
Costs Decision

Hearing Held on 9 November 2021

Site visit made on 10 November 2021

by David Cliff BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th December 2021.

Costs application in relation to Appeal Ref: APP/C3810/W/20/3264105 Land east of Shripney Road, Shripney, Bognor Regis PO22 9NW

- 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 Hanbury Properties Ltd for a full award of costs against Arun District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for 'outline application for up to 46 dwellings together with access, with all other matters reserved'.
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Decision

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

Procedural matters

2. The appellant's application for costs was made in writing at the hearing. Due to time constraints at the hearing, the Council's response to the costs application, and the appellant's subsequent final response, were made in writing following the hearing.

Reasons

3. Planning Practice Guidance states that irrespective of the outcome of an appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs unreasonable expense in the appeal process.
4. The Council's refusal of the application follows the conclusion by the Committee that the proposal would be contrary to several development plan policies and the National Planning Policy Framework ('the Framework'). Whilst I have not agreed with the Council on some of the main issues and have allowed the appeal based on all relevant merits and considerations, including the Framework, I have found that the proposal would not accord with the development plan due to its location outside of the built-up area boundary and the, albeit fairly limited, harm to the character and appearance of the area.
5. Taking into account the harm I have found in respect of the development plan, I do not consider that this is a case where the Council has prevented or delayed a development which should clearly be permitted. Whilst substantial residential development has been recently found to be acceptable at another

site in Shripney¹, that site involved development within the curtilage of an existing dwelling house rather than on an open 'green field' site without existing development.

6. There is no clear indication that the Council applied the tilted balance in its final determination of the application, including from reading the decision notice. However, the officer's report did refer to the tilted balance provision in the absence of a five year housing land supply. Nevertheless, notwithstanding the officer's recommendation for approval, as one of the Council's reasons for refusal relates to flooding, paragraph 11 of the National Planning Policy Framework is clear that the tilted balance would not apply where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. Footnote 7 includes areas at risk of flooding as being a protected area and the Council refers to the relevant paragraphs of the Framework (as published at that time) in the relevant reason for refusal. Whilst I disagree with the Council on its conclusion regarding flooding, as this formed one of its reasons for refusal it reasonably follows that the tilted balance would not apply in the Council's determination of the application.

Reason for refusal 1 (settlement boundary etc)

7. With regard to the first reason for refusal, the Council makes reference to there being clear harm to the village of Shripney. However, it is not at all clear from the wording of the reason in the decision notice what this harm to the village actually is.
8. It is agreed that the site is outside of the built-up area boundary and the matter of accessibility is one that, notwithstanding my own conclusion, has been adequately substantiated by the Council in its written evidence and oral submissions at the hearing (notwithstanding my conclusion on the merits). Recent decisions for other residential developments in Shripney have not raised similar objections, although the scheme at Land adjacent to Walnut Tree Cottage was clearly form much lesser quantum of development.
9. There is some tension with the recent appeal decision² for the proposed development at The Cottage, whilst noting that accessibility is one of several factors to be taken into account in consider the sustainability of a proposal. Taking account of the need to consider the full policy implications (including Policies T DM1 and T SP1 of the Local Plan) as part of this appeal, on balance I do not consider the Council has behaved unreasonably with regard to accessibility.
10. Although the first reason for refusal includes reference to C SP1 there is no indication within the decision notice itself as to the harm that would result upon the countryside, other than by the site being in the countryside. In its subsequent appeal statement, the Council makes reference to a 'green wedge' though the site is not allocated as part of any green wedge within the development plan.
11. Whilst I have found some localised harm to the character and appearance of the area based on the available evidence (including the appellant's Landscape and Visual Appraisal) and my inspection of the site and its surrounds, the

¹ The Cottage, Shripney Road

² W/4000456

Council's evidence has been at best, very brief in this regard. Furthermore, there is no indication in the decision notice as to what visual, landscape or other harm to the countryside the Council considered would result from its location outside of the built-up area boundary. The Council also does not make any reference to the appellant's Landscape and Visual Appraisal in its evidence. Overall, its criticisms of the scheme in this regard are vague and generalised and it has caused the appellant to seek to address such matters as part of its appeal submissions.

