



Costs Decision

Site visit made on 19 July 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 August 2022

Costs application in relation to Appeal Ref: APP/U1430/W/21/3283287 Land East of Waites Lane at Wakeham's Farm, Pett Level Road , Fairlight Cove, East Sussex

- 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 Damon Turner of Welbeck Strategic Land III for a full award of costs against Rother District Council.
 - The appeal was against the refusal of planning permission for a development described as 'Outline: Development of up to 43 residential units (including 40% affordable), including new vehicular access from Pett level Road'.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG also states that a Council is at risk of an award of costs if it: prevents or delays development which should clearly be permitted; fails to provide evidence to substantiate each reason for refusal; relies on vague, generalised or inaccurate assertions about a proposal's impact; or persists in objecting to a proposal which an Inspector has previously indicated to be acceptable, this being the Inspector that examined the Development and Site Allocations Local Plan 2019 (DaSA).
3. The Council's planning committee refused the proposal against the advice of Officers. It was entitled to do so as it is not bound to follow the recommendation of its Officers. Such an approach would render the committee superfluous. Nevertheless, the committee must be able to clearly articulate and substantiate its decision, especially when departing from professional advice.
4. The reasons for refusal are multifaceted and could have been clearer. The first concern relates to the effect on the character and appearance of the village and landscape of the High Weald Area of Outstanding Natural Beauty. This may seem curious at first because the appeal site is allocated for development. However, the allocation under Policy FAC2 of the DaSA is for approximately 30 homes whereas the proposal is for 43. As a result, the appeal scheme pushes the boundaries of the allocation.
5. This uplift in the number of homes would not be insignificant. It can also be considered in the context that the original scheme was for 48 homes but

received Officer support only when revised down to 43. Therefore, a comparably small change in the number of homes at the appeal site can make a notable difference. A scheme for 43 homes would inevitably be denser than a proposal for approximately 30, even when allowing for a small uplift in lieu of a plot for a doctor's surgery. The planning committee applied its planning judgment and found this to be harmful.

6. This conclusion followed a site visit and committee presentation and was therefore informed. The concerns have also been properly articulated and substantiated. Accordingly, this aspect of the Council's decision was not unreasonable, as were the concerns that the uplift in housing numbers would be at odds with the spatial strategy for Fairlight Cove given the availability of services and facilities. I do not share the view of the Council for the reason set out in my decision, but the point was not unreasonable.
7. Similarly, the uplift in the number of homes beyond that allocated would also have implications for foul drainage, the local problems with which are set out in the DaSA. The Council's concerns in respect of this matter are nuanced and were not advanced without evidence when considering the submissions of local residents, who clearly have detailed knowledge. Neither the Lead Local Flood Authority nor Southern Water objected to the proposal, but the latter has also informed residents that there is a problem with the foul drainage system that needs to be resolved.
8. As a result, there is reasonable doubt whether an increase in foul water discharge into the current system can be achieved adequately and prior to an upgrade. Southern Water's position was described at the hearing as being contradictory and unhelpful and I can see why. I therefore have some sympathy with the Council's position on this point. It was also a matter discussed in detail at the hearing, including whether the impact could be adequately mitigated. Southern Water also provided further comments during the appeal process. Thus, this aspect of the reason for refusal was reasonable.
9. The Council are concerned that the proposal would insufficiently integrate with the existing community. However, it would not be sited any further from the village than the allocation and future residents would access services along the route envisaged in Policy FAC2. The Council has not provided any substantive reason why it is now seeking to row back from the allocation on this point. I have not been referred to any alteration in circumstances, such as new policy or changes on the ground. Thus, this aspect of the reason for refusal was unreasonable and the appellant was put to wasted expense in addressing it.
10. This was compounded by the suggestion that the footway on Pett Level Road would harm the character and appearance of the area and would be unsafe, even though this is a specific requirement of Policy FAC2. The Council did not provide substantive technical evidence to suggest the route would fall below any recognised standard, which may have changed since the allocation, which could have justified departing from the views of the Local Highway Authority and the applicant's highways consultant. The Council subsequently removed its objections in respect of this matter, but the evidence before me suggests it should not have factored into the reason for refusal in the first place. The appellant was put to wasted expense in addressing this unreasonable point.
11. The Council also raised concerns that the non-provision of a serviced plot for a doctor's surgery was premature. However, evidence was before the Council

from the Care Commissioning Group in October 2020, which was prior to the decision being made, that the serviced plot was not required. This also needs to be considered in the context that the plot is not a 'hard' requirement of the allocation, it was subject to a business case. Moreover, I have not been directed to any other policy that specifically required alternative community uses to be considered in lieu of a serviced plot for a doctor's surgery, which the reason for refusal infers. Consequently, this was an unreasonable point, and the appellant was put to wasted expense in addressing it, even though the Council ultimately withdrew its objection.

12. The Council's second reason for refusal also refers to an absence of information to ascertain the impacts on the Dungeness, Romney Marsh and Rye Bay Ramsar. The Council subsequently confirmed through the Statement of Common Ground that there would be no adverse impacts in this respect. It is therefore unclear why this formed part of the reason for refusal. The advice from technical consultees did not support this stance. Again, it was an unreasonable point the appellant had to address.
13. In conclusion, it was legitimate of the Council to raise concerns regarding whether the uplift in numbers beyond that allocated would sit comfortably with the spatial strategy and harm the character and appearance of the settlement, the landscape and drainage capacity. However, it has failed to substantiate its concerns regarding social and community integration, highway safety along, and urbanisation of, Pett Level Road, the absence of the serviced plot for a doctor's surgery and the inadequacy of information relating to the impact on the Dungeness, Romney Marsh and Rye Bay Ramsar. This was unreasonable behaviour that resulted in unnecessary and wasted expense for the appellant in addressing these matters in the appeal process. Thus, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred. A partial award of costs is therefore justified.

Costs Order

14. 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 Rother District Council shall pay to Mr Damon Turner of Welbeck Strategic Land III the costs of the appeal proceedings described in the heading of this decision, but only in so far as they relate to the matters of social and community integration, highway safety along, and urbanisation of, Pett Level Road, the absence of the serviced plot for a doctor's surgery and the inadequacy of information relating to the impact on the Dungeness, Romney Marsh and Rye Bay Ramsar; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to Rother District 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.

Graham Chamberlain
INSPECTOR