The Planning Inspectorate

Costs Decision

Site visit made on 13 October 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th October 2020

Costs application in relation to Appeal Ref: APP/H1705/W/20/3257015
Land west of Silchester Road, Little London, Tadley RG26 5EX

- 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 and Mrs D W Snook for a full award of costs against Basingstoke & Deane Borough Council.
- The appeal was against the refusal of permission in principle for residential development of up to 4 no. dwellings.

Decision

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

Reasons

2. Paragraph 028 of the Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking a full award of costs on substantive grounds.

4. Paragraph 049 of the Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include: failure to produce evidence to substantiate each reason for refusal on appeal; and, vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

5. The applicant's main concern is that the Council has failed to substantiate its sole reason for refusal, which, contrary to the advice of professional officers, asserts that the policy harm arising from the proposal would significantly and demonstrably outweigh the benefits of the appeal scheme, within the context of the tilted balance of paragraph 11 d) ii of the *National Planning Policy Framework 2019* (the Framework).

6. While Members are not required to accept the advice of its professional officers, if a different conclusion is reached, the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence

substantiating that reasoning. It is open to Members to exercise their own planning judgement, but any such case must be fully justified in the face of opposing evidence.

7. I concur with the Council that it is a matter for the decision maker to decide what weight should be given to all relevant material planning considerations. However, I find that, whilst the Council has acknowledged that the appeal scheme would result in limited social and economic benefits, it has not provided clear evidence to support its conclusion that any harm arising from the policy conflict associated with the proposal would significantly and demonstrably outweigh these identified benefits.

8. I have noted the Court of Appeal opinion cited by the Council that the weight given to the benefits of new housing development in an area of housing land supply shortfall is likely to depend upon factors such as the broad magnitude of the shortfall, its likely duration, any Council actions to reduce it, and how much the development will contribute to it.

9. In this respect, the Council has drawn my attention to a modest and improved 5 year housing land supply deficit, having regard to the most recent Housing Delivery Test (HDT) results, and suggests that Local Plan Policy SS6 should therefore be afforded substantial weight. However, the Council has provided no detailed analysis to support its improved 5 year housing land supply figure, particularly given the potential for increased housing delivery over the last 3 years to reduce the amount of available deliverable housing land.

10. Also, the Council has provided no details of the context within which it considers the policy harm would be obvious and apparent in respect of its implications for the Council and the appeal site and its surroundings. As such, notwithstanding that the appeal scheme would make a limited contribution to the housing shortfall, I am not persuaded that the Council has provided demonstrable evidence that policy harm significantly outweighs the benefits of the scheme, in accordance with paragraph 11 of the Framework.

11. I therefore find that the Council has failed to provide evidence to substantiate its single reason for refusal at appeal and that this has comprised unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance. An award of costs is therefore justified.

Costs Order

12. 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 Basingstoke and Deane Borough Council shall pay to Mr and Mrs D W Snook, the costs of the appeal proceedings described in the heading of this decision.

13. The applicant is now invited to submit to Basingstoke and Deane 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. 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.

S Leonard

INSPECTOR