
Costs Decisions

Hearing Held on 8 July 2021

Site visit made on 15 July 2021

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th October 2021

Appeal A Costs application in relation to Appeal Ref:

APP/R3650/W/20/3252976

Wildwood Livery, Hook Street, Rudgwick, Horsham RH12 3GG

- 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 J Pearson for a full award of costs against Waverley Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for a hybrid application: change of use to single dwelling: outline application for the erection of 6 dwellings with all matters reserved except vehicular access following the demolition of existing buildings and structures.

Appeal B Costs application in relation to Appeal Ref:

APP/R3650/W/20/3252977

Wildwood Livery, Hook Street, Rudgwick, Horsham RH12 3GG

- 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 J Pearson for a full award of costs against Waverley Borough Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the change of use of a barn to dwellinghouse.

Decision

1. The applications for award of costs are refused for Appeals A and B.

Procedural Matters

2. As set out above there are two linked appeals on this site. I have considered each cost application on its individual merits. However, to avoid duplication I have dealt with the applications together, except where otherwise indicated.

The submissions for Mr J Pearson (Appeals A and B)

3. The imposition of reasons for refusal was unsupported by any analysis, and / or rely on information which is materially incorrect, for instance the distance of the site from local services and facilities. The Council has failed to pay any regard to the importance of consistency within the planning system: ignoring the decisions of Inspectors on housing land supply, and the Council's own decisions on the suitability of the site for development at the preapplication stage, and within the Brownfield Land Register.
4. No tilted balance approach was undertaken in the decision, which was necessary since the Council has been judged unreasonable in its view that it

could demonstrate a five year supply of housing land (see the Loxwood Road appeal). The sheer irrationality of the decision bearing in mind those aspects of it which are worthy of weight (the contribution to meeting general and affordable housing needs, the Brownfield Land Register) and the lawful use of the site / its traffic generation characteristics.

5. The Council's unreasonable behaviour led directly to a refusal which cannot be substantiated on the evidence and an appeal which has unnecessarily delayed acceptable development and should not have been necessary.

Response by the Waverley Borough Council

6. The Council's pre-application advice indicated that Officers may be able to support the principle of these proposals. In this advice, officers indicated that the proposed quantum of development is considerably greater in terms of scale and density than the existing form of development. On this basis, the applicant's assertion that the reason for Refusal 1 is fundamentally inconsistent with the advice is considered to be incorrect.
7. The advice detailed that the site is not considered to be isolated, and this is carried through in the determination of the applications. Paragraph 80 of the National Planning Policy Framework (previously paragraph 79) is not engaged. Advice was also informal officer opinion and therefore does not prejudice any future decision making by the Council. A recommendation for permission was indicated by the Council's case officer but this was subject to further comment and senior officer sign off. At no point was a formal decision made on the application, and it is not unreasonable for the initial recommendation to be disagreed with, particularly as aspects of the assessment which constituted the reasons for refusal 1 and 2 are subjective matters.
8. In determining the applications for both appeals, the Council were of the view that, whilst the site is not isolated, it was not in a sustainable location with an over reliance on the private car for access to services and facilities. Since determining the applications and the submission of the appeals, the additional analysis and data provided to the Council prompted a re-examination of these reasons for refusal relating to these matters and it is satisfied that, whilst the site is not highly sustainable, it is acceptable in this regard. The Council was not convinced of this at the time of the determination of the applications and it is reasonable for the applicant to go to some expense to further demonstrate this point to the Council.
9. The applicant suggests that the Council has acted unreasonably in insisting that a 5-year housing land supply (5YHLS) can be demonstrated. Included in the Officer Reports for both proposals was an assessment of a surplus 5YHLS at that time. Since the determination of the proposals, the most recent Housing Delivery Test results have been published by the government in 2021. Waverley scored 98% delivery against its housing target. The Council's 5YHLS Position Statement of October 2020 sets out a supply of 5.3 years. The Council's latest 5YHLS position was highlighted in the Statement of Common Ground (SOCG) which detailed a deficient 5YHLS, 4.26 years. The provision of seven additional dwellings is not considered to have a significant, material impact on the housing land supply in any event.
10. The Council advised the applicant that the barn conversion element of the proposal would be acceptable, citing confirmation of this within their Officers

delegated report in respect of Appeal A. Whilst the Council's position on the barn conversion element of the scheme (Appeal B) has been set out above (that the sole reason for refusal is considered to have been overcome), there was no formal confirmation of its acceptability at the time of the determination of Appeal A.

11. The Council acknowledges that the site was placed on the Brownfield Land Register with an end date of the 4th December 2019, where the site is effectively removed from the Register after due consideration had been given to the suitability of the site for over 5 dwellings (minimum requirement for the Brownfield Land Register).

Reasons

12. 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.
13. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Although not an exhaustive list, examples, include the failure to produce evidence to substantiate a reason for refusal. Appeal A has been dismissed and therefore, the Council has not prevented or delayed development which should clearly be permitted, having regard to its development plan, national policy and any other material considerations.
14. Notwithstanding this, the Council has produced evidence on the harm to character and appearance supporting its objections based on a highly urbanising form of development in its appeal statement. Based on any analysis of the proposal, it indicates that the quantum of development to be considerably greater in terms of scale and density than the existing form of development at statement paragraph 20. It further elaborates on the harm to visual appearance of the area, by referring to the applicant's LVIA at paragraphs 23 -24 and 27 of its statement. Furthermore, it considers the effect of existing equestrian use of the site within its overall assessment at paragraph 28 of its statement.
15. At a late stage in appeal proceedings, the Council has conceded a lack of 5 year housing land supply (5YHLS). The applicant has detailed appeal decisions since September 2019 where Inspectors found a deficient 5YHLS. The SOCG concedes 4.26 years and therefore, the tilted balance would apply (Paragraph 11 d) ii. of the Framework). The applicant has produced housing supply assessments, the latest of which indicates 3.9 years. However, the Council's evidence on the harm to the character and appearance in Appeal A clearly indicates that the adverse impact of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
16. For both Appeals A and B, the Council confirmed that it no longer wished to sustain a reason for refusal relating to the sustainability of the site (access to services and facilities by sustainable transport). This followed a review of an in-depth analysis of recent appeal decisions in the area, distances and walking times to facilities and services provided by the applicant at the appeal stage.

However, the Council had detailed the physical separateness of the site from Alford and Alford Crossways in both its officers report and appeal statements. In this case, access to facilities and services would be partly along an unmade track that is not street lighted, including Hook Street and the Public Bridleway. For a rural area such as this, there is judgement involved in determining this matter especially as every site will be different in terms of distance and quality of transport connections to facilities and services. On this basis, the Council's approach and final position on this matter has been reasonable.

17. Under Appeal A, a S106 agreement has now been completed and signed to address a reason for refusal on this issue. Given planning policy, this would have been a matter requiring assessment and therefore, expense involved in assessing this issue would have been necessary. The Council does not agree that the site constitutes brownfield land. Whilst I disagree, making effective use of land for housing has to be balanced against other considerations, such as the environment. In this regard, the Council has made a strong case for harm on character and appearance grounds. The Council's pre-application advice does not bind the Council and in any case, it highlighted some serious concerns on character and appearance. Similarly, it is the Council's final decision that matters rather than any officer indication that planning permission was to be granted.

Conclusion

18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Jonathon Parsons

INSPECTOR