



Costs Decision

Hearing Held on 17 December 2019

Site visit made on 17 December 2019

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 16 March 2020

Costs application in relation to Appeal Ref: APP/R3650/W/19/3234716 Land at Alfold Garden Centre, Horsham Road, Alfold, Cranleigh GU6 8JE

- 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 Mark Randall of Alfold Real Estates Ltd for a partial award of costs against Waverley Borough Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of 56 dwellings including 30% affordable units with associated parking and open space.
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Decision

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

The submissions for Mr Mark Randall of Alfold Real Estates Ltd

2. The application was submitted in writing in advance of the hearing but, in summary, the applicant contends that the respondent: (a) persistently refused to engage constructively and positively; (b) introduced a late objection to a s.106 planning obligation; and (c) refused to recognise the housing land supply position in light of recent appeal decisions.

The response by Waverley Borough Council

3. The Council made oral submissions in response. I now set out the substance of that response.
4. The principle of development within this location is not acceptable. As such, there would be no merit in further engagement with the applicant. The Council had fully engaged during the pre-application stage.
5. The Council conceded their reasons for refusal did not specifically refer to the location of the affordable housing although it was specifically referenced at page 37 of the Officer's Report. There is no policy which specifically deals with this issue. However, it is a principle of good design as required by the National Planning Policy Framework. The development would be a long-term and permanent addition and needs to be of an appropriate layout and mix as reflected in Policy TD1 of the Waverley Borough Local Plan Part 1 – Strategic Policies and Sites (2018).
6. The Council have reviewed the recent appeal decisions and their evidence of deliverability and the likelihood of schemes being built out. Recent changes provide evidence that substantiates the Council's ability to demonstrate a five-year housing land supply.

Reasons

7. 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.
8. The application for costs is in two parts. Firstly, in relation to procedural matters, the applicant cites a lack of cooperation on the Council's part to engage positively and constructively. This is taken together with the introduction of the Council's objection concerning the location of the affordable housing. Secondly, with regards to substantive matters, it is the applicant's case that the Council were unreasonable to advance an argument in favour of a five-year housing land supply in light of recent appeal decisions¹.
9. Turning firstly to substantive issues. The recent appeal decisions provided a clear determination of the five-year housing land supply as at the date of determination of those appeals. However, due to the effluxion of time, matters affecting housing land supply will inevitably change. Whilst only a short period of time had elapsed, the Council provided an up to date position for a number of schemes. I have concluded that the Council's additional evidence does not provide clear evidence and a realistic prospect of housing being delivered within 5 years over and above that previously deemed deliverable. Notwithstanding this, I accept that it was open to the Council to present additional evidence to support their case.
10. In terms of procedural matters, despite the applicant's comments I note that the Council were minded to accept revised plans and documents following the Council's determination of the planning application. In my view, this is clear evidence that the Council continued to cooperate and engage with the applicant, as was demonstrated by the Council's subsequent decision not to defend reasons for refusal numbers 3 and 5. Whilst the location of the affordable housing was not cited within the Council's reasons for refusal nor the its hearing statement, it was referenced within the Officer's Report and as such, its inclusion should not have come as a new or novel 'other matter' to the applicant. I understand the applicant's frustrations in requiring a unilateral undertaking rather than a section 106 planning obligation to be drafted at a late stage, however, to my mind, the Council were not unreasonable in refusing to enter into the planning obligation.
11. Accordingly, I do not find that the Council have acted unreasonably. As such, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. An award of costs is therefore not justified.

E Brownless

INSPECTOR

¹ APP/R3650/W/19/3227970 Land to the South of Cox Green Road, Rudgwick and APP/R3650/W/19/3230164 Land at Windacres Farm, Rudgwick