



Costs Decision

Site visit made on 17 March 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 May 2023

Costs application in relation to Appeal Ref: APP/R0335/W/22/3298985 Land north of Tilehurst Lane and north of Tile House and Honeysuckle Cottage, Binfield RG42 5JL

- 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 Machray and JPP Land Ltd for a full award of costs against Bracknell Forest Borough Council.
 - The appeal was against the refusal of planning permission for a proposal described as Erection of 9no. dwellings, including 2no. affordable dwellings, with associated landscaping and access to Tilehurst Lane (as approved under 18/00758/FUL).
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Decision

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

Reasons

2. Paragraph 16-030-20140306 of the Planning Practice Guidance (the PPG) advises that, costs may only 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.
3. Paragraph 16-049-20140306 of the PPG explains that examples of unreasonable behaviour by local planning authorities include preventing or delaying development which should clearly be permitted, not determining similar cases in a similar manner, failure to produce evidence to substantiate each reason for refusal on appeal, vague, generalised or inaccurate assertions unsupported by objective analysis, and not reviewing a case promptly following an appeal being lodged. These are five grounds upon which the appellant considers the Council has behaved unreasonably.
4. The previous appeal decision letter is a material consideration. The overriding consideration in that circumstance was the failure to demonstrate the site could be adequately drained and flood risk avoided¹. The appellant provided a significant amount of further evidence seeking to address those concerns.
5. The Council has not provided substantive evidence that explain why it has realistic concerns over the capacity of the Sustainable Urban Drainage System (SUDS), why it is not demonstrated the SUDS would not be acceptable to it and that it would not be managed for the life of the development. It has also

¹ Paragraph 37 of Appeal Decision Ref APP/R0335/W/19/3242594.

- not fully explained why it sought to apply the exception test having regard to up-to-date flood risk policy.
6. The Council provided evidence via an external link to an audio/video recording which the procedural guide makes it clear will not be accepted². Providing an external link of what is suggested to be 2 hours of discussion does not provide full assurance that I and all parties will view precisely the same version of the recording. There are concerns raised by the appellant that it is not sufficiently clear or legible. These are reasons why, in accordance with the procedural guide, the evidence was not accepted.
 7. Based upon the evidence before me, I have found the Council's first reason for refusal is not justified and I have not dismissed the appeal for this reason. The Council made vague and generalised assertions about the impact of the proposal that it has not supported by substantiated objective analysis. This is unreasonable behaviour and has resulted in unnecessary or wasted expense in the appeal process.
 8. There was no objection expressed in the officer's committee report in respect of the other reasons for refusal in the decision notice. The report suggested reason Nos 2 – 5 in respect of mitigation for the Special Protection Area, affordable housing, transportation infrastructure, community facilities and open space and lifetime management of the SUDS, were matters that could be addressed through conditions and/or a planning obligation. These do not appear to be matters the previous inspector found the development unacceptable.
 9. The Council has not provided substantive evidence that adequately explains why it felt it necessary to refuse the application for reasons its officers previously recommended could be dealt with via planning conditions and a planning obligation. There is no evidence that substantiates the Council carried out a necessary review of its case in relation to the reasons for refusal following the lodging of the appeal, which provided further substantive evidence upon the appellant's case.
 10. The Council has made generalised assertions about the impact of the proposal, it has not provided substantiated objective analysis of its reasons for refusal numbered 2 – 5 in its decision notice. It also has not determined similar cases in a similar manner. This is unreasonable behaviour which has resulted in unnecessary or wasted expense in the appeal process.
 11. I do not agree with the appellant's assertion the Council has prevented development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations for the reasons set out in my decision letter. I specifically raised the issue of the sequential test and a sequential test for the location of the development is not provided.
 12. Given the change that took place and the clarity provided in the National Planning Policy Framework (2021) (the Framework) since the previous appeal was dismissed, this is a matter that both parties should have sought to address as an important material consideration during the determination of the

² Paragraph 9.4.7 of the Procedural Guide: Planning appeals – England (2023).

application. As it is a matter that needed to be addressed, addressing this specific issue did not result in unnecessary or wasted expense.

13. As I have found the appeal should be dismissed for the reasons in my decision letter, the full costs of making the appeal should not be awarded. However, for the reasons I have set out above, I conclude that a partial award of costs is justified, for the costs incurred as a result of contesting the Council's reasons for refusal in its decision notice.

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 Bracknell Forest Borough Council shall pay to Machray and JPP Land Limited, the costs of the appeal proceedings described in the heading of this decision, limited to the costs incurred as a result of contesting the Council's reasons for refusal set out in its decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
15. The applicant is now invited to submit to the 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.

Dan Szymanski

INSPECTOR