



Costs Decision

Site visit made on 15 June 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Appeal Ref: APP/H1705/W/20/3257973

Development at Weston Road, Upton Grey, RG25 2RJ

- 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 Ben Morton-Hunte (ME Developments Limited) for a full award of costs against Basingstoke & Deane Borough Council.
 - The appeal was against the refusal of planning permission for the installation of an on site foul water drainage strategy to serve the approved residential development (planning permission ref. 16/03058/FUL).
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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.
3. The appellant submits that the Council has acted unreasonably and caused it to incur unnecessary expense. The reasons given are that 1) the Development Control Committee refused permission, despite the recommendation from officers and lack of objection from statutory consultees, 2) the decision should have been deferred if there was a lack of information, and 3) reference to policies was incorrect and the scheme was not assessed against the development plan when read as a whole.

Committee refusal

4. The committee is not bound to follow the advice of its officers. It is clear from the minutes and transcript of the meeting on 12 August 2020 that committee members had reviewed the evidence in detail and that there was a full deliberation of the application. The reasoning provided is adequate to justify the stance taken.
5. As set out in my main decision, I am in little doubt that the local area suffers from sporadic groundwater flooding. The proposal would result in the discharge of additional water to the ground via the drainage fields. I am further satisfied that it is the contribution of these flows during periods of groundwater flooding that was their concern leading to their reason for refusal of the scheme.
6. Credible reports and hydrogeological evidence of likely local groundwater flooding are not fully accounted for in the appellant's Flood Risk Assessment.

The Lead Local Flood Authority (the 'LLFA') identifies that appropriate groundwater monitoring has not been undertaken but does not pursue this in the context of episodic groundwater flooding any further.

7. The committee identified that groundwater level monitoring from the site was sparse and not sufficient to have confidence that more extreme events had been captured. In the absence of a more substantial hydrogeological assessment, I find that the committee did not behave unreasonably in overturning the recommendation of the officers and the LLFA.
8. The Environment Agency ('EA') permitted discharge of wastewater to a package treatment plant and drainage field from the 7 affordable homes in May 2020. However, this is only part of the development and no evidence has been provided that the EA would have concluded that the cumulative impact from the scheme in its entirety was acceptable, or that it would be content for individual discharges to proceed under their General Binding Rules in the context of a housing estate.
9. The LLFA clearly state that matters of foul drainage are outside their remit and that their conclusion, that the development would not cause pollution of surface water, was based on the EA issuing the permit. Given the lack of information regarding the basis for the EA's decision, added to the LLFA's declared lack of expertise in this area, I find it reasonable that the committee questioned this conclusion.
10. Counsel advice of 17 August suggests that the EA tacitly provided expert input by not objecting to the application. The EA's letters of 17 April and 22 April 2020 make it clear that they have not undertaken a detailed assessment, foul drainage should be to mains where possible and that a permit may be needed. For this reason, I do not agree that the lack of objection to the planning permission is tantamount to approval.
11. The Counsel also criticises the committee and objectors for not providing expert material to counterbalance the views of statutory consultees. I find that the queries and concerns of the committee and interested parties were reasonable, and the onus is on the applicant to provide evidence to satisfy these concerns.
12. Lack of objection from Environmental Health, Building Control or Thames Water has no bearing on this issue. The first two consultees would not normally consider the risks from groundwater rising below the foul water system without direction from a FRA that this was a likely occurrence, and it would not be within the remit of the latter.
13. For these reasons, I do not find that the committee behaved unreasonably in coming to a different conclusion to its officers and the statutory consultees.

Lack of deferral

14. The appellant states that as concerns were not raised by an 'expert' before the committee meeting, the decision should have been deferred. I disagree. The committee are empowered to come to their own conclusion if they can justify this stance, which they have.
15. I see no evidence that the committee behaved unreasonably in deciding to refuse the application because it was concerned that it could not defend itself

at appeal. All options appear to have been balanced by the committee before concluding that expert input was not required to make a decision.

16. For these reasons, I do not find that the committee behaved unreasonably in not deferring the decision because of lack of expert opinion.

Reference to policies and the LDP

17. The national and local policies referred to in the reason for refusal are appropriate. It is unfortunate that no reference was made in the decision notice to Policy EM12 of the LP, which protects the environment from pollution. However, it was raised in the officer's report and the reasoning for the decision is clear, so it should not have come as a surprise to the appellant. In addition, I have no evidence before me that this omission has led to unnecessary expense.
18. The applicability of Policy EM7 does not appear to have been fully debated during the committee meeting, but I have no evidence that this has led to wasted expense on behalf of the appellant. I do not know if Councillor George had a copy of Policy EM7 before him by the end of the meeting, but I note that he applies to the supporting officer for assistance on this matter and I therefore see no evidence of unreasonable behaviour.
19. The application is for discharge to package treatment plants. It is argued that the decision had a bearing on the success of the entire housing development, and therefore that the Council should have balanced the total scheme against the local development plan as a whole. I have not seen any evidence that the scheme was at risk if the drainage proposal was refused and therefore find this argument to have no merit.

Conclusion

20. In light of the above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated. The award for costs is therefore not justified.

B Davies

INSPECTOR