Council unreasonably refused planning permission.
12. With regard to the time taken to publish the decision, the Council's account is that a paper copy of the decision was issued and sent to the appellant by first-class post within five days of the planning committee's decision. I have no reason to doubt that. The version with a covering letter dated some three weeks later arose from an omission to post the decision on the website. In my view that was an oversight and does not amount to unreasonable behaviour.

13. The selected paragraphs in the Ballet School decision exemplify the appellant's case. A significant difference between that case and the one before me is that, at the Ballet School inquiry, the evidence given by the Council witness conflicted variously with a reason for refusal and with expert advice. At Warfield Park the officer's report to committee found harm in relation to character and appearance and in its location. The difference between officers and members lay in the weight each ascribed to that harm.
14. There is no detailed account of the discussion which led to the refusal of the scheme contrary to the officer's recommendation. The position in relation to housing land supply, its effect on planning policy and the benefits of the scheme are clearly set out in the report which was before members. To my mind, it is implicit from the reasons for refusal that the planning balance was recalibrated during consideration of the proposal, although possibly not in a methodical fashion. Unlike officers, members clearly considered that the benefits of the scheme were insufficient to outweigh the harm that they and officers had identified.
15. That two councillors failed to declare their personal interests in the case and took part in the decision-making process is a matter for the Council's own regulatory procedures. It has no bearing on whether the Council acted unreasonably.
16. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Síân Worden

Inspector