
Costs Decision

Site visit made on 22 October 2019

by Andrew Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 November 2019

**Costs application in relation to Appeal Ref: APP/W0340/W/19/3234385
Glenvale Nurseries, Hungerford Lane, Bradfield Southend, Reading
RG7 6JH**

- 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 West Berkshire Council for a full award of costs against Joe Atkinson of Charlesgate Homes Limited.
 - The appeal was against the refusal of planning permission for demolition of Glenvale garden centre and replace with 1 detached dwelling, retaining the existing entrance onto Hungerford lane.
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Decision

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

Reasons

2. The Planning Practice Guidance¹ advises that, irrespective of the outcome of an 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.
3. The applicant, in this case the Council, has made an application for a full award of costs on a number of grounds that are both substantive and procedural, on the basis that one of the aims of the costs regime is to discourage unnecessary appeals.
4. The proposal follows a number of previous planning decisions at the site including dismissed appeals, where the applicant suggests the core issues are the same. In terms of a substantive award the applicant submits that the development is clearly not in accordance with the development plan, as developing the site for any number of dwellings would be contrary to its housing policies. The applicant is of the view that the appeal follows a recent appeal decision² in respect of a very similar development on the same site where the Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period³.
5. The applicant contacted the appellant at an early stage to suggest that it would make a costs application in the event that the appellant chose to submit an

¹ Planning Practice Guidance Paragraph 030 Reference ID: 16-030-20140306

² APP/W0340/W/16/3166113

³ Planning Practice Guidance Paragraph 053 Reference ID: 16-053-20140306

- appeal against a further refusal. The applicant acknowledged that this advice was offered at an early stage. I am satisfied that this was appropriate, and having reviewed the wording of the relevant email satisfied that it could not be construed as intimidating behaviour. Such early engagement was proactive and in accordance with paragraph 39 of the Framework, which states that early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties.
6. The appellant is of the view that the proposal is significantly different to the previously appealed scheme. I accept that the most recent appeal was for four dwellings. It would be reasonable to assume that the effect on the character and appearance of the area, including the North Wessex Downs Area of Outstanding Natural Beauty (AONB) could be different. However, I note that the previous Inspector specifically referred to the siting of a dwelling at the front of the site, and in this respect the current appeal and previous appeal are very similar. He concluded that a dwelling at the front of the site closer than the existing structures would inevitably have a harmful effect on the rural character of the area.
 7. The appellant suggests that there have been changes in local and national policy since the previous appeal was determined. I am not satisfied that the ongoing local plan review is evidence of changing circumstances, and there have been no other changes to the Council's development plan in this period. In respect of Policies ADPP1 and ADPP5 of the West Berkshire Core Strategy 2006 – 2026 adopted 2012 (CS) and C1 of the Housing Sites Allocations DPD adopted 2017 (DPD), which relate to the principle of development, the current appeal and previous appeal would be judged in the same way. This is evidenced in paragraphs 8 to 10 of the previous Inspectors decision. In part iv) of Policy C1 of the DPD it is necessary for the decision maker to consider the specific design of the proposal; however as neither proposal could be considered infill development neither would accord with this Policy.
 8. I accept that the National Planning Policy Framework (the Framework) has been updated twice since the previous appeal was issued, however I am not convinced that this has resulted in changes that are significant enough to cause a decision maker to come to a conclusion that is different to the decision made by the previous Inspector.
 9. The appellant has referred to references in the revised Framework to the brownfield register and the continued encouragement to make use of PDL, including criticism of the way the Council manages its brownfield register. I appreciate that prior to its determination of the application the Council has not held a consistent view on whether the site should be considered PDL. However, at the point that the application was determined by elected members the position of Council Officers was set out clearly. In any case, such matters are of little relevance to the appeal proposal as I have found that the site should not be considered PDL. Furthermore, even if the site was considered to be PDL I am not satisfied that this would have been a determinative factor as PDL is not mentioned as an exception in Policy ADPP1 of the CS or C1 of the DPD.
 10. Since the determination of the previous appeal the appellant refers to the need for the applicant to provide enough serviced plots to meet its self-build register, with reference to paragraph 61 of the Framework. I am however not satisfied that this has any bearing on the appeal proposal as there is no legal

mechanism before me to ensure that the proposal would be brought forward as a genuine self-build scheme.

11. Therefore, I find that the development is clearly not in accordance with the development plan and no other material considerations such as national policy are advanced that indicate the decision should have been made otherwise⁴. The appeal follows a recent appeal decision in respect of a very similar development on the same site where the Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period. Therefore, the appellant has behaved unreasonably by submitting an appeal that had no prospect of succeeding.
12. In terms of procedural matters the applicant submits that it spent time unnecessarily examining matters relating to its housing land supply, that the appellant has failed to substantiate why its third refusal reason should be overturned, and that delays in submitting the appeal statement resulted in the applicant wasting time requesting the documents.
13. With regard to housing land supply the appellant made a case against the applicant during the application stage. As a result I consider it to be reasonable that the applicant asked the appellant whether this is a matter that he would pursue during the appeal process. Despite being asked the question directly the appellant did not provide an answer. I consider this to constitute unreasonable behaviour.
14. The appellant suggests that he is unclear as to what was meant by the applicant's third refusal reason, and therefore did not feel the need to address this matter in any detail in his appeal submissions. Whilst the email to the appellant dated 9 April 2019 did ask whether demolition would be limited to those buildings included in the red line area, it did not set out any concerns the Council had regarding retaining buildings in the blue line area. I also note that this matter was not referred to in the committee report. As such I am satisfied that the appellant's failure to address this matter in any detail during the appeal process does not constitute unreasonable behaviour.
15. The appellant is expected to send a copy of the appeal form and all supporting documents including the full statement of case to the Council at the same time that the appeal is submitted to the Planning Inspectorate. Instead the appellant waited until a start date for the appeal to be given. The applicant requested the documents three times. No reason for the delay has been given. I consider this to constitute unreasonable behaviour.
16. On the basis that the appellant has behaved unreasonably I also need to consider whether this unreasonable behaviour has resulted in unnecessary or wasted expense on the part of the applicant.
17. The applicant has been put to the expense of defending its position in relation to the entire appeal. The applicant has also incurred unnecessary costs examining matters relating to housing land supply and requesting documents from the applicant. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

⁴ Planning Practice Guidance Paragraph 053 Reference ID: 16-053-20140306

Costs Order

18. 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 Joe Atkinson of Charlesgate Homes Limited shall pay to West Berkshire Council the costs of the appeal proceedings described in the heading of this decision.
19. The applicant is now invited to submit to Joe Atkinson of Charlesgate Homes Limited, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew Tucker

INSPECTOR