
Costs Decision

Hearing Held on 12 October 2020

Site visit made on 13 October 2020

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2020

Costs application in relation to Appeal Ref: APP/U3935/W/20/3247149 Honeyfield Alpacas, Honeyfield Farm, The Marsh, Wanborough, Swindon SN4 0AR

- The application is made under sections 78, 322 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972.
 - The application is made by Swindon Borough Council (the applicant) for a full award of costs against Firecracker Developments Limited (the respondent).
 - The Hearing was in connection with an appeal against the refusal of planning permission for the erection of 5 executive dwellings with garages, landscaping and associated works.
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Decision

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

The submissions for the parties

2. Both the applicant and the respondent submitted their cases in writing.

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. When this appeal was submitted in February 2020, the appeal on the adjacent site for 8 executive homes (the adjacent appeal) had not been determined. Mindful of this, and given the scale of the shortfall in deliverable housing sites in the Borough and the assessment to be made concerning the impact on listed buildings, it was not unreasonable for the appeal to be lodged.
5. Moreover, while the Planning Inspectorate's *Procedural Guide: Planning Appeals- England* says

the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought,

it does not necessarily stand in the way of amendments being considered. In any event, the alterations that were made to the red line during the appeal process were minor in extent and, as I understand it, they did not introduce

anything new into the scheme. Rather, they sought to make the drainage that was already being proposed easier to control by condition. As such, the scheme remained 'essentially' what was considered by the local planning authority and on which the interested parties had been consulted. I am satisfied too that the additional submitted information was in response to the Council's decision notice, and I would have expected the respondent's appeal statement to be reviewed in any event by officers as they prepared the Council's case. As such, the appellant did not act unreasonably in this regard.

6. Turning to the effect of the adjacent appeal, the *Planning Practice Guidance* says costs may be awarded against an appellant if the appeal

follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.

7. In April 2020 the adjacent appeal was dismissed. It was for a development with a number of similarities to the one before me, as the 2 sites are primarily paddocks with boundary trees and shrubs. Moreover, both schemes
- were for a comparable number of detached executive dwellings;
 - were in the gap between the cluster of houses on The Marsh on one side and housing along Burycroft on the other;
 - were located in the countryside outside any settlement boundary, and were deemed to conflict with *Swindon Borough Local Plan* Policies SD2, EN5 and NC3(e);
 - were deemed to cause less than substantial harm to the significance of listed buildings by encroaching into the open rural settings that informed their historic origins, and
 - were considered in the context of the Borough being able to demonstrate just under 3 years' housing land supply.
8. The site before me though is not '*the same*' as that of the adjacent appeal, for although their boundaries come to within a few metres of each other, at no point do they overlap. However, the *Planning Practice Guidance* makes clear that the list of scenarios where costs may be awarded against the appellant is not exhaustive, and so it follows others can also apply. As such, the fact that the 2 appeals were not on the same site does not, of itself, mean it was reasonable for this appeal to continue after the decision for the adjacent appeal was issued.
9. The respondent contended that as the listed buildings affected by the 2 schemes differed, there is no certainty the same judgement would be made on its appeal or that the same outcome would result. However, its heritage consultant accepted that this scheme would cause less than substantial harm to the setting of the Wrightsbridge complex. He also acknowledged that the nature of the impact of this scheme on the setting of the Wrightsbridge complex and the level of harm to which it would lead would be comparable to the nature and level of harm caused by the development subject of the adjacent appeal on the settings of Lake Cottage and Moat Cottage.

10. Therefore, the reasonableness of pursuing the appeal turns on whether the public benefits offered in this case could be reasonably expected to outweigh that harm, given that the public benefits cited in the adjacent appeal failed to outweigh the harm to the significance of the heritage assets identified by that Inspector.
11. In this regard, the respondent contended that, at the time of the adjacent appeal, it was expected the local plan review was going to be soon submitted for examination. That though has not happened, thereby meaning any resolution of the shortfall in housing land supply that would be secured through a reviewed local plan is further away than anticipated in April 2020. However, even if the Inspector considering the adjacent appeal had taken that matter into account, any timetable in relation to its adoption that might have been before him would, inevitably, have been vague. Therefore, while he accepted that the housing supply issues are likely to be '*temporary*' no timescale was put on this, but rather he was balancing that against the permanent harm to the listed buildings. I have no basis to consider he afforded significant weight to the adoption of a reviewed local plan in the near future and its effect on the housing land supply situation, or that he anticipated the housing situation would be rectified soon. Consequently, this fact is not, to my mind, a material change in circumstance between the appeals.
12. Of the other matters raised by the respondent in support of its case, the development subject of the adjacent appeal also proposed a network of attenuation ponds and so that cannot be offered as a difference. Furthermore, for the reasons given and drawing on the legislative and policy background, issues relating to the various financial benefits cannot be attributed significant weight.
13. However, the appeal before me proposes extensive planting and a level of public access to the land to the east of the appeal site that, it was contended, could assist in outweighing the identified harm. Although this may seem of itself, to be relatively slight, it is nonetheless a matter that has the potential to influence the assessment made under paragraph 196 of the *National Planning Policy Framework*. Therefore, while I have come to a different view to the respondent in relation to the effect of these works to the east, on balance and given their scale, I nonetheless consider it was not unreasonable for the respondent to continue pursuing this appeal on the basis of that contention.
14. Consequently, while there are a number of similarities between this case and the adjacent appeal, I nonetheless consider that the differences between the 2 schemes were sufficient to mean it was not unreasonable to continue pursuing this appeal once the adjacent appeal had been issued.

Conclusions

15. Accordingly, I conclude that the respondent did not act unreasonably, and so has not put the Council to any unnecessary expense. Therefore, an award of costs is not justified.

JP Sargent

INSPECTOR