
Costs Decision

Site visit made on 26 January 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 May 2021

Costs application in relation to Appeal Ref: APP/H1705/W/20/3261913 Land South of St Michael's Close, North Waltham RG25 2BP

- 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 Ian Jones for a full award of costs against Basingstoke and Deane Borough Council.
 - The appeal was against the refusal of the Council to grant Technical Details Consent for the erection of 2 no. dwellings with associated access, garaging, parking and landscaping, pursuant to Permission in Principle Approval Ref 19/01954/PIP for up to 4 no. dwellings.
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Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking a full award of costs on substantive grounds.
4. The Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include refusing planning permission on a planning ground capable of being dealt with by conditions.
5. The applicant's view is that permission should not have been refused on the grounds of the Council's first reason for refusal, as the matter of drainage was capable of being dealt with by means of a planning condition. Given that, subject to the completion of a legal agreement to secure Nitrate Neutrality, the scheme was acceptable in all other respects, the applicant's view is that the appeal could have been avoided.

6. The Officer Committee Report raised no objection in respect of drainage matters and recommended approval of the application, subject to a condition requiring the drainage details contained in the Drainage Technical Note Ref TNO1 Issue 3 dated 27 April 2020 by Stuart Michael Associates to be implemented prior to the occupation of the dwellings.
7. Following concerns by Committee Members in respect of the proposed drainage strategy, Officers recommended that the condition be changed to require an alternative drainage strategy to be approved by the Council prior to the commencement of development or occupation of the proposed dwellings. As such, in refusing the application, the Council's decision went against the Officer recommendation.
8. Whilst the Planning Committee is not required to accept the advice of its professional Officers, if a different conclusion is reached, the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence substantiating that reasoning. It is open to Members to exercise their own planning judgement, but any case must be fully justified in the face of opposing evidence.
9. I find that the Council were entitled to raise concerns about the details of the appellant's drainage scheme that was submitted with the planning application, having regard to the topography of the site and the position of the proposed infiltration basin at a higher ground level than the new built development, and to take account of third party concerns in respect of localised flooding that has occurred within the site vicinity.
10. However, the Officers' proposed revised drainage condition would have enabled an alternative strategy to be approved prior to the commencement of development or occupation of the dwellings. This accords with advice in Paragraph 54 of the *National Planning Policy Framework 2019* (the Framework) which requires Local Planning Authorities to consider whether otherwise unacceptable development could be made acceptable through the use of conditions. Furthermore, I consider that the Council's concerns were sufficient to provide clear justification for a requirement for the condition to be discharged before development commences, having regard to Paragraph 55 of the Framework.
11. My decision, which accompanies this cost decision and should be read in conjunction with it, explains why I have found that, having regard to the small-scale nature of the proposal, and the location of the site within a low flood risk area, it is accepted practice to deal with the matter of the drainage scheme by means of a planning condition.
12. The Council has not provided a site-specific technical drainage assessment, or other substantive evidence, to demonstrate that this matter is not capable of being dealt with by means of a planning condition. There was no cogent evidence before the Planning Committee, or submitted by the Council as part of this appeal, with respect to the causes of the surface water flooding along St Michael's Road, nor substantive evidence that the appeal scheme would be likely to intensify it. As such, I find that the Council's first reason for refusal constitutes unreasonable behaviour, which has resulted in expense incurred by the appellant in contesting this aspect of the appeal.

13. As the Council had resolved to approve the application, subject to the completion of a legal agreement and an Appropriate Assessment and Habitats Regulation Assessment in respect of nitrate neutrality, and work on the legal agreement was underway at the time of the Committee decision, it seems that the appeal could have been avoided in the absence of the first reason for refusal, since the second reason for refusal is a consequence of the first. However, I have not awarded a full award of costs, since the completion of the legal agreement would have been a requirement of the scheme in any case.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that a partial award of costs is justified.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Basingstoke and Deane Borough Council shall pay to Mr Ian Jones, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in submitting the appeal and contesting the Council's first reason for refusal.
16. The applicant is now invited to submit to Basingstoke and Deane Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Leonard

INSPECTOR