



Costs Decision

Inquiry opened on 18 July 2017

Site visits made on 27 July 2017

by Richard Clegg BA(Hons) DMS MRTPI

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

Decision date: 01 December 2017

Costs application in relation to Appeal Ref: APP/R3650/W/16/3155714 Springbok Radcliffe Estate, land at Sachel Court Road and between Dunsfold Road & Loxwood Road, Alfold Crossways, Cranleigh, GU6 8EX

- 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 The Merchant Seaman's War Memorial Society & Thakeham Homes for a full award of costs against Waverley Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development described as 'a hybrid application: full planning permission for the erection of 60 independent living apartments and 20 independent living bungalows, including the demolition of existing 20 residential units within the annex to Sachel Court, provision of communal facilities, associated landscaping and amenity space, erection of 125 dwellings, shop (class A1), café (class A3), artificial turf courts and sports pitches, public open space and landscaping, and infrastructure works; outline permission (all matters reserved except means of access) for the erection of up to 275 dwellings including a residential care home (class C2), primary school building, associated landscaping and public open space, access and infrastructure works, services and drainage infrastructure, formation of two vehicular and pedestrian access points into the site, one from Loxwood Road and one from Dunsfold Road, and related highway infrastructure works'.
 - The inquiry sat for seven days: 18-21, 25, 26 & 28 July 2017.
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Decision

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

Procedural matters

2. The Merchant Seaman's War Memorial Society is also known as Care Ashore, and is referred to by both names in the representations. I shall use the shorter name to refer to the Joint Appellant in this decision.
3. The main parties agreed that the proposed development is more clearly described as follows. *A hybrid proposal seeking: full planning permission for the erection of a care facility with 60 apartments and 20 associated bungalows, demolition of the annex to Sachel Court, erection of 125 dwellings, a shop and café, a sports pitch, public open space, and infrastructure works; and outline planning permission for up to 250 dwellings, a 25 bed residential care facility, a primary school, infrastructure works, and public open space.*

The submissions for Care Ashore & Thakeham Homes

4. The costs application was made in writing (Document A21). The gist of the submissions is as follows. The Borough Council had behaved inconsistently in various respects. In the reports on the 2016 and 2017 applications, it had been accepted that the tilted balance set out in paragraph 14 of the National Planning Policy Framework (NPPF) should apply, and this had also been accepted by the Council at the concurrent Dunsfold Aerodrome inquiry. At this inquiry, the Council's planning witness initially argued that the tilted balance did not apply, but had changed his position in cross-examination. Differing positions had been presented on Aim 3 and Policy M1 from the adopted Local Plan (ALP). The evidence of the Council's landscape witness was in large part inconsistent with that of the officers who determined the 2017 application. Additionally there was inconsistency with the strategy of the emerging Local Plan (ELP) which required a significant proportion of new dwellings to be built outside the main settlements.
5. The Borough Council had changed or clarified its position at a late stage in respect of certain matters. At the inquiry it became clear that it was not necessary to call the Appellants' design witness. Although the second application for the proposed development was not determined until the day before the inquiry opened, the Council must have been aware of its stance on design at an earlier date. Inquiry time could have been saved if agreement had been reached that the tilted balance referred to in paragraph 14 of the NPPF applied, prior to the cross-examination of the Council's planning witness. The transport links of the appeal proposal in comparison to Cranleigh should have been considered before the application was determined.
6. It was alleged that the Borough Council had taken unreasonable stances in relation to the following: that the tilted balance did not apply, the principle of the location of the proposed development, the application of paragraph 55 of the NPPF, housing land supply, the scope of the evidence of its landscape witness, and the use of reasons relating to the lack of planning obligations.
7. Unnecessary time was taken by the Borough Council in evidence in chief. Responses to landscape and housing land matters should have been put in writing before the inquiry opened. It is submitted that the Appellants are entitled to costs in relation to the appeal, or for that part of the inquiry dealing with the material detailed above – a proportion of 50% is suggested.

