The Planning Inspectorate

Costs Decision

Site visit made on 26 April 2023

by H Miles BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Costs application in relation to Appeal Ref: APP/C1435/W/22/3310445
Land north of Jubilee Drive and Highgrove Crescent, Polegate
Easting 559644, Northing 105231

- 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 Taylor Wimpey UK Ltd for a full award of costs against Wealden District Council.
- The appeal was against the refusal of planning permission for residential development (use class C3) comprising up to 180 dwellings; informal and formal open space, footpaths, cycleways and internal roads; associated parking, landscaping, planting, noise attenuation measures, utilities, drainage infrastructure and groundworks. All matters are reserved with the exception of vehicular access into the site, to be taken from Highgrove Crescent.

Decision

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

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.

3. The substantive points in the appellant's case are that the Council has failed to substantiate each reason for refusal at appeal and has made vague generalised or inaccurate assertions about a proposal's impact, unsupported by an objective analysis. As well as that it has not determined similar cases in a consistent manner and refusing planning permission on a planning ground capable of being dealt with by conditions.

4. In this case during the appeal process the LPA confirmed that it would not be defending this appeal and has not submitted evidence to support its reason for refusal. The only evidence in support of their decision to refuse is the decision notice and no objective analysis for these reasons has been given. This is unreasonable behaviour.

5. Whilst members are entitled to depart from an officer recommendation, this must be for a sound reason. In this case, the overwhelming evidence before members in the Transport Assessment, Travel Plan, comments from the Highway Authority and the officers report that the site would be suitably accessible by sustainable transport modes. Also, evidence in the Noise Assessment, Design and Access Statement, comments from Pollution Control and the officer's report set out the acceptability of the proposed noise mitigation measures. There is no detailed evidence before me that explains

why Members decided to depart from this position. As such the planning authority has not been able to show that it had a reasonable basis for this stance.

6. The site is also outside the development boundary and contrary to the development plan in this regard. However, for the reason set out above this is the only adverse effect. There was also detailed evidence in the officers report and Planning Statement regarding the lack of a 5 year housing land supply and application of the presumption in favour of sustainable development. Again, I am not presented with any justification as to why Members made a decision contrary to this specific detailed evidence. The Council have therefore not demonstrated a reasonable basis for its position. As such, and as supported by my main decision, I find that this is development that should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations.

7. The fact that the site is outside the development boundary and its accessibility to public transport are fundamental characteristics of the site and as such these matters could not be addressed via condition. Whilst the detail of the noise mitigation bunds could be secured by condition it was evident that a substantial screen would be required. The Council's costs response states that it is the extent of the noise mitigation that would be required rather than the detail of its appearance that was of concern. As such this is fundamental to the acceptability of the proposed development and could not be controlled via condition. Finally, the Council were being asked to determine a scheme of up to 180 dwellings. As such, whilst the layout submitted was illustrative and the appellant may choose to seek permission for fewer dwellings it would not be appropriate for the Council to specify a lower number by condition or at reserved matters stage. Therefore the grounds for refusal could not have been dealt with via condition.

8. Outline planning permission has been granted on a neighbouring site (land west of Shepham Lane) for up to 108 dwellings which included an acoustic barrier and a density of 34.62 dwellings per hectare[1]. However, this site differs in its size and shape, the extent of the site which borders the A27 and the density proposed which is lower than that of the appeal scheme. As such I do not find that it would be unreasonable for the Council to reach a different conclusion.

9. The land west of Shepham Lane decision, as well as development to the south of the appeal site[2] were determined when the council could not demonstrate a 5 year supply of deliverable housing sites. In circumstances such as this the decision maker must make a judgement as to whether any adverse impacts would significantly and demonstrably outweigh the benefits. Given the differences in the scale of development along with the likely differences in other benefits I am not persuaded the Council has not determined similar cases in an inconsistent manner.

10. During the appeal process the Council has sought to put its position forward as early as possible and has worked with the appellant on drafting a statement of common ground and a UU. However, this does not set aside that this appeal

[1] WD/2016/3047/MAO
[2] WD/2007/1054/MEA

should not have been necessary in the first place, and has only arisen due to the unreasonable behaviour of the Council outlined above.

11. The Council has demonstrated unreasonable behaviour that it has failed to substantiate the reason for refusal at appeal and this is undefended by any objective analysis. This leads me to conclude that the Council has delayed development which clearly should have been permitted, having regard to its accordance with the development plan and all other material considerations. As such this appeal in its entirety should not have been necessary.

12. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

13. 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 Taylor Wimpey UK Ltd, 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.

14. 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.

H Miles

INSPECTOR