

Costs Decision

Hearing held on 25 April 2023

Site visits made on 24 and 25 April 2023

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Costs application in relation to Appeal Ref: APP/C1435/W/22/3310505 Little Shepham, Shepham Lane, Polegate BN26 6NB

- 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 Orbit Homes for a full award of costs against Wealden District Council.
 - The hearing was in connection with an appeal against the Council's refusal to grant consent, agreement or approval to details required by a condition of a grant of outline planning permission.
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Decision

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

The submissions for the Appellant

2. These were made in writing in advance of the Hearing.

The response by the Council

3. These were made in writing in advance of the Hearing.

Reasons

4. Planning Practice Guidance (PPG) tells us that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
 5. The PPG goes on to say that one of the purposes of the costs regime is to encourage local planning authorities to properly exercise their development control responsibilities; to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case; and not to add to development costs through unnecessary delay.
 6. Examples are given in the PPG of the types of behaviour that might give rise to a procedural award of costs against a local planning authority. These include preventing or delaying development which should clearly be permitted; and acting contrary to, or not following, well-established case law.
 7. As I have set out in my parallel appeal decision, the Council was wrong, in the first instance, to adopt the position that their condition 6 provided for 35% affordable housing. In its use of the phrase *not less than 35%*, it very clearly did not. That was unreasonable.
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8. More than that though, the Council then refused to approve the details by taking into account local finance considerations. It is very clear from Section 70(2)(b) of the Town and Country Planning Act 1990 (as amended) that the correct place to take these into account is when considering whether to grant planning permission. In attempting to repair the situation caused by the use of the phrase *not less than 35%* in condition 6, when considering the details submitted in pursuance, the Council took into account a matter, namely local finance considerations, that it should not have. Acting contrary to the Statute, constitutes unreasonable behaviour, especially when one considers that this matter was drawn to their attention before the decision was made.
9. Further still, in refusing to approve the details, the Council failed to properly balance the obvious benefits of a 100% affordable housing scheme against the relatively minor impacts on the highway network, and bus services, that would result from a 100% affordable housing scheme. Again, that is unreasonable behaviour.
10. In that overall context, the position adopted by the Council in refusing to approve the details submitted in pursuance of the condition has no sound basis. It is abundantly clear that the submitted details should have been approved in the first instance and development that should clearly have been permitted has been prevented and delayed.
11. This unreasonable behaviour on the part of the Council has resulted in the need for the appellant to lodge an appeal that should not have been necessary. The appellant has incurred unnecessary expense in doing so. As a result, a full award of costs against the Council is justified.

Costs Order

12. 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 Wealden District Council shall pay to Orbit Homes, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Wealden 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.

Paul Griffiths

INSPECTOR