The Planning Inspectorate

Costs Decision

Hearing Held on 24 November 2020 and 30 November 2020
Site visit made on 4 December 2020

by N Holdsworth MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2021

Costs application in relation to Appeal Ref: APP/M3645/W/20/3246023
62, 64, 66 and 68 Banstead Road, Caterham, CR3 5QE

- 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 Chris Maunders of Turnbull Land Ltd for a full award of costs against Tandridge District Council
- The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of 4 no. 3 bedroom semi detached houses and the construction of 27 no 1 and 2 bedroom apartments and 2 no 4 bedroom houses in a 3 storey building. The creation of two new vehicular accesses and 33 car-parking spaces and associated works.

Decision

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

The submissions for Mr Chris Maunders of Turnbull Land Ltd

2. These were provided in writing prior to the second day of the hearing. The following additional points were made in the hearing.

   - The delays in this case were unusually long, and there was inadequate explanation given for it.

   - Whilst there was some communication between the parties, this was inadequate to progress the application. Because of the delays, the appellant was unable to make amendments to the scheme which could potentially have addressed some of the issues identified and therefore made the proposal acceptable in planning terms.

   - The substantive comments were not provided until after the appeal was submitted.

The response by Tandridge District Council

3. This was provided verbally and the following points were raised.

   - The Council were under significant pressure with the turnover of staff at the time the planning application was under consideration. This is reflected in an acknowledged national shortage of experienced planning officers. Whilst other planning applications were being determined, these were more likely to be minor applications that do not require the level of expertise from senior officers. The Council were undergoing a restructure at the time of the

planning application, which further affected its ability to recruit and retain staff.

- Regarding amendments, the statutory function of the authority is to determine planning applications. On this occasion there were fundamental issues relating to the proposal, namely its impact on the character and appearance of the area that meant an appeal was inevitable. In terms of ecology and flood risk, these were not matters that could be overcome by way of planning condition given national policy and guidance.
- There was some correspondence between the Council and the Applicant over parking issues, site ownership and affordable housing.
- All the putative reasons for refusal related to substantive planning issues and evidence was provided in support of this in the appeal.
- The two additional costs decisions related to delays associated with committee referrals and delays caused by unreasonable reliance on evidence from local residents relating to flood risk. They are not directly comparable to this proposal.

Reasons

4. Planning Practice Guidance advises that parties in planning appeals and other planning proceedings normally meet their own expenses. However, 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. Unreasonable behaviour in the context of an award of costs may be either procedural – relating to the process; or substantive – relating to the issues arising from the merits of the appeal.

Procedural Issues

5. The appellant submitted the planning application in July 2019. After the time limit passed in October 2019, the Council explained that the case was awaiting allocation to another officer. Further correspondence in December 2019 refers to officers not having the capacity to progress the case. An appeal against non-determination was submitted in January 2020 due to the lack of progress. By this point minimal substantive feedback was provided, meaning that the appellant did not have the opportunity of addressing the concerns regarding the proposals which eventually materialised at appeal stage, either by way of additional surveys or amendments to the scheme.

6. The Council acknowledged the issue with the delays both at the time of the planning application and the hearing but explained that it was caused by staff shortages and high staff turnover at the Council. It was also explained in the hearing that the Council was undergoing a restructure at the time the application was being processed, which had resulted in the loss of large numbers of experienced staff. Unfortunately, this case, which clearly raised complex planning issues, was delayed as a consequence of this situation.

7. Whilst the situation is regrettable and frustrating for the appellant, these are nonetheless reasonable explanations for the procedural delays in the case. The situation is therefore different to the two other costs decisions cited by the

appellant[1]. In those cases, the Inspectors clearly found that the reasons for the delays, and the failure to keep the respective parties updated, were inadequate.

8. Regarding Affordable Housing, it was established at the hearing that the Council did not substantively respond to the second viability report submitted by the Appellant in October 2019. This appears to have been due to a miscommunication between its consultant and the planning officer involved meaning that, whilst its consultant prepared a further viability report it was never submitted or made available to the appellant in advance of the hearing.

9. However, the Council did not attempt to submit this statement at the hearing, so there was no need for an adjournment. As such, the Council did not act unreasonably, in this respect. The Council raised issues with the approach to the appellant's viability assessment which would need to be dealt with in some way, and which were ultimately the subject of a discussion in the hearing. As such, this was not wasted time.

10. The position taken by the Council on the planning issues involved in the appeal differed in part from that taken at pre application stage. However, such advice is not binding on the Council. It must take account of issues raised in public and statutory consultation, when taking a stance on a formal planning application. It did not act unreasonably in changing its position on certain issues, particularly given that many of the concerns raised were reflected in feedback amassed in such consultation.

Substantive Planning Issues

11. One of the reasons for refusal related to non-compliance with the Council's own parking standards. The appellant does not dispute that there would be a breach of these standards. The Council had regard to the parking survey submitted but concluded that it would not overcome this issue and explained why this was the case with reference to alleged harm to the living conditions of neighbouring residents. The Council did not act unreasonably in seeking to resist the proposal on these grounds.

12. The appellant argues that the ecological impacts could have been dealt with by way of planning condition. However, the Council provided an adequate justification as to why it took a precautionary stance on this issue, making reference to national policy on biodiversity which advises against the use of conditions in the circumstances that were thought to prevail. The Council did not therefore act unreasonably in how it handled this issue.

13. In all the putative reasons for refusal the Council provided a clear explanation as to why the proposal would conflict with the development plan, in its statement of case. The level of amendment necessary to address these issues would have been very significant. It will be clear from the planning appeal decision that, in some cases the level of harm would have been so significant that planning permission could not be granted for the proposed development. The Council did not therefore delay development that should clearly be permitted. It did not act unreasonably in relation to the substantive planning issues in this case.

[1] W/4000666, APP/L3245/W/18/3200964

Conclusion

14. In conclusion, I cannot agree that the Council has acted unreasonably in any aspect of this case. The Applicant was not put to unnecessary or wasted expense in pursuing either appeal. An award of costs is not justified.

Neil Holdsworth

INSPECTOR