



Costs Decision

Site visit made on 5 February 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd February 2021

Costs application in relation to Appeal Ref: APP/W0340/W/20/3256178 11 Pond Close, Newbury RG14 6JH

- 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 A, D & E Property Ltd for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of planning permission for removal of derelict garages and erection of 2 no dwellings and 4 no flats, together with associated landscaping and parking.
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Decision

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

Reasons

2. The applicant submits that the Council has acted unreasonably by preventing development which should clearly have been permitted having regard to paragraph 63 of the National Planning Policy Framework (the 'Framework') and other material considerations.
3. Planning law¹, as noted by Paragraph 2 of the Framework, dictates that planning applications must be made in accordance with the development plan unless material considerations indicate otherwise. The policies contained within the Framework are material considerations which should be taken into account in dealing with applications.
4. In determining the planning application, the Council concluded that their adopted plan-led strategy to meet unmet demand for affordable housing outweighed the national policy in relation to the provision of affordable housing set out at paragraph 63 of the Framework.
5. In determining the appeal, I agreed with the Council's assessment and found that despite a significant degree of inconsistency between paragraph 63 of the Framework and Policy CS6 of the West Berkshire Core Strategy (2006-2026) (the 'CS'), the circumstances in the case warranted determining the appeal based on the affordable housing approach set out in the development plan. Therefore, I cannot agree that the Council has acted unreasonably in this regard.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004

6. In support of their case, the applicant has drawn my attention to a recent planning application² for nine dwellings in West Berkshire, where the Council concluded that on-site affordable housing was not required because the proposal was not a major development. However, limited information has been provided about this application by the main parties and it is unclear why the Council's previous approach differs from their current position in relation to Policy CS6 of the West Berkshire Core Strategy (2006-2026) (the 'CS').
7. The Planning Practice Guidance (the 'PPG') explains that a failure to determine similar cases in a consistent manner is likely to constitute unreasonable behaviour. Due to the limited information that has been provided about the previous case, it is unclear whether the previous and current proposals can be described as 'similar'. Nevertheless, even if I were to accept the applicant's position that the Council behaved unreasonably in this regard, the Council's decision was robust and supported by evidence to demonstrate an exceptional local need for affordable housing, which they found to outweigh national policy as set out within the Framework.
8. The PPG advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Given that the Council properly substantiated their reason for refusal, even if I were to accept the appellant's position on this matter, it is apparent that an appeal would have arisen in any event due to the fundamental disagreement between the parties about the weight to be afforded to Policy CS6 of the CS, when considered in the context of paragraph 63 of the Framework. Therefore, I am not persuaded that such unreasonable behaviour has directly caused the applicant to incur unnecessary or wasted expense in the appeal process.
9. The applicant refers to an appeal decision³ in South Buckinghamshire from January 2020, where an Inspector afforded non-determinative weight⁴ to a local planning policy concerning the provision of affordable housing on non-major developments due to 'serious inconsistencies' with paragraph 63 of the Framework. As set out within my appeal decision, I found that the circumstances in relation to the case in South Buckinghamshire were materially different to the current proposal. Therefore, I find that the Council did not act unreasonably by affording limited weight to the appeal decision.
10. Whilst I understand the applicant's frustration in relation to the way in which the Council determined the application, which included an outdated assessment of relevant case law⁴ within the officer report, I have found that the Council's overall application of Policy CS6 of the CS was not flawed. Consequently, for the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, the application for an award of costs is refused.

Christopher Miell

INSPECTOR

² Council Ref: 19/00504/FUL

³ PINS Ref: APP/N0410/W/19/3237373

⁴ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council [2016] EWCA Civ 441