



Costs Decision

Site visit made on 24 January 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2023

Costs application in relation to Appeal Ref: APP/Q3115/W/22/3297026 Land adjacent to The Orchard, Benson, Oxfordshire OX10 6JB

- 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 Victoria Land for a full award of costs against South Oxfordshire District Council.
- The appeal was against the refusal of planning permission for development described as 'outline application for up to 19 dwellings (including 40% affordable housing), with all matters reserved with the exception of access on land adjacent to The Orchard, Benson'

Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) 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. The appellant considers that the Council's behaviour was unreasonable in two main respects, which I consider in turn below.

Lack of co-operation

3. The appellant considers that the Council could have worked more proactively to ensure that a pedestrian connection was achieved between the appeal site and the neighbouring housing development. The Council are described as seeming reluctant to engage with the neighbouring developer to achieve those links. The neighbouring development was at its reserved matters stage and this would have been an opportune time to secure a link with the appeal site.
4. The Council report that it did attempt to enter into discussions with the adjacent developer. The evidence suggests such discussion occurred in a meeting and that developer sought to have discussions directly with the appellant, rather than through the Council. This was communicated with the appellant by email.
5. There is an adopted development plan policy which seeks the integration of such development sites¹ and the unproductive discussions with the neighbouring developer would have been frustrating for the appellant. However, I am not satisfied that it was the role of the Council to persist on these discussions or to ensure that the appeal scheme was policy compliant in that regard. The Council's response to the costs application adequately

¹ Policy DES1 of the South Oxfordshire Local Plan 2020.

demonstrates the rationale for not requiring a pedestrian link as part of the neighbouring reserved matters approval. In addition there is not substantive evidence that the use of a compulsory purchase order by the Council would have been a reasonable alternative here.

6. Based on the evidence before me I am satisfied that the Council acted appropriately to try and assist in addressing the matter. While its actions did not have the outcome desired by the appellant, I do not find that unreasonable behaviour occurred.

Preventing or delaying development which should clearly have been permitted

7. The appellant considers that the first reason for refusal, relating to footway connectivity, was unreasonable given the proposed footway on Braze Lane was found to be acceptable to the Highway Authority. The second reason for refusal, relating to trees and hedgerows on third party land, was similarly not informed by objections from forestry or landscape officers.
8. While this may be the case, the absence of objections from consultees would not necessarily dictate the Council's decision on the planning application. The Council's officer report summarises responses from consultees and goes on to discuss where the concerns lay, based on the information that was available at that time.
9. While I have disagreed with the Council's conclusions on these matters, I am satisfied that the Council adequately substantiated their reasons for refusal within its officer report and appeal statement, and those reasons were informed by relevant development plan policies and material considerations. Given the relative complexities of delivering the proposed footway, I do not consider this to be a case which should clearly have been permitted. I do not find the Council's determination of the application in this regard to have been unreasonable.
10. While it may have been possible to address some of the Council's concerns during the application process, this matter relates to the Council's internal processes. Based on the information before me this does not in itself amount to unreasonable behaviour.

Conclusion

11. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described by the PPG, has not been demonstrated. Therefore the application for costs is refused.

C Shearing

INSPECTOR