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## Costs Decision

Site visit made on 15 December 2020

**by Christopher Miell MPlan MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 July 2021**

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### **Costs application in relation to Appeal Ref: APP/C1435/W/20/3257830 Land South of South Street, East Hoathly, East Sussex**

- 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 Prime Crest Homes Limited for a full award of costs against Wealden District Council.
  - The appeal was against a refusal to grant outline planning permission for a residential development of up to 55 residential dwellings.
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### **Decision**

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

### **Reasons**

2. The Planning Practice Guidance (the 'PPG') advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicants costs application essentially relies on the fact that the Council's Officers recommended that outline planning permission be granted for the proposed development, but that the Members of the Council's Planning Committee took a different course of action and refused planning permission without adequate reason to do so.
4. The PPG explains that examples of unreasonable behaviour by local planning authorities includes a failure to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
5. In this instance, the applicant asserts that the reasons for refusal given by the Members of the Council's Planning Committee were unjustified and 'swayed' by public opinion rather than an objective analysis of the relevant planning issues.
6. In particular, the applicant argues that the Members failed, when undertaking their overall planning balance, to afford an appropriate degree of weight to the fact that the Council is unable to demonstrate a five-year supply of deliverable housing sites. In such circumstances, the tilted balance contained in paragraph 11(d) of the National Planning Policy Framework (the 'Framework') is engaged. For decision making this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

7. In determining the appeal, I found that the location of the proposed development would conflict with Policies GD2 and DC17 of the Wealden Local Plan (1998) (the 'WLP') and Policy WCS6 of the Wealden District Local Plan Core Strategy (2013) (the 'CS'). Moreover, I concluded that the proposed development would cause moderate harm to the character and appearance of the area, and, as a result the proposal would conflict with Policy GD2 of the WLP. Consequently, I concluded that the proposal would conflict with the development plan as a whole.
8. To this regard, I agreed with the Planning Committee's assessment on these issues. Therefore, I cannot agree that the Council has relied upon vague, generalised or inaccurate assertions about the proposal's impact.
9. However, when engaging the tilted balance, I found that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the proposed development, in particular the provision of market housing, affordable housing and custom and self-build plots, when assessed against the policies in the Framework taken as a whole. I afforded this matter significant weight in the overall planning balance and found that it outweighed the conflict with the aforementioned development plan policies. Accordingly, I granted outlined planning permission for the proposed development. This finding was different to the Council.
10. However, the weight given to the benefits of the proposed development in the overall planning balance when engaging the tilted balance is a matter of planning judgement and it is for the decision maker to determine whether the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the proposed development.
11. I recognise that my findings in respect of the tilted balance and my overall decision to grant planning permission was different to the Council's assessment. However, the Council Members in this case were entitled not to accept the professional advice of Officers so long as a case could be made for the contrary view.
12. The transcript of the Planning Committee meeting demonstrates that the Council Members had due regard to the fact that the Council is unable to demonstrate a five-year supply of deliverable housing sites, which was a material consideration of fundamental importance in the determination of the case.
13. In refusing planning permission, it is clear from the transcript of the Planning Committee meeting that the Council Members objectively assessed the proposal and identified conflict with the development plan. Following this conclusion, they had regard to the Council's housing land supply, but concluded that the site was unsuitable for residential development.
14. In particular, in debating the application, I note that Planning Committee Member Cllr Draper makes reference to Section 2 of the Framework and the presumption in favour of sustainable development. In his view, the proposal did not represent sustainable development and he justified his position by identifying concerns, amongst other things, related to the accessibility of local services and bus services to other settlements. These concerns were echoed by other Members of the Planning Committee during the meeting, as evidenced by the transcript.

15. Overall, I am satisfied that the Council Members substantiated the reason for refusal in respect of the planning application by undertaking an objective analysis. Therefore, despite my findings, I cannot agree that the Council relied upon vague, generalised or inaccurate assertions about the impact of the proposed development. The main issues relevant to the appeal are a matter of planning judgement and the Council Members were entitled to take a different view to their Officers and the applicant following their own objective analysis.
16. Accordingly, I cannot agree that the Council acted unreasonably in refusing planning permission for the proposed development.

**Conclusion**

17. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, the application for an award of costs is refused.

*Christopher Miell*

INSPECTOR