
Costs Decision

Site visit made on 8 December 2020

by David Troy BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

**Costs application in relation to Appeal Ref: APP/P1940/W/19/3242846
Banstead Down, Dell House and Woodlands, Old Chorleywood Road,
Rickmansworth WD3 4EH**

- 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 Vince Millen of Millen Homes Ltd for a full award of costs against Three Rivers District Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of an outline planning permission for construction of three detached dwellings to include reuse of existing access from Old Chorleywood Road with alterations to access.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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.
3. The appellant states that the Local Planning Authority (LPA) was unreasonable and unnecessary or wasted expense was incurred in rebutting Refusal Reason 1 seeking affordable housing contributions as part of a reserved matters application¹ and Refusal Reason 2 covering the issue of siting of the proposed dwellings, a matter previously agreed as part of the original outline planning application² and which remained unchanged as part of the appeal scheme. The appellant also states Refusal Reason 4 in relation to the impact of the development on the existing trees was unnecessary.
4. The PPG sets out a non-exhaustive list of examples of unreasonable behaviour on substantive grounds³ which may put an LPA at risk of an award of costs. Relevant to the case of this application, it states that refusing to approve reserved matters when the objections relate to issues that should have already been considered at the outline stage could be considered unreasonable.
5. In response to the appellant's appeal and costs application, the LPA acknowledges that, following the receipt of legal advice, the affordable housing

¹ 19/1483/AOD

² 16/1669/OUT

³ Planning Practice Guidance: Paragraph 049 Reference ID: 16-049-20140306

contributions are outside the scope of the reserved matters application and the determination of this application was not a vehicle for addressing this matter. The LPA has accepted that Refusal Reason 1 as worded was not sustainable and has withdrawn this reason for refusal in respect of this proposal.

6. I note the LPA's comments that the additional costs incurred by the appellant in relation to this appeal had not been directly caused by Refusal Reason 1, as the appellant had already prepared the supporting affordable housing evidence in connection with two separate planning applications for residential development on the appeal site⁴ and elsewhere⁵. This is disputed by the appellant, who indicates that this detailed supporting work in relation to Policy CP4 of the Core Strategy 2011 was undertaken as a direct result of this reasons for refusal.
7. However, fundamentally these complications and the dispute between the main parties are not crucial to my determination of the appeal. It is clear that, if the LPA had not sought an affordable housing contribution as part of this reserved matters application, the appellant would not have been faced with unnecessary expenses of preparing the arguments and collating the supporting affordable housing evidence in relation to Refusal Reason 1. I therefore consider that the LPA has acted unreasonably in this regard.
8. In relation to the issue of siting of the proposed dwellings and the overall assessment by the LPA of the impact of the proposed development on character and appearance. Refusal Reason 2 set out in the LPA's Decision is complete, precise, specific and relevant to the application. It clearly states the policies of the Three Rivers District Council Core Strategy 2011 and the Three Rivers District Council Development Management Policies Local Development Document 2013 that the proposal would be in conflict with.
9. The officer's report and the LPA appeal submissions demonstrate the LPA's views on how the proposal would affect the character and appearance of the area, having particular regard to the location of the appeal site and the design and layout of the proposed development using the evidence submitted by the appellant, third party representations and the LPA's consultee observations.
10. It is clear in this context, that the issue of siting, whilst remaining unchanged, formed part of the overall assessment by the LPA of this matter. I consider that Refusal Reason 2 has been adequately substantiated by the LPA in its officer report and appeal submissions. I therefore do not consider that the LPA has acted unreasonably in this regard.
11. The appellant also states that Refusal Reason 4 was unnecessary as the LPA failed to consider the technical and professional assessment and other evidence provided in relation to impact on trees. A Tree Survey, Tree Protection and Arboricultural Impact Plan (Drawing no. WDB2016R2) was submitted and approved at the outline stage and forms part of the evidence provided as part of the appeal scheme. This is a material consideration to which I attached significant weight.
12. The PPG⁶ states preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations could be considered unreasonable.

⁴ 19/1737/OUT

⁵ 19/1923/OUT – 2 Canterbury Way, Croxley Green

⁶ Planning Practice Guidance: Paragraph 049 Reference ID: 16-049-20140306

13. Whilst subject to a separate Decision, based on the evidence before me, I was satisfied that adequate information was submitted to assess the impact of the proposed development on the existing trees as part of the appeal scheme and Condition 7 attached to the original outline permission requires the submission of a Tree Protection Scheme and an Arboricultural Method Statement which would ensure necessary mitigation measures to protect the existing trees.
14. It is clear from the content of the officer's report that, whilst the receipt of the Tree Survey, Tree Protection and Arboricultural Impact Plan and the tree protection conditions on the original outline planning permission was acknowledged, the LPA failed to adequately address this matter when an assessment of the application was made. As such, I can make no other conclusion than that Refusal Reason 4 was unnecessary. I therefore consider that the LPA has acted unreasonably in this regard.
15. For the reasons explained above, I am of the view that the appellant has incurred unnecessary and wasted expense in dealing with Refusal Reason 1 and Refusal Reason 4. As a result, I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a partial award of costs is justified.

Costs Order

16. 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 Three Rivers District Council shall pay to Mr Vince Millen of Millen Homes Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in dealing with the appeal on Refusal Reason 1 and Refusal Reason 4; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Three Rivers District 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.

David Troy

INSPECTOR