
Costs Decision

Site visit made on 9 August 2021

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 22 September 2021

Costs application in relation to Appeal Ref: APP/W0340/W/20/3258901 Old Farmhouse, Newbury Road, Hermitage, Thatcham RG18 9TB

- 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 T A Fisher for a full award of costs against West Berkshire Council.
 - The appeal was against the refusal of an application for the variation/removal of a condition attached to an outline planning permission.
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Decision

1. A partial award of costs is allowed.

Reasons

2. The national Planning Practice Guidance (PPG) states that parties will normally be expected to meet their own costs in relation to appeals and 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 expense in the appeal process.
3. The Council has objected to the effects of relocating some of the housing development to the southern end of the site, within this outline scheme. Within its statement it refers to the comparison of the proposal with the allocated site referred to as HSA25. They also refer to the relationship with open land to the south and separation between the proposal and existing housing. I consider that the mention of 'density' and 'scale' by the Council were clear comparisons between the proposal and what it had envisaged if the allocated site had been developed in isolation and was not an attempt to seek to consider the whole principle of the scale of the development on the appeal site.
4. The Council then include a reference to the effects on the AONB and I see this as an expansion of the same point, that is an alleged harm to the area by providing more housing adjacent to the open land. Notwithstanding the fact that this specific point is not contained in the reasons for refusal, I consider that it is just an amplification of the Council's case and not tantamount to a new reason for refusal.
5. Similarly, the inclusion of the allegation that the proposal would not be 'sustainable development' is used as an umbrella term to encompass the harm that the Council were seeking to identify in social and environmental terms, as

set out in its reasons and not the introduction of new matters. With respect to the first reason for refusal, whilst I have not agreed with the Council, I consider that the case put forward involves a judgement and their view was not an unreasonable one.

6. The objection to the relocation of the open space appeared in part to relate to its likelihood of flooding and thus its usability. From the submitted documents it would appear that the Lead Local Flood Authority (LLFA) Officers were treating the application as a detailed one, rather than an outline, as had previously been determined with suitable conditions attached. Once that this matter had been clarified, it appears that the LLFA Officers were content to include the previously attached conditions in this respect.
7. In relation to the prospect of the open space flooding, the approved open space would have been the subject of a similar risk, from what has been submitted. In this instance, I consider that the Council's failure to be satisfied with conditions similar to/the same as had previously been attached and seeming to ignore the fact that the approved open space would be the subject of some flood risk has involved additional time and expense to the appellant and the Council has been unreasonable in adopting this position. Furthermore, the appellants confirm that surface water would not discharge into the pond from the proposed housing area. The allegation that the re-arranged open space would give rise to more disturbance at the pond from dogs and possibly cats is unfounded in my view, particularly as the open space would abut the pond in the approved scheme also. These matters add to my findings of unreasonable behaviour.

Conclusions

8. I accept that some matters raised are no more than a difference of planning judgement and whilst I have agreed with the appellant in relation to the merits of the appeal, some views contained within the Council's case are not unreasonable. However, as set out above, I consider that the matters relating to drainage and the use and usability of the open space are not supported by sound reasoning and amount to unreasonable behaviour. This will have involved the appellant in additional and wasted expense in dealing with these matters at the appeal.
9. For the above reasons, I consider that the Council has acted unreasonably. Therefore, in respect of the matters identified above, their actions have meant that the appellant has incurred unnecessary expense and an award of costs is justified.

Costs Order

10. 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 West Berkshire Council pay to T A Fisher, the costs of the appeal proceedings described in the heading of this decision only in relation to its reasons 2 and 3 as set out on its decision notice.

11. The applicant is now invited to submit to West Berkshire 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.

S T Wood

INSPECTOR