



Costs Decision

Hearing Held on 5 & 6 July 2023

Site visit made on 6 July 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th August 2023

Costs application in relation to Appeal Ref: APP/L3815/W/22/3300814 Koolbergen, Kelly's Nursery and Bellfield Nursery, Bell Lane, Birdham, Chichester PO20 7HY

- 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 Mr and Mrs Knappett for a full award of costs against Chichester District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for an Outline Application with all matters reserved apart from access for the erection of up to 73 dwellings, open space and associated works, Class E(g) employment floorspace and Class E(a) retail floorspace.
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Decision

1. The application for an award of costs is allowed in part.

The submissions for Mr and Mrs Knappett

2. The Council has behaved unreasonably as it prevented or delayed development which should clearly be permitted having regard to the development plan, national policy and any other material considerations. This was because the elected members misdirected themselves by disregarding professional officer advice at its September 2021 planning meeting, given it was advised that reasons it was looking to defer the application were not substantiated based upon relevant evidence. The Council was invited to review their reasons for refusal, but it did not do so.

The response by Chichester District Council

3. The Council is not bound by the advice of its officers and at the meeting in question there were several matters about which the Council members sought further information such as in respect of the buffer zone from the ditch, the A27, the cumulative effect upon the Manhood Peninsular, and education provision in Birdham. It was felt necessary that Southern Water (SW) and National Highways (NH) representatives attended a future committee meeting. This is an entirely reasonable approach, therefore the Council has not behaved unreasonably.

Reasons

4. 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. Paragraph 16-049-20140306 of the PPG lists examples of unreasonable behaviour by local planning authorities as including preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and other material considerations, and not promptly reviewing a case following an appeal being lodged.

5. For the reasons set out in my decision letter the Council's first and second reasons for refusal are substantiated and matters that need to be weighed in the planning balance.
6. The Council had a very limited amount of evidence upon which to consider the ability to provide a maintenance buffer to the ditch. From the evidence before me it was not unreasonable to defer the decision to seek clarification upon certain matters. However, it is not clear why, if the buffer did need to be greater than suggested on the indicative plans, the quantum and configuration of development could not be provided on the site given the scope for considering design and layout at the reserved matters stage.
7. Moreover, the Lead Local Flood Authority has in certain circumstances accepted lesser distances, so it may not even be necessary to provide the full 3m buffer. Therefore, in respect of the third reason for refusal, the Council has not adequately justified its position and I find it has behaved unreasonably and resulted in unnecessary or wasted expense incurred in the appeal process.
8. The Members were advised in officer reports it is the statutory duty of SW to ensure that off-site foul drainage infrastructure is fit for purpose. A representative of SW attended a committee meeting and SW did not object to the proposal. Members were advised that the matter could be addressed by planning conditions in respect of phasing, and that any failings of SW are to be addressed under the Water Industry Act 1991 with recourse to OFWAT.
9. The Council has not set out substantive evidence to me that demonstrates such an approach is incorrect. Therefore, in respect of the fourth reason for refusal, the Council has behaved unreasonably and resulted in unnecessary or wasted expense being incurred by the appellant in the appeal process.
10. The appellant had considerable time to prepare and submit a planning obligation that is legally rigorous and contained the necessary provisions. The initial UU was not signed by all those with an interest in the land. I adjourned the hearing to allow the appellant a short additional period to make any amendments it considered necessary in-light of what was discussed. It was only after this and the submission of a second UU that certain concerns were addressed sufficiently. Therefore, I take the view the Council's fifth reason for refusal was justified at that time. Given the appellants would have had to prepare a legally robust UU and justify their position in respect of the A27, I do not consider unnecessary or wasted expense has been incurred in respect of that matter.
11. I specifically raised the issue of flood risk in relation to the absence of a Flood Risk Assessment, the Sequential Test and the application of the Exception Test. Given the changes that took place to the National Planning Policy Framework (2021) (the Framework) since the previous appeal was dismissed, and the revisions to the Planning Practice Guidance since the appeal was lodged, these

are matters that should have been addressed as an important material consideration during the determination of the application. Therefore, addressing this specific issue did not result in unnecessary or wasted expense.

12. 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. 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. 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 third and fourth reasons for refusal in its decision notice.

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 Chichester District Council shall pay to Mr and Mrs Knappett, 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 third and fourth reasons for refusal set out in its decision notice; such costs to be assessed in the Senior Courts Costs Office if not agreed.
14. 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