Costs Decision

Hearing Held on 15 January 2020

Site visit made on 15 January 2020

by R J Jackson BA MPhil DMS MRTPI MCMI

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

Decision date: 12 February 2020

Costs application in relation to Appeal Ref: APP/C3810/W/19/3236911 Land adjacent to Bonhams and Flints, Hoe Lane, Flansham PO22 8NP

- 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 Mr Edward Van der Wee, Pallant Homes Ltd for a full award of costs against Arun District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for development of the site by the erection of 10 dwellings with access from Hoe Lane, Flansham.

Decision

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

Procedural matters

2. The applicant made their application orally at the Hearing, principally by reading out a pre-prepared statement, although making a few changes in light of the discussions and actions at the Hearing. While it had been intimated to the Council that an application was to be made, the applicant did not provide the Council with his reasoning prior to the event.

3. The Council felt that it could not, fairly, respond to the application at the Hearing. I therefore agreed that it could submit a written response after the Hearing closed with the applicant having the opportunity to provide final written comments thereafter.

4. As all the parties are aware of the cases being made it is not necessary for me to set them out in this decision.

Reasons

5. The Planning Practice Guidance (the 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 process.

6. The applicant set out five main grounds and some other points where it considered that the Council had acted unreasonably on substantive matters and one additional ground on a procedural matter. I will go through each in turn. I will then assess whether those areas where I find unreasonable behaviour led to unnecessary or wasted expense.

7. The first ground relates to the situation when the Council determined the application in March 2019 on the basis that, in the applicant's view, had the Council considered the matter correctly, it would have been unable to demonstrate a five year supply of land for housing (5YHLS). This would have led to it utilising the so-called 'tilted balance' which can be found in paragraph 11 d) of the National Planning Policy Framework (the Framework), rather than the 'conventional balance', and in light of this would have approved the application therefore making the appeal unnecessary.

8. The Arun Local Plan 2011 – 2031 (the ALP) was adopted in July 2018. Therefore, in line with footnote 38 of the Framework, this plan should be considered 'recently adopted' until 31 October 2019 and it can reasonably be assumed that at adoption the Council was able to demonstrate a 5YHLS. This would be maintained until 31 October 2019. Consequently, at the date of its decision the Council could reasonably conclude that it had a 5YHLS.

9. In any event it seems to me that even if the Council had concluded that it was unable to demonstrate a 5YHLS at the point of making its determination, it is not inevitable that it would have granted planning permission, especially where the Council considered that the proposal had a number of other harmful effects. Where a proposal is contrary to the overall development plan, as here, it cannot be concluded that planning permission should inevitably have been granted as the weight to be given to the plan and other material considerations is a matter of planning judgement. This ground therefore does not succeed.

10. The second ground relates to the use of the 930 figure for the annual housing requirement for the period 2016/17 to 2020/21 when the Council had accepted that this represented a "minor error" and should have 1,120 dwellings per annum. The applicant also sought to show that the lack of evidence presented to the hearing as to the deliverability of four Strategic Allocation sites was unreasonable.

11. Although the Council accepted that it had realised that the 930 figure in the originally adopted plan in July 2018 was in error and had changed the text in Policy H SP1 of the ALP my impression was that it forgot that it also needed to amend the annual requirement indicator line in Picture 12.1. This led to the inconsistency which the Council then sought to justify by reference to extrinsic material. For reasons I explain in my decision this was not necessary or appropriate. This behaviour was unreasonable.

12. The definition of deliverability in the Glossary to the Framework and footnote 6 of that document put a presumption on the Council to demonstrate that sites meet that definition. Not to provide any evidence beyond verbally reporting conversations with developers, landowners and site promoters, is not meeting that presumption. For the four sites in question the Council failed to demonstrate that they were deliverable and to provide no evidence in support of its assertions was unreasonable.

13. The third ground was the applicant maintained that the Council had acted unreasonably when it maintained that whether the 5YHLS figure was 3.7 years or 2.9 years it would have put forward the same arguments. The Council responded by indicating that as the starting point of the determination is the development plan that this was not unreasonable.

