



Costs Decision

Site visit made on 6 October 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th December 2020

Costs application in relation to Appeal Ref: APP/P1940/W/20/3249758 165-167 Hampermill Lane, Watford, Hertfordshire WD19 4TF

- 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 Hampermill Estates Ltd for a full award of costs against Three Rivers District Council.
 - The appeal was against the refusal of planning permission for is the demolition of existing buildings and the erection of a part two, part three storey buildings with basement to accommodate 9 residential flats (4 x 1 bed, 2 x 2 bed, and 3 x 3 bed) with associated alterations to site access and provision of landscaping, parking and refuse storage.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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 PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations or fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The Applicant submits that the Council has acted unreasonably as it did not negotiate to resolve the matters in dispute, nor did it accept a request for an extension of time for it to determine the application. It therefore did not act in accordance with paragraph 38 of the National Planning Policy Framework (the Framework) in that it did not approach the decision in a positive and creative way.
5. In respect of the first reason for refusal the Applicant sets out that there was no acknowledgement that pre-application advice had been sought and that amendments had been made. The decision not to negotiate over the design when it could have been made acceptable is considered unreasonable behaviour particularly as there is no local design guide or style guide in adopted plans or supplementary planning documents. Also, references to

'excessively urbanising' is contradictory as the site is located wholly within the development boundary of the Oxhey Hall - Secondary Centre. Additionally, the reason for refusal does not identify where the harm would lie in terms of 'detracting from the visual amenities'.

6. The second reason for refusal related to the failure to provide a contribution towards affordable housing. The Applicant prepared a viability assessment (FVA) with the application and this was reviewed by the Council who stated that the scheme would be able to support an affordable housing contribution. The Applicant accepted some of the Council's assessment and provided a further FVA which concluded that the Appeal Proposals could support a financial contribution of £75,000 towards off-site affordable housing.
7. It is the Applicants' view that the further viability response and offer of a £75,000 contribution towards off-site affordable housing, is a significant material consideration in support of the proposals. It is clearly not the case that no affordable housing contribution was offered by the Applicant as referenced in the reason for refusal.
8. The third reason for refusal relates to a financial contribution towards highways infrastructure. The Applicant agreed to this contribution but this is not acknowledged in the Officers' report or decision. It is submitted that no opportunity was provided for this to be included in a section 106 agreement and this (and the affordable housing contribution) could have been addressed.
9. Finally, in respect of the fourth reason, this related to insufficient information to demonstrate that the appeal development would not have a detrimental impact on existing trees of visual importance. However, the reason for refusal does not identify what information was required or where the harm to existing trees would lie. Furthermore, it does not identify what is meant by 'existing trees of visual importance'.
10. The application was supported by an arboricultural report and tree protection plan which were submitted as part of the planning application. Furthermore, the Applicant responded to the landscape officers' consultation response and provided further information, although no consideration of this was made in the officers' report. It is submitted that this reason for refusal is therefore flawed.
11. In response, the Council acknowledge that the Applicant did engage in pre-application discussions although the proposals were not viewed positively by the Council with matters of design, neighbour impact and trees/landscaping being matters of concern. Whilst the changes made to the proposal prior to submitting the planning application are acknowledged, the view of the Council was that these did not address all the identified concerns.
12. In terms of negotiation, the Council set out in their 'next steps' letter that if the advice on a pre-application enquiry is ignored then the Council will not negotiate on the planning application. The Council's view is that the revised scheme did not take into account all of the advice given and it has not acted unreasonably in its decision not to accept amendments as part of the consideration of the application.
13. In respect of the first reason for refusal, the Council considers that this was set out fully in its officers' report. Furthermore, the Applicant was aware of the

