

Costs Decision

Inquiry Held on 10-13 September 2019

Site visit made on 13 September 2019

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2019

Costs application in relation to Appeal Ref: APP/R0335/W/19/3231875 Land at Tilehurst Lane, Binfield RG42 5JS

- 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 JPP Options Ltd for a full award of costs against Bracknell Forest Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for the erection of fifty three dwellings, (including thirteen affordable houses), together with open space, landscaping and vehicular and pedestrian access.
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Decision

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

The submissions for JPP Options Ltd

2. The application was made in writing. Although the application was refused for six reasons, five of those have been capable of being satisfactorily addressed through the submission of a legal agreement. The remaining reason for refusal is defended with evidence that is vague generalised and inaccurate. Furthermore, no evidence is presented on the planning balance.

The response by Bracknell Forest Borough Council

3. The response was made in writing. The evidence of Mr Cobben for the Council is well founded and undertaken by a suitably qualified and experienced witness. Evidence regarding the planning balance was submitted in the round table discussion on the effect of the proposal on the character and appearance of the area.

Reasons

4. 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.
5. The planning application was reported to the Planning Committee with a recommendation to grant planning permission. The Planning Committee is not obliged to accept the officer's recommendation, but in doing so it must be able to provide clear reasons for refusal. In this instance the reason for refusal is clear and alleges that the proposal would cause unacceptable harm to the character and visual amenities of the area and the rural setting of Binfield due

- to the increased quantum of dwellings over and above those already approved leading to an increased density and scale of development. As a consequence, conflict with relevant development plan policy is alleged.
6. The appeal site has relevant planning history. In 2015 an appeal was dismissed for the erection of 72 dwellings¹. In 2016 an appeal was dismissed for the erection of 28 dwellings². The decision was subsequently quashed. The Inspector for the subsequent redetermined appeal for the 28 dwellings allowed the scheme³.
 7. The consideration of character and appearance is often a subjective one. In this instance that consideration is made within the context of the three previous appeal decisions, the Inspectors in which have all found harm to the character and appearance of the area to varying degrees. Indeed, I have found harm to the character and appearance of the area based on the proposals.
 8. It is accepted by all parties that the existence of planning permission for 28 dwellings on the appeal site is a significant material consideration. For it to be given significant weight as a fall back position there needs to be a reasonable prospect of it being carried out and it would also need to be equally or more harmful than the scheme for which permission is sought.
 9. I am not aware of the specific evidence in front of the Planning Committee at the time of their consideration of the planning application regarding the prospect of the 28 dwelling scheme coming forward. However, it was stated at the Inquiry that the application for reserved matters had only been submitted a short time before the Inquiry so would unlikely to have been part of the Planning Committee's consideration. Even if the Planning Committee had been of the view that there was a reasonable prospect of the development being carried out, it was entitled to reach a conclusion that the proposal would be more harmful than the 28 dwelling scheme.
 10. The issues raised regarding the development pattern, density and the consequent increase in car parking, boundary treatments and hardstanding as well as differences in footprint are relevant ones in the consideration of the character and appearance of an area. Although I have not agreed with the findings of the Council, that does not reduce the legitimacy of their contribution to the character and appearance of an area.
 11. The evidence of Mr Cobben, for the Council, makes comparison of the current proposal with the two previous schemes for the appeal site. From my understanding of his evidence, Mr Cobben considers that the proposal, when compared to the extant permission or viewed in isolation would result in the urbanisation of this part of Binfield. Therefore, the extant permission would be less harmful than the current proposal. Consequently, while a material consideration, it would not in itself, outweigh the harm caused by the appeal proposal.
 12. At that point the Council should have provided evidence on the benefits of the proposal and incorporated them into the balancing exercise. There is no written evidence on this, but Mr Cobben, in the round table discussion, did give his view as to outcome of such a balancing exercise.

¹ APP/R0335/A/14/2219888 – referred to as the 72 dwelling scheme

² APP/R0335/W/15/3139035 – referred to as the quashed decision

³ APP/R0335/W/15/ 3139035

13. While therefore, it was late in the day in terms of Inquiry timescales, it cannot have been a surprise to the appellant that the Council was of the view that relevant material considerations did not outweigh the conflict with the development plan policies.
14. All in all, therefore, I am satisfied that although I have reached a different conclusion to the Council, it advanced a case that, in its opinion, indicated that the proposal was contrary to the development plan and the National Planning Policy Framework. Consequently, the Council did not act unreasonably in this matter.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, for the reasons given above, I refuse the application for an award of costs.

Zoe Raygen

INSPECTOR