



Costs Decisions

Inquiry held on 8, 9 and 10 June 2021

Site visits made on 24 May and 15 June 2021

by Peter Rose BA MRTPI DMS MCMi

an Inspector appointed by the Secretary of State

Decision date: 12 July 2021

Costs applications in relation to Appeal Ref: APP/R0335/W/21/3267437 Palm Hills Complex, London Road, Chavey Down, Berkshire, RG12 9FR

- The applications are made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The applications are made by Shanly Homes for full and partial awards of costs against the decision of Bracknell Forest Council.
 - The Inquiry was in connection with an appeal against a decision by the Council to refuse planning permission for a development described as 'outline consent (with landscaping reserved) for the demolition of the existing Palm Hills complex and redevelopment of the site to provide 81 dwellings (15x1b, 8x2b, 49x3b and 9x4b) with associated car parking, landscaping and amended access onto London Road'.
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Decisions

1. The application for a full award of costs is refused. The application for a partial award of costs is allowed.

The submissions for Shanly Homes

Application for a full award

2. The application was refused planning permission by the Council for five reasons contrary to the recommendation of its Officers. Only one of the five reasons remained in contention at the Inquiry (Reason 01), and this was further narrowed to the authority's concern towards only the taller elements of the proposed development and implications for local character in terms of both townscape and intensity of use.
3. The decision was unreasonable given that the appeal site is allocated for housing, that no issue was taken with density, that there would be no adverse impact on the character and appearance of the area in views from outside of the site, and that the activity from the additional dwellings proposed over and above the indicative number allocated to the site would be imperceptible. There was an absence of any objective analysis supporting the Council's position and the authority did not adduce any convincing evidence of harm.

Application for a partial award

4. Reason 02 relates to the impact on badgers and was contrary to the conclusions of both the appellant's ecological submissions and the advice of the Council's own Biodiversity Officer. At no point has the Council been able to identify any evidence contradicting those conclusions and advice to justify

refusing the application on that basis. It caused the appellant unnecessarily to incur additional costs in commissioning a further Ecological Statement which it submitted with its appeal. This confirmed the earlier conclusions in order for the Council to withdraw its objection.

The response by the Council

Application for a full award

5. The Council maintains that it did not act unreasonably in refusing the application on grounds that it would have an adverse impact on the character of the area and has provided evidence to the Inquiry in support of its position.

Application for a partial award

6. When considering the application, Members referred to specific and recent sightings of badgers within the appeal site. Whilst anecdotal, the transient nature of badger populations was recognised and it was considered that it would be inappropriate, and contrary to relevant guidance, to approve a scheme in the absence of additional, up-to-date survey information. As a result, Reason 02 was included in the decision, and was phrased so as to invite the provision of additional information to address this concern. The Council's objection was subsequently withdrawn following receipt of the appellant's further report.

Reasons

Application for a full award

7. The Planning Practice Guidance (the Guidance) identifies possible unreasonable behaviour by an authority to 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.¹ At the Inquiry, only Reason 01 of the Council's decision, relating to impact upon character and appearance, remained in dispute.
8. Reason 02 related to badgers and I deal with the particulars of that matter in more detail below as part of the application for a partial award. The point relevant to the overall decision was that, as with Reasons 03, 04 and 05, it was not maintained by the authority as a matter for objection.
9. Reason 03 related to implications for the Thames Basin Heaths SPA, but the application had been subject to an Appropriate Assessment (AA) undertaken by the Council. This concluded that any adverse effect on the integrity of the SPA could be avoided through mitigation, and the appellant remained willing in that regard.
10. Reason 04 related to drainage but a proposed drainage strategy formed part of application, was considered suitable by the Lead Local Flood Authority, and the appellant was prepared to make the necessary commitments through a planning obligation.
11. Reason 05 concerned the need for a travel plan. A broad plan had already been submitted, there was no issue with its contents, and the appellant was willing to make necessary commitments through a planning obligation.

¹ Paragraph: 049 Reference ID: 16-049-20140306

12. The Council's justification for Reason 01 was limited, but evidence was provided to explain its concerns.
13. The scheme would involve 32 more homes than the 49 generally anticipated by the development plan for this edge of settlement location. The scheme would be directly adjacent to designated countryside, and would include a significant proportion of higher level houses and a large apartment block not characteristic of the existing local area, all of which would potentially add to the urbanising and intensive character of the scheme. Mere allocation of a site for housing purposes also does not mean that any form of residential development should necessarily be acceptable.
14. Contrary to those concerns, my accompanying section 78 decision concludes there would be no adverse impact upon local character and appearance. For the reasons detailed, my assessment is that the authority's higher level concerns do not reflect through into tangible harm on the ground. Nevertheless, on overall balance, and notwithstanding the Council's position in relation to Reasons 02, 03, 04 and 05, I do not find the merits of the Council's case on the basis of Reason 01 alone to be so unsubstantiated as to be unreasonable.

Application for a partial award

15. The Guidance further defines possible unreasonable behaviours by an authority to include failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis; and refusing planning permission on a planning ground capable of being dealt with by conditions.² The Guidance encourages authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, and not to add to development costs through avoidable delay.³
16. Reason 02 was contrary to the conclusions of the appellant's ecological submissions and the accompanying advice of the Council's own Biodiversity Officer, both of which drew upon relevant, up-to-date evidence submitted as part of the application. The application was dated 13 September 2019 and was accompanied by a Phase 1 habitat survey dated September 2019 and then by a further Ecological Assessment dated December 2019.
17. The conclusions of those reports were technically unchallenged and, notwithstanding the transient nature of badger activity, drew upon reasonably contemporary survey results which were not contradicted by any other substantive evidence. The badger survey did not identify any badger setts on the development site itself but did find a sett within the woodland to the north. The badger survey demonstrated that the site was not an important foraging resource for the species and that foraging activity was limited to the offsite woodland and the woodland fringes at the northern and eastern site boundary.
18. Member references to anecdotal sightings do not justify the Council's position. The presence of badgers in the vicinity was not disputed by the evidence, their significance for the site was formally identified, and the need for further work

² Paragraph 049 Reference ID: 16-049-20140306

³ Paragraph 028 Reference ID: 16-028-20140306

around detailed issues of mitigation, including both during the building phase and accommodation post-construction, was recognised.

19. There appears to have been was no sound basis for further information to be sought in that context or to refuse planning permission on that basis. Rather, the Council's actions caused the appellant to incur additional costs in commissioning a further Ecological Statement dated 21 January 2021. This further work was submitted with its appeal and Statement of Case and broadly confirmed the conclusions of the previous assessment.
20. The Council's actions in relation to Reason 02 were unreasonable and incurred unnecessary expense for the appellant.

Conclusion

21. I therefore conclude that unreasonable behaviour on the part of the Council resulting in unnecessary or wasted expense incurred by the appellant in relation to Reason 02 of the Council's decision notice, as indicated in the Guidance, has been demonstrated, but not in relation to the overall decision. Accordingly, I conclude that a partial award of costs is justified.

Costs Order

22. 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 Bracknell Forest Council shall pay to Shanly Homes the costs of the appeal proceedings described in the heading of this decision limited to those relating to the expenses incurred by the appellant in connection with the Ecology Statement dated 21 January 2021 which it commissioned and submitted with its Statement of Case, and such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. Shanly Homes is now invited to submit to Bracknell Forest 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.

Peter Rose
INSPECTOR