The Planning Inspectorate

Costs Decision

Site visit made on 8 March 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2021

Costs application in relation to Appeal Ref: APP/C3620/W/20/3257242
The Warren, Oxshott Road, Leatherhead KT22 0EN

- 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 Adrian Sykes of Skye Property Group Limited for a full award of costs against Mole Valley District Council.
- The appeal was against the refusal of outline planning permission for Rural Exception Affordable Housing Development consisting of three apartments and a self-build basement dwelling.

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.

3. The appellant did not submit an application for costs on the relevant form, but makes various allegations of unreasonable behaviour within their statement of case. There is no reference to the PPG, but the broad thrust is that the Council has behaved unreasonably by 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.

4. The officer report makes extensive reference to previous appeal decisions for the site. As I have explained in my planning decision, appeal decisions are an important material consideration. However, the decision-maker should always consider whether circumstances have changed in the intervening period. The Design and Access Statement draws attention to a legal judgment[1] where the court held that residential gardens which are not in 'built-up areas' are not excluded from the definition of previously developed land (PDL). The Council did not grapple with this evidence, relying instead on the earlier conclusions from Inspectors that development on the site would be inappropriate development in the Green Belt. This failure to take account of more recent caselaw constitutes unreasonable behaviour.

[1] *Dartford BC v SSCLG* [2017] EWCA Civ 141

5. It is contended that the exception within paragraph 145 (f) of the National Planning Policy Framework (the Framework) should have been applied to the scheme. However, for this to have a bearing the proposal must accord with the development plan. For the reasons I set out in my decision, the scheme does not constitute a rural exception site and there are no other development plan policies supporting affordable housing in this location outside the built-up area. The Council applied this aspect of national Green Belt policy correctly and therefore unreasonable behaviour has not been demonstrated.

6. The Council has cited the Supplementary Planning Document 'Affordable Housing: A Guide for Applicants on Core Strategy Policy CS4' (SPD). This document aids interpretation of Policy CS4 of the Mole Valley Core Strategy. It was prepared in line with the relevant regulations[2] and was subject to public consultation. The SPD is a material consideration of significant weight and the Council was entitled to apply its provisions.

7. The appellant is aggrieved with the Council's handling of the application, arguing that it does not demonstrate the proactive approach required under paragraph 38 of the Framework. However, there is no obligation on the Council to negotiate during the course of an application. There may sometimes be merit in doing so, the most obvious example being where this could make a proposal acceptable and thereby avoid the time and expense of going to appeal.

8. There was opportunity in this case for negotiation over tenure split and viability, and to enable the appellant to respond to concerns in respect of the site's location. An extension of time might have enabled further discussion on these and other points, but there is no compelling evidence to demonstrate that the outcome would have been any different, given the level of harm identified in relation to the Green Belt and non-Green Belt matters.

9. The lack of engagement with the affordable housing officer did not prevent the appellant from providing a signed s106 planning obligation at the appeal stage. There is no planning obligation before me but as I have explained this would not have altered the outcome of the Green Belt balance in any event.

10. The local planning authority will only be at risk of an award of costs if it can be demonstrated that a more collaborative approach would have avoided the appeal. I am not persuaded on this point; in my opinion, the outcome would have been the same even with further discussion between the parties. The failure to take account of relevant caselaw in respect of the PDL issue was unfortunate, but ultimately it did not alter the fact that the proposal constitutes inappropriate development within the Green Belt. I have concluded that the proposal would be unacceptable on Green Belt and other grounds and it therefore follows that the appellant's evidence was a necessary part of the appeal process.

11. Accordingly, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. As such, an award of costs is not justified.

Robert Parker

INSPECTOR

[2] The Town and Country Planning Act (Local Development) (England) Regulations 2004, as amended.