



Costs Decision

Site visit made on 22 March 2021

by Chris Couper BA (Hons) DiP TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2021

Costs application in relation to Appeal Ref: APP/X0415/W/20/3252599 Land to the rear of 18 Botley Road, Chesham, Buckinghamshire HP5 1XG

- 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 Ash Mill Developments Limited for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal to grant permission in principle for a residential development of a minimum of two dwellings and a maximum of four dwellings.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. This relates to both procedural and substantive matters. At ID: 16-049-20140306 it provides examples of types of behaviour that may give rise to a substantive award of costs against a local planning authority.
3. These include 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; failure to produce evidence to substantiate each reason for refusal on appeal; and giving vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. In summary, the appellant contends that, by Final Comments stage, the Council had not produced any proper basis upon which to conclude that permission in principle should be refused or that, applying paragraph 11 of the National Planning Policy Framework ('Framework'), the harm arising from a policy conflict would significantly and demonstrably outweigh the benefits.
5. In my view, the Council has clearly articulated its concerns regarding the scheme's impact on the character of the area. Its 'design/character & appearance' section of its officer report, and paragraphs 3.2 to 3.12 of its statement clearly describe the character of the area and the harm that it considers would be caused to that character, with particular regard to the nearby pattern of linear development facing Botley Road. It did so having regard to national and local planning policies, and other material considerations, including the area's planning history.

6. In its appeal statement, the Council agreed that Policy H4 of the Chiltern District Local Plan 1997 (Consolidated September 2007 and November 2011) is not wholly consistent with the Framework, but its decision also references other development plan policies which, in seeking to support good design (which in my view includes the location of development having regard to its context) and to respect local character and distinctiveness, are consistent with it.
7. The Council's case referenced Framework paragraph 70 which states that plans should consider the case for setting out policies to resist inappropriate development of residential gardens. I'm not persuaded that that reference to a plan-making function was relevant to its case, nor that the policies referred to in its decision explicitly resist development on such land. Nevertheless, in my view, that reference to Framework paragraph 70 did not set the scene for its whole case as alleged.
8. Whilst detailed matters regarding visual intrusion on outlook should be addressed at technical details consent stage, in my view it is not unreasonable for the Council to consider in general terms whether as a matter of principle a site's location is suitable for the proposed amount of development, having regard to its impact on neighbouring properties.
9. The development plan and Framework policies the Council referred to in its decision and officer report were broadly relevant to its consideration of the scheme's impact on the area's character and on its amenities.
10. At paragraph 6 of its officer report the Council acknowledged that it did not have a five year housing land supply as required by the Framework, and that the scheme would contribute to its housing supply. It applied 'significant weight' to the delivery of housing, and in its conclusions then correctly applied the Framework's 'tilted balance', finding that, having regard to what it considered to be the inappropriate location and visual intrusion, the adverse impacts of granting permission would significantly and demonstrably outweigh the scheme's benefits.
11. In my appeal decision I have found that the scheme would cause only limited harm to the character of the area, but that I could not conclude that it would be unsuitable on the grounds of its impact on nearby occupiers' outlook. However, these are matters of planning judgment, on which it followed that, when applying the tilted balance at paragraph 11 of the Framework, I reached a different conclusion from the Council. On these matters the Council did not therefore act unreasonably.
12. Turning to procedural matters, the Planning Practice Guidance sets out that examples of unreasonable behaviour which may result in an award of costs against a local planning authority include prolonging proceedings by introducing a new reason for refusal; and introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
13. In this case, the Council set out in its appeal statement that the site is not within reasonable walking distance of shops and services in Chesham, but concluded that the site's accessibility would not be unacceptable. This was not therefore a new reason for refusal.

14. Although the Council's decision notice did not refer to noise and disturbance to nearby occupiers due to comings and goings along the access, this was clearly raised as a concern at paragraphs 12 and 13 of its officer report, and in my view it would therefore have been clear to the appellant that this matter would need to be addressed in its appeal submissions.
15. However, the absence of an ecological appraisal was not raised by the Council until appeal stage, and it then inappropriately used its Costs Rebuttal to provide evidence regarding the area's ecology, when such evidence should have been provided far earlier in the process as part of its case when refusing the application and in its appeal statement. This behaviour is unreasonable.
16. That said, the appellant addressed this new matter succinctly in its Final Appeal Comments at paragraphs 35 to 42, and correctly, but briefly, pointed out in its Final Costs Comments that the costs regime is not the place to introduce fresh evidence. Consequently, the proceedings have not been prolonged by the Council's behaviour, and I am not persuaded that the appellant has been put to unnecessary extra expense as a result of additional work that would not otherwise have arisen.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Chris Couper

INSPECTOR