



Costs Decision

Site visit made on 27 September 2022

by C Shearing BA (Hons) MA MRTPI

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

Decision date: 31 October 2022

Costs application in relation to Appeal Ref: APP/B1415/W/21/3285744 Land to the east of Harrow Lane and west of 777 and 779 The Ridge, St Leonards on Sea, Hastings TN37 7PT

- 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 Park Lane Homes Ltd for a full award of costs against Hastings Borough Council.
 - The appeal was against the refusal of planning permission for erection of 67 dwellings together with access, open space, parking and landscaping
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant claims that the Council exhibited unreasonable behaviour in both substantive and procedural terms. I have considered these in turn below.

Substantive Reasons

4. The PPG provides a list of types of behaviour that may give rise to a substantive award against a local planning authority. The applicant claims that the behaviour of the Council included three of these examples, relating to preventing development which accords with the development plan, failure to substantiate the reason for refusal and generalised assertions about a proposal's impact, which are unsupported by any objective analysis.
5. Planning permission was refused for a single reason relating, in summary, to the impact on the character and appearance of the area, arising from overdevelopment of the site. The minutes of the Committee Meeting of 28 April 2021 contain only one point relating to visual impact, where the Committee discussed that the proposed terraces facing Harrow Lane were not in keeping with the detached houses opposite.
6. The applicant has provided a transcript of the Committee Meeting which has not been contested by the Council. The transcript shows that some members of the Committee expressed a desire for the capacity of the site to remain at 50

homes, in line with the previous outline planning permission, rather than identifying the harm arising from the development before them. The transcript shows that the impacts on the character and appearance of the area were not an integral part of the debate or discussion until after the suggestion that the application be refused, when the reason for refusal was being drafted. Consequently, there is very little detail surrounding the rationale behind the decision.

7. There is no further evidence of discussion of this matter, or why, despite being different to those houses opposite and being a higher density than previously approved, this amounted to harm to character of the area. The Council's appeal statement expands upon these issues by discussing the character of the area and identifying where some specific examples of differences with the appeal scheme lie. However, it is not evident that this informed the refusal of the planning application and in this respect, I find the Council made vague and generalised assertions about the proposals impact, unsupported by objective analysis.
8. The applicant asserts that correct regard was not had for the development plan, including the site allocation. As I have found in my appeal decision, Policy LRA3 of the DMP does not stipulate a maximum number of homes for the site, only a possible net capacity. Based on the evidence before me, the wording of the Policy was incorrectly applied by the decision makers and that policy failed to be applied in light of the wider basket of policies forming the local plan and the National Planning Policy Framework (the Framework), for example relating to densities and efficient use of land.
9. Furthermore, following the Committee's finding of harm to the character and appearance of the area, there is no evidence before me that this harm was, in turn, considered in light of the presumption in favour of sustainable development particularly as Council were unable to demonstrate a 5 year land supply for housing and had underperformed in the delivery of housing, referred to in the officer's report. While they may still have reached the same conclusion, it is not apparent that the Committee considered the adverse harm they found to significantly and demonstrably outweigh the benefits of the proposal or correctly applied the objectives of the Framework. This adds further to my concern regarding the application of the development plan and other relevant material considerations, and taken together, the above concerns lead me to conclude that the Council behaved unreasonably in the determination of the appeal scheme.
10. While it does not underpin my conclusions in respect of unreasonable behaviour found above, parts of the transcript show that the Committee failed to engage with the spirit of the PPG, which is clear that an appeal should be a last resort and encourages parties to re-engagement before entering into an appeal.

Procedural Matters

11. The applicant entered into the pre-application process with the Council prior to the submission of the planning application, which is the approach encouraged by the PPG and the Framework. However, as informal advice, the Council were not bound to follow the advice given at that stage. Neither were the Planning Committee duty bound to follow the advice of its officers at the Committee meeting, as this is a part of the Council's decision making process.

Conclusion

12. For the reasons give, the Council behaved unreasonably through failing to substantiate their reason for refusal and through their application of development plan policy and other material considerations, including the Framework.
13. Consequently, unreasonable behaviour resulting in unnecessary or wasted expense through the appeal process, as described by the PPG, has been demonstrated and an award of costs is 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 Hastings Borough Council shall pay to Park Lane Homes Ltd, the costs of the appeal proceedings described in the heading of this decision.
15. The applicant is now invited to submit to Hastings Borough 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for the detailed assessment by the Senior Courts Costs Office is enclosed.

C Shearing

INSPECTOR