
Costs Decision

Site visit made on 15 May 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2019

Costs application in relation to Appeal Ref: APP/R3650/W/18/3216058 Green Lane Farm, Green Lane, Badshot Lea, Surrey GU9 9JL

- 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 Farnham Estates Ltd for a full award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for the construction of 43 dwellings and associated parking, with new access from Monkton Lane without complying with conditions attached to planning permission Ref WA/2016/2456, dated 5 March 2018.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, Planning Practice Guidance (PPG) 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 process¹. The applicant contends that the Council has acted unreasonably by preventing and delaying a development which should clearly be permitted having regard to its accordance with the development plan and national policy.
3. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires proposals to be determined in accordance with the development plan unless material considerations indicate otherwise. It is clear that the Council accepted that the proposed reduction in affordable housing provision would be to a level that complies with the current development plan and that there were no material considerations capable of outweighing a favourable determination on this issue. In these circumstances, Paragraph 11(c) of the National Planning Policy Framework indicates that a proposal should be approved without delay. Members of the Council's Joint Planning Committee were not obliged to follow the recommendations of Council Officers to approve the application, but there is an expectation that detailed evidence should be provided to substantiate each reason for refusal of the application.
4. The first refusal reason relates to procedural rather than planning matters; no reference is made to compliance with planning policy. The reason states the reduction in affordable housing would be "*substantially different*" and therefore not in accordance with the S.73 procedure. The Council contends that as there

¹ Paragraph: 030 Reference ID: 16-030-20140306

is no statutory definition for a minor material amendment that this is a matter of planning judgement, for a decision taker in each case. Their statement comments, *"given the scale of the reduction, together with the context of the current level of housing need in the Borough, the committee reached the conclusion that the change would not constitute a minor material amendment"*.

5. Whilst I can understand a preference for the higher level of affordable housing in the appeal permission, given the pressing need for affordable housing in Waverley, no defence of the decision to refuse has been provided other than an opinion that the scale of change would not be minor. Section 73 of the 1990 Act enables a Council to amend or remove conditions attached to a planning permission but does not enable fundamental alterations to the nature of that permission. It creates a procedure that results in a new planning permission. As such the responsibilities on the Council are to consider the application in relation to the development plan, any material considerations and if there would be any fundamental alterations to the nature of the original planning permission. The context is the approval of a development of 43 dwellings in a sustainable location. The proposal would not change this context and would result in a policy compliant level of affordable housing. The proposal would not result in a fundamental alteration to the nature of the appeal permission. Refusal of the proposal on this basis and provision of no substantive defence for this at appeal amounts to unreasonable behaviour and has caused delay.
6. The second, third and fourth refusal reasons relate to the absence of a completed planning obligation at the time of determination of the application. The Council has since signed a deed of variation to the obligation attached to the appeal permission. This is dated 17 May 2019 and confirms that the Council is now content that the contributions the subject of these reasons can be secured. Although there has been a delay in completing the deed of variation since refusal of the proposal, this has not resulted in unnecessary or wasted expense for the applicant as it would have been necessary to complete such a deed of variation had the proposal been approved in accordance with the officer recommendation. Moreover, the second, third and fourth refusal reasons were supported by reference to relevant planning policies and correctly pointed to short-comings in the proposal at the time of the decision.

Conclusion

7. PPG provides examples in which local planning authorities are at risk of an award of costs². These include, *"failure to produce evidence to substantiate each reason for refusal on appeal"*, and *"failing 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"*.
8. My findings are that whilst unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated in relation to the second, third and fourth refusal reasons, that it has been demonstrated in relation to the first reason. There has been no material change in circumstances to justify the first refusal reason. A partial award of costs in relation to this reason is therefore justified. PPG confirms that a partial award may result from an application for either a full or partial award³.

² Paragraph: 049 Reference ID: 16-049-20140306

³ Paragraph: 041 Reference ID: 16-041-20140306

Costs Order

9. 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 Waverley Borough Council shall pay to Farnham Estates Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the first reason for refusal of the proposal. It is self-evident that the substantive part of the appeal submissions relate to the first refusal reason.
10. The applicant is now invited to submit to Waverley 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.

Rory MacLeod

INSPECTOR