The Planning Inspectorate

Costs Decision

Inquiry held on 21-24 January 2020
Site visit made on 24 January 2020

by Michael Boniface MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2020

Costs application in relation to Appeal Ref: APP/R3650/W/19/3237359
Land East of Loxwood Road, Alfold, Surrey

- 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 Catesby Strategic Land Ltd for a partial award of costs against Waverley Borough Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for up to 80 dwellings (including 24 affordable) with associated landscaping, open space and SUDS.

Decision

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

The submissions for Cateby Strategic Land Ltd

2. The application was made in writing[1]. In essence, it contends that the Council was unreasonable to pursue a case that it could demonstrate a deliverable five-year housing land supply in the light of two recent appeal decisions[2] that concluded otherwise. No substantive new evidence was provided to justify the Council's position.

The response by Waverley Borough Council

3. The Council accepts that it cannot demonstrate a deliverable five-year housing land supply and consents to an award of costs in accordance with the Agreement on Housing Land Supply and Costs[3].

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 Council pursued a case that it could demonstrate a deliverable five-year housing land supply despite two recent appeal decisions that had concluded otherwise. The Council's evidence made little or no reference to the appeal decisions and it transpired during the course of the Inquiry that it had submitted the wrong version of its evidence to the Planning Inspectorate and all parties involved.

[1] Inquiry Document 25
[2] APP/R3650/W/19/3230164 (Windacres Farm) and APP/R3650/W/19/3227970 (South of Cox Green Road)
[3] Inquiry Document 10

6. After all parties had the opportunity to consider the revised document it became clear that the evidence was largely unaltered. In fact, it was confirmed by the Council to be the same evidence submitted to the Windacres Inquiry, albeit with quotes from the Inspector's decision in that case now included and some minor changes to wording. The evidence supporting the Council's conclusions on deliverability was entirely unaltered, the appendices being the exact same documents that were presented in the previous appeal.

7. The Council were initially unable to answer basic questions on its approach to calculating supply despite the differences with the appellant's approach having been highlighted in evidence, setting the scene for the discussions that followed.

8. Notwithstanding invitations to the Council to consider its position, it maintained its case that a deliverable five-year supply could be demonstrated and a round table session examined the disputed sites. This took a significant amount of Inquiry time, only for the Council to change its position and present an agreed statement[4] the following day that it could only demonstrate four years' worth of supply.

9. The Council did not robustly reconsider its position in light of the Windacres Farm appeal decision and failed to substantiate its assertion that it could demonstrate a deliverable five-year housing land supply. The Council's approach was clearly unreasonable in this case and resulted in wasted time and expense for the appellant in preparing and presenting a case on housing land supply matters.

Costs Order

10. 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 Waverley Borough Council shall pay to Catesby Strategic Land Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs involved in dealing with the matter of the supply of housing (deliverability) between 15 November 2019 and 22 January 2020 (inclusive); such costs to be assessed in the Senior Courts Costs Office if not agreed.

11. The applicant is now invited to submit to Waverley Borough 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.

Michael Boniface

INSPECTOR

[4] Inquiry Document 10 (Agreement on Housing Land Supply and Costs)