The response by Waverley Borough Council

8. The application was refused as the site was in an unsustainable location and because of the effect on the character and appearance of the area. The points raised are the sort that occur in every inquiry. None would have been determinative of the proposal, and the appeal would have gone ahead even if material had been dealt with in the manner suggested. It was up to the Council to decide how to present its case: the criticism that rebuttals should have been submitted in response to the Appellants' evidence does not demonstrate unreasonable behaviour. That concessions were made should not be a matter for criticism: an award of costs on this basis would act as a disincentive for witnesses to agree to points raised.
9. Insofar as the tilted balance was concerned, the operation of the NPPF in this respect had not been clear until the recent Supreme Court judgement.

Whether or not the tilted balance applied in this case was not determinative as the report on the application made clear. References were made to the Dunsfold Aerodrome proposal but this is not a matter before the inquiry. Notwithstanding reference to comparative transport links, Cranleigh would be more sustainable than the proposed development because of the facilities and services there. The Council had not behaved unreasonably in presenting its evidence, and had not caused any wasted costs.

Reasons

10. Planning Practice Guidance advises that costs may be awarded where a party has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
11. The Council maintained two principal objections to the proposal throughout the appeal process; that the development would be in an unsustainable location and that it would cause harm to the character and appearance of the area. Detailed adjustments and concessions made at the inquiry did not alter that fundamental position. I am satisfied that the Council provided evidence which substantiated its position in respect of both these objections. It was not unreasonable to argue that the site was in an unsustainable location for the development proposed, having regard to the evidence presented in respect of accessibility and planning policy, notwithstanding the need for a proportion of new housing to be provided outside the main settlements. The Council's agreement to the note setting out similarities in public transport services from Alfold Crossways and Cranleigh (Document G6) does not undermine this position, given the much greater range of facilities and services in Cranleigh which is one of the main settlements in the Borough.
12. The Borough Council's landscape witness produced comprehensive and detailed evidence in support of the Council's case. References were made to wildlife and historical associations: these are factors which may contribute to landscape value, and the evidence submitted did not go so far as to raise additional grounds of objection to the appeal proposal. Insofar as housing land is concerned, it is true that the Council did not submit detailed written rebuttal evidence about sites contributing to the supply. However it did submit extracts from the 2016 Land Availability Assessment (Document L9), which include certain details about individual sites. Moreover there was no arrangement for the submission of rebuttal proofs of evidence included in the bespoke timetable for this case.
13. Two reasons for refusal referred to the absence of a legal agreement (No 8 concerning affordable housing, No 10 concerning infrastructure contributions and works), and a third (No 11) referred to the financial sustainability of a bus service. The Borough Council agreed in the planning statement of common ground that these matters could be addressed by legal agreements, and planning obligations have subsequently been submitted. I have found that the planning obligations (with the exception of that concerning the care home which is not mentioned in the reasons for refusal) are necessary for the development to be considered acceptable. At the date of determination of the planning application these necessary provisions were not in place: accordingly the Council did not behave unreasonably in using reasons relating to the absence of planning obligations in its decision to refuse planning permission.

14. The Appellant contends that unnecessary time was taken by the Borough Council in evidence in chief, particularly by its landscape and planning witnesses. I recorded that the Council took about 2.25 hours in evidence in chief on landscape matters and about 1.5 hours on planning matters, compared with about 1.5 hours and 1.25 hours respectively by the Appellants' witnesses. Although the Council took longer, I do not regard the additional time taken as excessive. Moreover the inquiry was accommodated within its original allocation of eight days: there were seven sitting days, and an eighth day was devoted to a programme of site visits. The Council's presentation of its case did not unduly prolong the inquiry proceedings.
15. As the Council did not pursue the reason for refusal concerning the design and layout of the housing, it was not necessary for the Appellants' design witness to appear at the inquiry. It is clear that the Council did not pursue design and layout matters as a consequence of the decision on the planning application for the revised scheme. That application was only determined the day prior to the opening of the inquiry. Notwithstanding the Appellants' argument that the Council's position could have been established earlier, it could not have been finalised until determination of the subsequent planning application had occurred.
16. I conclude that the Borough Council has not behaved unreasonably in respect of the appeal proposal, and, therefore, that neither a full nor a partial award of costs is justified.

Richard Clegg

INSPECTOR