- design concerns of the Council and it was considered that significant changes would have been required to make the development acceptable.
14. The Council acknowledges that on the second reason for refusal the response on the FVA did not leave a significant period of time for negotiation. However, given that this was not the only matter in dispute it was not considered appropriate to extend the timeframe to deal with this issue and complete the associated section 106 agreement. The Council does note that the section 106 agreement has now been completed through the appeal process.
 15. In respect of the third reason for refusal, the differing response from the County Council as part of a separate pre-application discussion was noted. However, the Council is unable to comment on the response which the Applicant received from the County Council. That said, the Applicant agreed to that contribution and this was acknowledged in the Officers' report, albeit that at that time there was no section 106 agreement. As above, it was not considered appropriate to extend the timeframe for this, and it is also noted that this is included in the submitted section 106 agreement.
 16. The Council considers that the fourth reason for refusal was explained in its officers' report and what information was required, including why pre-commencement conditions were not considered to be appropriate. The Council maintains that further details on the proposed excavation, basement construction and construction management were needed prior to the determination of the application.
 17. In my decision I found that the Council's decision to refuse planning permission was well founded, given the effect of the development on the character and appearance of the area which was the first reason for refusal.
 18. Furthermore, I cannot agree with the Applicant that just because the site is located within a development boundary it would not be possible to have a development which would be 'excessively urbanising'. Whilst this term is not defined, it is clear from the reason for refusal, the officers report and the appeal documentation what the Council's concerns were.
 19. In coming to that view, I acknowledge that matters of design and the effect of the development on the character and appearance of the area are subjective matters. However, in this case, the Council have provided sufficient explanation and justification of its concerns on this issue.
 20. In respect of the reasons for refusal relating to affordable housing and highway infrastructure both of these matters required financial payments to be made. However, following the submission of the FVA this was a matter which required detailed consideration. As such, I find that discussions over the amount which the development could contribute, including the further FVA, was part and parcel of the normal consideration of such issues.
 21. I acknowledge that the Applicant agreed to a total level of financial contributions of £75,000 (split between the affordable housing and highway contributions) and this was also agreed by the Council. However, at the point when the Council determined the application an appropriate legal agreement had not been completed. Therefore, the Council were correct by including this as part of their reasons for refusal. It is therefore my view that the Council did not act unreasonably in respect of both of these reasons for refusal.

22. Whilst I accept that the Council could have given the Applicant time to complete the legal agreement, given the other concerns that the Council had I consider that the approach taken in respect of this was not unreasonable. This is particularly the case as to complete such an agreement would have led to extra cost to the Applicant at that time with little prospect of a permission being forthcoming from the Council.
23. Turning to the fourth reason for refusal, from the evidence before me, there was some dialogue between the Council and the Applicant prior to the Council's decision. Given this, and the pre-application advice, it was clear which trees the Council considered to be trees of visual importance. I am also conscious that further tree information was submitted as part of the appeal process, including an updated arboricultural report following the digging of a trench.
24. Whilst I found in favour of the Applicant on this matter in my decision, it was nevertheless a finely balanced issue. I also had the benefit of the additional information and updated arboricultural report which assisted in my decision. Taking these matters into account, I consider that the Council have not acted unreasonably in relation to this reason for refusal.
25. Finally, the decision of the Council not to negotiate on the application is not in the spirit of what the Framework advocates in the approach to decision making in a positive and creative way. It is also unclear why the Council did not agree to an extension of time to determine the application when it was offered.
26. That said, I am also mindful of the guidance in the PPG which indicates that costs associated with the period during the determination of the planning application cannot normally be awarded, although parties are expected to behave reasonably throughout the planning process¹.
27. Whilst the two reasons for refusal relating to the need for a legal agreement have ultimately been addressed through the appeal process (and no doubt could have been resolved had such an extension of time been agreed), the same cannot be said about the effect of the development on the character and appearance of the area. Indeed, even if there had been some discussions on the character and appearance issues, there is no guarantee that the concerns of the Council could have been overcome. This is significant as the effect of the development on the character and appearance of the area was the determinative factor in my decision.

Conclusion

28. Taking all of the above into account I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and therefore an award of costs is not justified.

Chris Forrett

INSPECTOR

¹ Paragraph: 033 Reference ID: 16-033-20140306 Revision date: 06 03 2014