14. Clearly, the extent of any shortfall is a material consideration to be taken into account which will affect the weight given to that shortfall as an other material consideration and the Council did not demur from this. Rather as with ground one, the weight to be given to those factors is a matter for the decision maker and here the Council justified its position. I therefore consider that the Council did not act unreasonably in this ground.

15. The fourth ground that the Council relied on an incorrect assessment of paragraph 12 of the Framework when the plan should have been considered out-of-date. For the reasons set out in relation to ground one at the date of the determination of the application by the Council this was not incorrect; it was only thereafter did matters change.

16. The final ground was that it was only in its Statement of Case did the Council raise that it considered Flansham to be a non-designated heritage asset, effectively adding a new element to one of the reasons for refusal.

17. The relevant reason for refusal did refer to "assets" in the plural. However, the Officer report stated "there are likely to be further buildings which could be considered non-designated heritage assets (such as Bonhams itself)" which indicates that such assets would be buildings rather than a place. The report then did go on to note that Flansham had a historic character and the reason for refusal indicated there was a "historical character" to Hoe Lane, Flansham. However, these references are some distance from indicating that Flansham or Hoe Lane should be considered a non-designated heritage asset, or making clear what the extent of that asset should be, so that an assessment of the effect on its significance could be made.

18. The Council referred to the PPG[1] where it states "local planning authorities may also identify non-designated heritage assets as part of the decision-making process on planning applications, for example, following archaeological investigations". While archaeological investigations is an example, the PPG does give an indication that the decision to identify a non-designated heritage asset as part of the determination process can follow the discovery of additional or new information and no new or additional information was here identified. Even then, it is not clear what, if any, action has been taken by the Council towards considering whether Flansham should be considered as a candidate for designation as a Conservation Area.

19. To state in its Statement of Case that Flansham should be considered to be a non-designated heritage asset without there being a material change of circumstance in the meantime was therefore unreasonable.

20. Additionally, the applicant did make some further grounds about the case and whether the Council was reasonable in relying upon various factors. In all cases I am of the view that these matters are material considerations and the Council substantiated their use. While I disagree as to the weight that I give to some of the considerations, it was not unreasonable to rely upon them. This therefore does not represent unreasonable behaviour.

21. In addition to the above substantive matters, the applicant made an application on procedural grounds on the basis the Appeal Questionnaire submitted to the Planning Inspectorate by the Council when the appeal was lodged had been

[1] Reference ID: 18a-040-20190723

accompanied by the previous, incorrect, version of Policy H SP1 of ALP and this was not corrected until the Hearing itself. While the extract from the Council's website provided to me at the Hearing does not set out the date when the "minor error" was corrected, it was clear that this was before the Questionnaire was submitted in October 2019. To provide the out-of-date version was unreasonable.

22. Therefore, I conclude that the application is made out on two of its grounds amounting to three different elements; relating to the appropriate figure against which to judge land supply, the failure to supply evidence in relation to the deliverability of four Strategic Allocation sites, and whether Flansham should be considered a non-designated heritage asset. In relation to all of these matters the appellant was required to expend costs to provide evidence to counter the propositions put forward by the Council and time was spent at the Hearing discussing these matters. This was unnecessary.

23. However, the amount of time spent dealing with the error in the version of the ALP submitted with the Questionnaire at the Hearing was minimal and effectively formed part of the discussions about the correct housing figure. I therefore consider that there was no additional wasted expense occasioned by this unreasonable behaviour.

Conclusion

24. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

25. 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 Arun District Council shall pay to Mr Edward Van der Wee, Pallant Homes Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to:

- the appropriate figure against which to judge housing land supply;
- whether the four Strategic Allocation sites should be considered deliverable; and
- whether Flansham should be considered as a non-designated heritage asset;

such costs to be assessed in the Senior Courts Costs Office if not agreed.

26. The applicant is now invited to submit to Arun District 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.

R J Jackson

INSPECTOR