
Costs Decision

Site visit made on 24 July 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2019

Costs application in relation to Appeal Ref: APP/Y3615/W/19/3225673 Land adjoining Streamside, Harpers Road, Ash GU12 6DB

- 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 Bourne Homes for a full award of costs against Guildford Borough Council.
 - The appeal was against the refusal of an application for planning permission for the erection of 24 new houses with associated parking and creation of new vehicular access.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, 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 expense in the appeal process.
3. PPG also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
4. The crux of the applicant's case in seeking an award for costs appears to be grounded in substantive matters. Namely that they feel the appeal scheme should not have been refused planning permission and the Council have failed to sufficiently defend their decision through a lack of evidence and substance and included vague and generalised assertions about the impacts of the proposed development.
5. The Council refused planning permission for four reasons. In summary, and as referred to in my separate decision, these related to the effect of the proposed development on a) the character and appearance of the area; b) ecology and biodiversity interests; c) the Thames Basin Heaths Special Protection Area (TBHSPA); and d) infrastructure through the lack of financial contributions to mitigate the impacts thereon. I note the applicant's address of these out of the order they appear on the decision notice. For ease of reference, I shall do the same.

6. The applicant is correct in pointing out that matters pertaining to infrastructure contributions and mitigation against harm to the integrity of the TBHSPA, as per the Council's case, are able to be addressed through the completion of a planning obligation. It is equally true however that a completed obligation was not before the Council at the time they determined the planning application. Consequently, and again as per their case, they could not be satisfied the impacts in each respect could be made acceptable. Had the Council not included reference to each of these areas as part of their decision, it would have the potential to undermine their case in respect of them. Having seen the Council's evidence in regard to these two matters and the absence of a completed obligation at the time of a decision being made, I do not feel the Council's actions were unreasonable.
7. The applicant has since submitted an obligation. The applicant was well aware of the need to do this both in accordance with the requirements of the development plan and the impacts of the appeal scheme in other areas. I note that the Council introduced a requirement for a financial contribution towards the provision of a road bridge. I have engaged with this in my other decision. As far as I understand it, the provision of the road bridge is part of the relevant policies that concern the implementation of the extant housing allocation the appeal site is part of. The adoption of the document that this policy forms part of falling after the determination of the application. Hence, again on my understanding, the request therefore coming after the planning application was determined. It does not strike me as reasonable for the Council to have made such a request based on an (at the time) unadopted policy. As I have also set out in my other decision, I agree with my colleague's findings in respect of the reasonableness of the road bridge contributions expected from developments falling within land covered by the aforementioned extant allocation.
8. It does not seem to me therefore that the applicant had been put to unnecessary or wasted expense in responding to the Council's reasons for refusal in this regard since they were undertaking work that they would have had to, had the matter been dealt with during the life of the planning application. There was additional work in responding to the road bridge request but as I have said, this was following the determination of the application and in response to the requirements of a since adopted part of the development plan. In any case, the amount of additional work that responding to this request required does not seem to have been extensive or significantly time consuming given work was well underway on a draft obligation at the time.
9. On the matter of ecology and biodiversity interests it seems on my understanding of the evidence that this reason for refusal was based on insufficient information for the Council to be able to draw conclusions on the scheme's impacts in each regard. The applicant undertook further survey work following the determination of the application, work that ultimately lead the Council to withdraw their reason for refusal. Having looked at the timescales it seems to me that the Council withdrew this reason in good time and at as early an opportunity as was reasonably possible given further consultation with their relevant advisor was needed. The applicant's ecologist provided further information during the life of the application which the Council appear from the delegated officer report to have considered and maintained their objection to the scheme on ecology and biodiversity grounds. It appears to be the case, and certainly turned out to be, that such objections could be overcome but

evidently through the submission of further information from the applicant which, as I have said, came after the Council made their decision. Following the Council's decision not to defend this reason for refusal, no further discussion on it had taken place and thus the applicant has not been put to further work. With the above in mind, I am of the view that the Council have neither been unreasonable nor caused the applicant additional expense here.

10. The applicant sets out that neither the Council nor their ecologist were willing to meet to discuss matters concerning ecology and biodiversity. There is not detailed discussion of such a request in the evidence but notwithstanding, it seems sufficiently clear to me on my reading of the evidence that, prior to the refusal of planning permission and the subsequent information submitted by the applicant after, the two main parties were still some way apart on their opinions of the appeal scheme's impact in these areas. It does not therefore strike me that a meeting to discuss them at the time would have necessarily been of great merit. In any case, the Council made their position sufficiently clear on these matters at the time and there is no statutory duty on them to formally meet to discuss them in further detail. Their other reasons for refusal would have stood regardless and planning permission would still have been refused.
11. Returning then to the first reason for refusal which concerned the effect of the appeal scheme on the character and appearance of the area. Having regard to the Council's evidence in this respect which is formed by the delegated officer report and their appeal statement it seems sufficiently clear to me that their objections centred around the effect of the development type and specifically its layout on the area rather than necessarily any landscape harm which the main parties appear to agree on. The Council place any likely landscape effect in the context of the wider allocation which to my mind draws sufficient distinction between this and how the type and layout of development would affect the rural character of the area more generally. Indeed, their appeal statement separates the two matters. The Council's character and appearance reason for refusal is detailed and sufficiently precise, is clear on the harm and places such in the context of the relevant policies of the development plan at the time. In this respect, I cannot see any instance of unreasonable behaviour.

Other Matters

12. There is some evidence to suggest that officers were minded to recommend approval of the appeal scheme. Be this as it may, the Council as a decision making body issued a formal decision to refuse it for the reasons given. Frustrating as such a set of circumstances can be it is not unusual during the time a planning application is being considered. Consequently, I cannot find this as unreasonable behaviour on the Council's part.
13. The applicant is of the view that the Council have failed to undertake any form of planning balance in drawing their conclusions on the scheme. Whilst it is one of the aims of the Framework¹ to undertake such exercises when identifying some harms the Council have been clear in their evidence as to where any harms lie and how that results in conflict with the development plan and the Framework. They have also addressed matters in the round by identifying those areas in which the scheme would be acceptable including recognition that it would form one part of an extant housing allocation. It is

¹ The National Planning Policy Framework 2019

sufficiently implicit on my understanding of the Council's evidence that they feel the areas in which the scheme would be acceptable and any benefits it would yield would not have been sufficient to make it acceptable. Indeed, the Council's delegated officer report explicitly mentions the balance, devoting a decision thereto in its latter stages.

Conclusion

14. With the above in mind, I find that the Council has not acted unreasonably and thereby caused the applicant to incur unnecessary or wasted expense. A claim for costs is not therefore justified. Accordingly, it is hereby refused.

John Morrison

INSPECTOR