



Costs Decision

Hearing (Virtual) held on 1 March 2022

Site visit made on 3 March 2022

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 April 2022

Costs application in relation to Appeal Ref: APP/V2255/W/21/3272760 Land lying to the south of Dunlin Walk, Iwade ME9 8TG

- 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 BDW Kent for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for 20 residential dwellings with means of access approved and all other matters reserved on the land lying to the south of Dunlin Walk, Iwade, as identified on the indicative layout.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. The applicant considers that the Council acted unreasonably by failing to address two key national policy tests, refusing permission on issues which could be addressed by condition at reserved matters stage, and failing to produce evidence to substantiate its decision.
3. The Council's reason for refusal refers to paragraphs in the National Planning Policy Framework (Framework) that are relevant to the specific subject matter. Although the Council's appeal submissions neither use the specific phrasing of Framework paragraph 111 nor refer to the test it contains, the statement by Mr Burbridge refers to safety issues on several occasions and identifies, for example, 'grave concerns' over the accessibility of the site for delivery and servicing. To my mind, that relates sufficiently to the approach of paragraph 111 and the Council's written position is clear that the appeal proposal would, in its opinion, have an unacceptable impact on highway safety.
4. The refusal reason does not refer to Framework paragraph 11d and the Council's written submissions do not directly address the presumption in favour of sustainable development which is triggered in cases such as this where there is not a five year supply of deliverable housing sites. However, with the Council's appeal statement by Councillor Bonney referring to the 'tilted balance', it is clear that the Council was cognisant of this national policy test. Although not explicitly stated by the Council, the evidence before me, including what the Council said during the hearing in relation to matters such as the

weight it considered should be afforded to the proposal's benefits, also points to it considering that the adverse impacts it alleged would arise in relation to highway safety would significantly and demonstrably outweigh the benefits. Furthermore, it seems to me that this is what Councillor Bonney means in her reference to the 'tilted balance should not apply' as opposed to meaning that the approach set out under paragraph 11d is simply not applicable. While the applicant may disagree with the Council's position and the weight it afforded to the proposal's benefits and alleged harm, this does not mean that the Council failed to have regard to the approach set out in Framework paragraph 11d.

5. With the planning application made in outline with all matters except access reserved for future consideration, the Council's refusal reason covers layout-related issues that would be finalised at reserved matters stage and which could usually be covered by condition. During the hearing, in response to the additional illustrative plans submitted by the applicant, the Council also withdrew its concerns that the appeal proposal could not be acceptably laid out with regards to servicing and confirmed that this matter could now be appropriately addressed at reserved matters stage and dealt with by condition.
6. However, the Council's appeal submissions, including what was said at the hearing, indicate that it considered that it would not be possible to resolve its layout-related concerns via condition/at reserved matters stage. This was because the Council deemed, on the basis of the information available when it made its decision and submitted its written appeal submissions, that the proposed development of 20 dwellings could not be designed and laid out on the site in the manner that would provide acceptable servicing and parking arrangements. The straying into detailed issues that are covered by the reserved matters, such as housing mix and parking numbers, was therefore neither particularly surprising nor unreasonable. Although the additional illustrative plans submitted by the applicant prior to the hearing subsequently demonstrated an acceptable layout could be achieved in relation to servicing, the Council did not have this when preparing its written appeal submissions. The Council also maintained its parking-related concerns were neither resolved by the additional plans nor could be resolved via a different layout.
7. Although such matters can be – and usually are – addressed by condition for outline applications such as this, granting permission for a development that the Council believed would be unlikely to be approved at reserved matters stage and imposing conditions that it considered could not be resolved at that point would, in my view, not have been judicious. Accordingly, it seems reasonable to me for the Council to have refused permission for a scheme that it considered – rightly or wrongly – presents issues that could not be addressed by condition and could thus not actually be delivered. That I have come to a different conclusion and that the Council withdrew its servicing-related concerns during the hearing in response to the additional illustrative plans do not mean that it acted unreasonably in relation to this matter. In coming to this view, I have also taken into account that the Highway Authority had not objected to the planning application.
8. The Council's written appeal submissions, particularly in relation to the matter of parking provision and which Councillors Bonney and Martin focused on, are relatively concise. However, they refer to relevant guidance, are not particularly vague, generalised or inaccurate, and neither their brevity nor a lack of professional qualification or specific expertise in relation to the matter of

parking mean that the information provided is inherently insufficient to substantiate the Council's position. The Council's servicing concerns were also covered by a suitably qualified professional. In addition, setting out the reason for refusal, the Decision Notice is complete, precise, specific and relevant to the development proposed, and details the alleged harm and the local and national planning policies and guidance that the Council considered the development conflicts with.

9. In this case, the Council's written submissions, combined with what was said during the hearing, sufficiently elaborate its concerns with the proposed development and substantiate the refusal reason. Although I have come to a different conclusion and the Council's concerns relate to reserved matters, this does not mean that its views with respect to parking were unfounded to the point that they are unreasonable. The lack of technical evidence regarding the Council's concerns with parking provision, the lack of objection from the Highway Authority and the Council's concerns being related to a reserved matter do not lead me to a different conclusion.
10. Although I have come to a different overall conclusion to the Council and have allowed the appeal, this does not mean that it acted unreasonably in refusing the planning application. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

T Gethin

INSPECTOR