12. Consequently, given the lack of overall supporting evidence, vague and generalised assertions along with the failure to properly summarise the issue in its decision notice, I consider that the Council has behaved unreasonably in relation to the matters concerning the effect upon the open countryside setting and 'green wedge' thereby causing appellant unreasonable costs in the appeal process.

Reason for refusal 2 (flood risk)

13. The parties agree that it is necessary to consider the implications of climate change. The Council's Strategic Flood Risk Assessment indicates that the site would be at risk of flooding, based on 2061 and 2115 scenarios, albeit in the absence of existing flood defences. The Council has not provided any detailed evidence to counter the evidence and case put forward in the appellant's Flood Risk Assessment Addendum (along with the evidence provided in its original Flood Risk Assessment) provided with the appeal including the case argued by the appellant that the site would not be at any significant risk of flooding based on the existence of the flood defences.
14. The Council's evidence both in writing and orally at the hearing did not provided any substantive arguments on whether for any reason the existing flood defences might be at risk in future years. At the hearing the Council also confirmed that it's objection related solely to the matter of flooding following climate change and not matters related to drainage issues on and adjacent to the site, including Shripney Road.
15. Furthermore, the Council accepted the results of the appellant's sequential test and has made no objections in its evidence to the arguments put forward in the appellant's exception test. The Council also did not raise any similar objections to recent proposals for residential development in Shripney which are also stated as being within future Flood Zone 3a as a result of climate change, an approach which seems on the face of it to be inconsistent.
16. Given the lack of supporting evidence to justify the Council's objection in this regard, I consider on the balance of probability that the Council has behaved unreasonably in relation to this reason for refusal. This has resulted in the appellant incurring unnecessary expense in contesting this part of the appeal.

Reason for refusal 3 (agricultural land)

17. There is no dispute between the main parties that the proposal would result in the loss of Grade 2 agricultural land. The consideration of this issue includes a balancing exercise on whether the need for development outweighs the need to protect the agricultural land in the long term. Whilst this reason for refusal appears to have been included by the Council at a late stage in its decision making process, the Committee determined that it should be included.

18. The Council's appeal statement says that the appellant has not supplied any reports to comply with the policy criteria. However, I am clear in my decision that the reports³ provided by the appellant can be considered to amount to a sustainability and options appraisal as sought by Policy SO DM1 in setting out how the requirements to protect the best and most versatile land can be outweighed. However, it is a matter of judgement whether it would accord with the requirements of Policy SO DM1.
19. The Council's written and oral appeal evidence does not grapple in any great detail with the appellant's assessment including that submitted with the appeal, but states in paragraph 5.27 of its appeal statement that it remains of the view that the proposal is in conflict with Policy SO DM1 in respect of criteria (a) to (c) and that the conflict with the policy is not outweighed by the need for new housing and that the site is not in a suitable sustainable location as suggested.
20. These matters largely relate to a judgement of harm against benefits. It appears likely that even if the Council had accepted that the information provided amounts to a sustainability and options report, it would still have raised objection on whether the harm outweighs the benefits. Taking account of the facts of the matter, including that the development would result in the loss of Grade 2 agricultural land, on balance I do not consider that the Council has behaved unreasonably with regard to this reason for refusal.

Conclusion

21. I find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated with regard to the Council's first and second reasons for refusal as set out above and that a partial award of costs is therefore justified.

Costs Order

22. 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 Arun District Council shall pay to Hanbury Properties Ltd, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in connection with contesting (a) that part of reason for refusal 1 relating to a 'green wedge' and open countryside setting and (b) reason for refusal 2 (flood risk) on the decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
23. The applicant is now invited to submit to Arun District Council, whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Cliff

INSPECTOR

³ Appraisal of Agricultural Land Quality and s Soil Resource Plan (March 2020) and Statement on Agricultural Land Quality (October 2020) by Reading Agricultural Consultants