
Costs Decision

Site visit made on 13 July 2021

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Costs application in relation to Appeal Ref: APP/C3810/W/21/3270515 Land at Summer Lane, Pagham

- 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 Arun District Council for a full award of costs against Paula Hilton and Brian Biermann Collins.
 - The appeal was against the refusal of planning permission for a material change of use of land from agricultural use to use for open space.
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Decision

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

Reasons

2. Planning Practice Guidance advises that parties in planning appeals normally meet their own expenses. Costs may only be awarded against a party who has behaved unreasonably, and where that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. Planning Practice Guidance also advises that appellants will be at risk of an award of costs being made against them if development is clearly not in accordance with the development plan, and no other material considerations are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
4. In this case the proposal to use the appeal site wholly as open space was clearly in conflict with the strategic housing allocation under SD1, and the grant of planning permission for residential development¹. It was therefore not in accordance with the development plan or with decisions made recently by the Council.
5. Furthermore, there is no reasonable prospect of the proposed use being implemented. The land is not owned or within the control of the appellants. Housing development has commenced on part of the site to the north of Summer Lane, and work is underway to prepare detailed plans for housing development on the allocated housing site south of Summer Lane. A representation on behalf of a developer and landowners of the land at Summer

¹ P/140/16/OUT, P/54/15/OUT and P/70/19/RES

Lane objects to the planning appeal and makes it clear that there is no intention of the appeal proposal being implemented.

6. The appellants are professionally represented by a planning agent who, based on the correspondence and representations before me, is very familiar with the housing strategy of the Arun Local Plan and has sought to oppose it both in the past and more recently through applications for alternative uses on the strategic housing allocations in Pagham. While that opposition may be heartfelt, now that these housing allocations have been agreed as part of the adopted Arun Local Plan, attempts to oppose or frustrate them as a matter of principle in the manner undertaken with this appeal is, in my view, unreasonable behaviour.
7. I consider the submission of the appeal for a use unconnected with the allocated or permitted use of the majority of the site, and with no realistic prospect of it ever being implemented, is unreasonable. That unreasonable behaviour has necessitated the Council to incur unnecessary and wasted expense in defending its first reason for refusal, on whether the proposal would prejudice the delivery of housing.
8. The Council also opposed the proposed use on access grounds. For the reasons set out in the appeal decision, this is an arguable point of detail rather than principle, and one on which I have found in favour of the appellants. It was therefore not unreasonable for them to appeal on this ground, and no costs associated with this second reason for refusal are applicable.

Conclusion

9. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a partial award of costs is justified, in so far as it relates to the costs incurred by Arun District Council in defending the first reason for refusal on whether the proposal would prejudice the delivery of housing.

Costs Order

10. In the 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 Paula Hilton and Brian Biermann Collins shall pay to Arun District Council the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in defending the first reason for refusal relating to whether the proposal would prejudice the delivery of housing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Paul Hilton and Brian Biermann Collins, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Guy Davies

INSPECTOR