



Costs Decision

Site visit made on 10 October 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

**Costs application in relation to Appeal Ref: APP/R0335/W/23/3321229
Westwood House, Swinley Road, Ascot SL5 8BA
Easting (x) 489926 Northing (y) 168826**

- 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 Nicholas King Homes for a full award of costs against Bracknell Forest Borough Council.
 - The appeal was against a refusal to grant planning permission for development described as 'residential development comprising the demolition of two existing dwellings and the erection of 20 new dwellings with associated parking, landscaping and access works'.
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Decision

1. The application for an award of costs is refused.

Reasons

2. 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 PPG provides that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing planning applications, or by unreasonably defending appeals. Examples of this include where development is prevented or delayed where it should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material considerations; where vague, generalised or inaccurate assertions are made about a proposal's impact which are unsupported by any objective analysis and where similar cases are not determined in a consistent manner.
4. There is agreement between the parties that the site constitutes previously developed land. The neighbouring site known as Brompton Gardens was previously granted planning permission for residential development also at a time when the Council could not demonstrate a five-year supply of deliverable housing land. Even so, it does not automatically follow that planning permission should be granted on the appeal site.
5. The Council was required to consider the proposal on the basis of the current situation, having regard to existing development in the area, the design of the proposal and the site-specific location of the site with boundaries to both London Road and Swinley Road. Furthermore, the Council would have been mindful of the previous appeal decision on the site. Therefore, the

material considerations were not identical to the neighbouring site. While I have reached a different conclusion to the Council on the effect of the proposal on the character and appearance of the area, the Council was entitled to reach its own conclusions on what is a subjective matter.

6. Whilst informal advice was during the consideration of the application and it was confirmed that design changes made were an improvement to the proposed scheme, ultimately the processes of the Council required final sign off taking all material considerations into account and the Council set out its reasoning within its delegated report. The report also acknowledged that the Council was unable to demonstrate a 5-year housing land supply and a tilted balance was applied in line with Paragraph 11d of the National Planning Policy Framework (the Framework). In these particular respects, the Council did not act unreasonably.
7. However, while the Framework allows Local Planning Authorities to give weight to relevant policies in emerging plans, the Council did not rely on any specific emerging policies in its decision. Rather it suggested that the emerging Local Plan (eLP) demonstrated it was moving towards being able to demonstrate a 5-year housing land supply. As it stands, the evidence before me suggests that the main modifications have not been completed or consulted upon and the eLP has therefore progressed no further towards adoption since the Council's decision. I therefore find that the Council's reliance on the eLP addressing the housing land supply shortage was premature.
8. The appellant considers some of the Council's arguments to be contradictory. Whether or not that be the case, the Council reached an overall finding that there would be significant and demonstrable harms arising from the spread of the development, the impact on the character of the site and erosion of the areas function as a gap between the nearest settlements. It also found that the contribution of 18 dwellings over the existing situation, including 5 affordable dwellings, carried significant weight. With these factors in mind, it is not clear that the Council's balancing exercise would have concluded in favour of the development and that an appeal would have been avoided had the eLP not formed part of its considerations on housing land supply.
9. For the reasons set out, unreasonable behaviour which has caused unnecessary expense has not clearly been demonstrated in this instance. The application for costs is therefore refused.

M Russell

INSPECTOR