
Costs Decisions

Hearing Held on 8-9 June 2021

Site visit made on 15 June 2021

by Stephen Wilkinson BA(Hons) BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28th July 2021

Appeal A - Costs application in relation to Appeal Ref:

APP/C1760/W/20/3260339

Land north of 10 Walworth Road, Picket Piece, Andover, Hampshire

- 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 Test Valley Borough Council for a full award of costs against Foreman Homes.
 - The hearing was in connection with an appeal against the refusal of planning permission for residential development of up to 64No. dwellings, associated landscaping, amenity areas and access from Walworth Road.
-

Appeal B - Costs application in relation to Appeal Ref:

APP/C1760/W/20/3269880

3 Walworth Road, Picket Piece, Andover, Hampshire

- 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 Test Valley Borough Council for a full award of costs against Foreman Homes.
 - The hearing was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for demolition of No3 Walworth Road, and the erection of 35 dwellings, landscaping and access off Walworth Road, Picket Piece, Andover SP11 6LU.
-

Decision

Application in respect of Appeal A

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

Application in respect of Appeal B

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

Appeals A and B

The submissions for the applicant - Test Valley Borough Council

3. The application has been made for a full award of costs on both substantive and procedural grounds. In summary the application covers the following points:

- The appeals had no reasonable prospect of succeeding. The proposed development is not in accordance with the development plan, in particularly Policy COM2 of the Test Valley Borough Revised Local Plan 2016 and the appellant accepts that the Council has a 5 year housing land supply
 - The appellant submitted evidence late including a revised Flood Risk Assessment received by the Lead Local Flood Authority on 3rd June 2021 in respect of Appeal A only. A Nitrogen Budget and Mitigation Land Requirement for both appeals was only submitted to the Planning Inspectorate which was received by the local planning authority on 3rd June 2021.
 - Planning obligations in the form of a draft Unilateral Undertaking was only submitted on 17 May. Following advice from the Council that a Section 106 agreement signed by multiple parties a draft was sent to the County Council on 26th May. This was despite many of the Council's reasons for refusal relating to the absence of a legal agreement.
4. Furthermore, Foreman Homes have behaved unreasonably resulting in the applicant to incur unnecessary expense in terms of officer time in the preparation and presentation of evidence for the Hearing.

The response by Foreman Homes

5. In summary Foreman Home's position is summarised below:
- Both applications have social and economic benefits and the decision on the merits of an application requires a balanced judgement having regard to the development plan when considered as a whole.
 - The departure from adopted policy COM2 is a technical breach in respect of Appeal A. In contrast with respect to Appeal B, the proposed scheme is entirely in accordance with the development plan when considered as a whole.
 - The omission of the appendices relating to the Nitrogen Budget did not add very much to the presentation of their case on this matter.
6. Foreman Homes have behaved entirely reasonably in respect of the presentation of both appeals

Reasons

7. Planning Practice Guidance (the Guidance) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the process. I shall aim to address each strand of the applicant's case in turn.

Substantive grounds of claim

8. I acknowledge that the Council has a policy compliant supply of housing land. In respect of Appeal A, part of the site lies outside the housing allocation included in Policy COM6 and in the countryside as defined by Policy COM2. However, the determination of an application has to be against the development plan unless material circumstances indicate otherwise.

9. The appellant has made a case for both appeals on the basis that there is an overriding need for new housing in line with the Governments ambitions for 300,000 new dwellings each year. Although this is an important consideration, it was not adequately evidenced within the context of this appeal. However, I acknowledge that despite the Council's Policy COM2 and its positive housing land supply position, material considerations can sometimes prevail. I do not agree that the appeals had no reasonable prospect of success, despite my decisions in this regard.
10. In respect of the Appeal B the entire appeal site is included in the housing allocation within Policy COM6. Whilst aspects of the appeal scheme depart from other areas of policy and I have found against the appellant in my main decision the balance inherent in planning decisions is sufficient in this case to warrant consideration of the proposal.
11. The submission of the application had some merit, albeit limited in these circumstances. For these reasons, the claim made on substantive grounds is unsuccessful.

Procedural grounds of claim

Late submission of evidence

12. In respect of appeal reference Appeal A, the Council refers to the late submission of documentation in respect of 'flood mitigation' and for both appeals in respect of the 'Nitrogen budget and mitigation land'.
13. Whilst I regard the appellants behaviour in respect of these matters as being unreasonable resulting in inconvenience for the Council by allowing insufficient time for it to marshal its responses adequately, it is unclear where the unnecessary expense would have been incurred.

Planning Agreements

14. Both appeals were refused with reference to the lack of contributions to infrastructure and provision of affordable housing. Given the appellants experience of successfully securing a negotiated planning permission at No. 10 Walworth Road which involved an extensive Section 106 agreement with parties other than the Council this process could have commenced earlier than it did in time for an undated draft of the agreement to be presented during the Hearing as the Guidance¹ requires.
15. It is unclear why the appellant did not adhere to the Guidance given their past experience. References included in its case to the Council having an agreed template (based on the agreement secured for No.10 Walworth Road) is unhelpful in this regard given that they initially submitted a Unilateral Undertaking for each appeal. The onus is on the appellant to submit its evidence in time for the Hearing.
16. In response to the Council's comments, draft Agreements were submitted but just before the Hearing. Because they involved other parties both within the Council and externally, the Council just did not have sufficient time to progress this matter. This is entirely understandable.

¹ PINS Procedural Guidance, Planning Appeals 2021

17. In response Unilateral Undertakings were submitted after the Hearing for both appeals. The Council takes exception with the appropriateness of an Undertaking for matters such as affordable housing which could impose requirements on parties who are not signatories and references the Paragraph N6.9 of the Guidance on this specific point.
18. The submission of Undertakings at such a late stage in this appeal represents unreasonable behaviour given the scope and content of the Undertakings but given that the Council has not had sufficient time to give this matter adequate scrutiny then no costs would have been incurred.
19. For these reasons, the claim on procedural grounds is unsuccessful.

Conclusions

20. I therefore find that, whilst there has been unreasonable behaviour by the appellant on procedural grounds it has not been demonstrated that there has been unnecessary or wasted expense incurred by the Council, as described in the Planning Practice Guidance.

Stephen Wilkinson

INSPECTOR