



Costs Decision

Inquiry Held on 4 and 5 July 2023

Site visit made on 4 July 2023

by S Edwards MA MATCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2023

Costs application in relation to Appeal Ref: APP/P1425/W/23/3316217 Land off High Street, Barcombe Cross (Easting:541847 Northing:115720)

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Rydon Homes Limited for a partial or full award of costs against Lewes District Council.
 - The inquiry was in connection with an appeal against the refusal to grant approval of details required by a condition attached to a grant of outline planning permission.
-

Decision

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

The submissions for Rydon Homes Limited

2. The application for costs was made in writing. In summary, the applicant considers that it was unreasonable for the Council to refuse to approve the reserved matters application on the basis of the first reason for refusal, with regard to the effect of the development on the street scene and rural setting of Barcombe Cross.
3. The reserved matters application was recommended for approval, as set out in the Case Officer's Report, and had the support of the Council's Landscape Architect and Conservation Officer. In that respect, the applicant has referred to the pre-application advice which he sought from the Council, and which was followed to design the appeal scheme. The applicant also considers that there are no prescriptive requirements within the development plan in respect of the relationship between the development of this allocated site and the High Street frontage.
4. For these reasons, the applicant is of the view that the Council acted unreasonably in failing "to produce evidence to substantiate each reason for refusal". The applicant considers that members of the Planning Committee simply disregarded the Case Officer's recommendation and made "vague, generalised or inaccurate assertions" about the impact of the proposal, which were "unsupported by any objective analysis". In doing so, the Council prevented or delayed a development "which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations". Furthermore, the applicant argues that the Council's submissions fail to substantiate this particular reason for refusal.
5. The applicant also considers that the Council should not have refused the reserved matters application on surface and foul water management grounds,

given that the principle of accommodating satisfactory drainage had already been addressed as part of the outline application. The Council subsequently accepted that this reason for refusal could not be sustained and should accordingly be withdrawn, despite the applicant having submitted no additional information.

6. The applicant thus argues that the Council acted unreasonably in refusing to approve the reserved matters application for reasons that should already have been considered at outline stage, on grounds capable of being dealt with by condition, and despite the absence of objection from the Lead Local Flood Authority.

The response by Lewes District Council

7. The rebuttal to the costs application was made in writing. In summary, the Council argues that members of the Planning Committee are entitled to depart from the recommendation of Officers. In this instance, this was done after the recommendation was discussed at length by the Planning Committee. The Council also explains that whilst the applicant entered into pre-application discussions with the Council, this is not a guarantee of planning permission, as the Planning Committee was the ultimate decision-maker and thus considered the application on its merits. The Council is notably referring to a Post Committee Delegated Report, suggesting that the Reserved Matters application could be refused "if 'frontage development' is unacceptably intrusive".
8. Rather than making generalised or inaccurate assertions about the proposal, unsupported by any objective analysis, the Council explains that members of the Planning Committee took into account of the supporting text to the relevant policy, which was not addressed within the Case Officer's Report. Members simply exercised their planning judgment and, having regard to the development plan and other material considerations, found that this was not a proposal which could be permitted.
9. With regard to the second reason for refusal, the Council explains that information on flooding and drainage matters was only provided to members shortly before their Committee meeting, and they had therefore little time to consider this additional evidence or scrutinise it. The Council argues that the decision to refuse the application on these grounds was an entirely reasonable approach, particularly as this reason for refusal was subsequently withdrawn prior to the Case Management Conference, after the Council had taken the time to review the case and ensure that only relevant issues were before the Inspector. Moreover, the Council notes that the applicant's proof of evidence on flooding and drainage matters was produced at a time when the matter was no longer in dispute between the main parties. Accordingly, this expense cannot be attributed to the Council's conduct in the appeal process.

Reasons

10. The national Planning Practice Guidance (PPG) advises that irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The PPG adds that one of the aims of the costs regime is to encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny

on the planning merits of the case, not to add to development costs through avoidable delay.

11. Members of the Planning Committee are not bound to accept the Case Officer's recommendation and are entitled to come to a different decision, provided that they do so whilst relying on substantive planning grounds. In respect of the first Reason for Refusal, the Council's submissions rely to a large extent on the supporting text to Policy BA02 of the Lewes District Local Plan Part 2 – Site Allocations and Development Management Policies (February 2020), which notably states that "as part of any development, new properties should be set back from the High Street".
12. However, and as I have explained in my Decision Letter, the Courts have previously made it clear that whilst supporting text is "relevant to the interpretation of a policy to which it relates, (...) it does not have the force of policy and cannot trump the policy". Attempts to substantiate the first reason for refusal were not sufficient or convincing. This is a site that was allocated for residential development as part of the plan-making process and where outline planning permission has already been granted for the construction of up to 26 dwellings.
13. The Council must have therefore satisfied itself that this quantum of development could be satisfactorily accommodated on the site, otherwise it is difficult to understand why outline permission was granted. In doing so, it would have also been accepted that as a result of the loss of this undeveloped field and the construction of a residential scheme, the site's contribution to the rural edge of the village and to the setting of the Barcombe Cross Conservation Area would be eroded.
14. Whilst the outline scheme showed properties being set further back from the High Street, the applicant was not bound by this layout, as this formed part of the matters which had been reserved for subsequent determination. The applicant produced compelling evidence setting out the design rationale of the appeal scheme and how it has evolved, following negotiations with the Council's Officers.
15. The fact that the applicant has subsequently submitted a revised Reserved Matters application with properties being set back from the High Street is no indication that the Council's decision was justified or reasonable. It only serves to illustrate the applicant's commitment to the development of this allocated site.
16. With regard to the second reason for refusal, I have been presented with no convincing evidence explaining why members of the Planning Committee had not had sufficient time to consider additional information on flooding and drainage matters that had been submitted in support of the application. Even if that was the case, it remains unclear why, having regard to the presented evidence, the Council decided to refuse the Reserved Matters application rather than pursuing other options.
17. Whilst this reason for refusal was withdrawn prior to the Case Management Conference in April 2023, this was not done following the submission of new evidence by the applicant, in order to overcome the Council's concerns. The fact that the Council accepted the matter could be addressed through the

imposition of conditions clearly indicates in my view that the application should not have been refused on these grounds in the first place.

18. For the reasons detailed above, I consider that the Council's decision has resulted in preventing or delaying a development which should have clearly been permitted, having regard to its accordance with the development plan, national policy and other material considerations. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified in this instance.

Costs Order

19. 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 Lewes District Council shall pay to Rydon Homes Limited, 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.
20. The applicant is now invited to submit to Lewes 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.

S Edwards

INSPECTOR