The Planning Inspectorate

Costs Decision

Site visit made on 20 January 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Costs application in relation to Appeal Ref: APP/C3810/W/19/3234972
Clays Farm, North End Road, Yapton BN18 0DT

- 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 Domusea Developments Ltd for a full award of costs against Arun District Council.
- The appeal was against the refusal of the Council to grant planning permission for development described as residential development comprising 33 no. units, access, landscaping and associated works.

Decision

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

Procedural matter

2. The applicant has applied for a full award of costs but in doing so has individually listed a number of items. A full award of costs however, necessarily relates to all costs incurred in the appeal process. It is on this basis that I have considered the applicant's claim.

Reasons

3. 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.

4. The applicant claims that the Council has acted unreasonably on grounds which I summarise as:

   a) failure to substantiate the reason for refusal of planning permission, and making vague, generalised or inaccurate assertions about the need to protect best and most versatile agricultural land; and

   b) preventing or delaying development which should clearly be permitted.

5. With regard to Ground (a), the Council refused planning permission on the basis of loss of agricultural land. This was on the understanding that land within the site was classified at Grade 1. The land was subsequently shown to fall within Grade 2. This misidentification was partly a product of inaccuracies within the available evidence, including the Yapton Neighbourhood Plan. However, whilst the difference indicates that the land is of lesser quality, it does not alter the scheme's conflict with Policy SO DM1 of the Arun Local Plan 2011-2031 Adopted 2018 (the LP), as this applies equally to land falling within Grades 1, 2 and 3a.

6. Policy SO DM1 of the LP is broadly consistent with national policy s set out within the National Planning Policy Framework (the Framework). Here paragraph 170(a) of the Framework states that decisions should contribute to protecting and enhancing soils in a manner commensurate with their statutory status or identified quality in the development plan. As such, aside from the scheme's obvious conflict with Policy SO DM1, regardless of whether the land is Grade 1 or Grade 2, the reason for refusal was consistent with objectives clearly set out at both local and national level. For these reasons, I do not accept that the Council failed to substantiate its reason for refusal of planning permission, or that it made vague, generalised or inaccurate assertions about the need to protect best and most versatile agricultural land. Ground (a) therefore fails.

7. The applicant principally rests Ground (b) on the operation of paragraph 11 of the Framework, given the Council's acknowledged lack of a demonstrable 5-year supply of deliverable housing sites (5YHLS). In this context the applicant incorrectly states that permission should only be refused where policies set out in footnote 6 of the Framework apply. This is because, where footnote 6 polices do not apply, or they do not provide clear reasons for refusal, the 'tilted balance' set out in paragraph 11(d)(ii) is then engaged. It is then for the decision maker to apply weight to the relevant considerations as they see fit in undertaking the balancing exercise.

8. The applicant draws attention to the fact that the Members resolved to refuse planning permission against officer advice. However, as Members are not bound to follow the recommendations of their officers, this was not in itself unreasonable. The fact that officers subsequently recommended approval of a 'duplicate' application is also not unreasonable. This is because officers were been generally consistent in their recommendations.

9. I note the fact the members have subsequently resolved to approve the duplicate application, reversing their previous stance. In doing so the revised classification of the land has been taken into account, alongside a sharp fall in the level of the Council's 5-year supply of deliverable housing sites. In each regard therefore the assessment has involved evidence and circumstances which were either not available or not applicable when the current application was determined. As such the weight applied to these considerations could reasonably differ from that applied when the appeal scheme was assessed, so too therefore could the outcome of any balancing exercise. As such I do not agree that the Council prevented or delayed development which should clearly have been permitted. For this and the above reasons Ground (b) fails.

Conclusion

10. For the reasons set out above I conclude that the applicant's claim for a full award of costs should be dismissed.

Benjamin Webb

INSPECTOR