



Costs Decision

Hearing held on 17 October 2023

Site visit made on 17 October 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

Costs application in relation to Appeal Ref: APP/C3810/W/23/3323858

Land to the rear of Meadow Way, Westergate

Grid Ref Easting: 493620, Grid Ref Northing: 104816

- 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 Gleeson Land for a full award of costs against Arun District Council.
 - The appeal was against the refusal of planning permission for proposed development described in the application form as: Outline planning application with all matters reserved, other than principal means of access and demolition of 24 Meadow Way, for the construction of up to 89 residential dwellings, with access taken from Meadow Way, together with the provision of open space, landscaping and associated infrastructure.
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Decision

1. A partial 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 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 applicant submitted their costs application against the Council orally at the Hearing and provided a written copy at the same time. After a brief adjournment, the Council provided an oral response to the application and the applicant made final comments on that response at the Hearing. The application is for a full award of costs, on substantive grounds.

The Applicant's Claims

4. The applicant refers to the Council's handling of the planning application, which was submitted on 8 December 2022. On 21 February 2023, the Council's Planning Officer advised the applicant that it was expected that the planning application would be put to the Council's Planning Committee in April 2023 with a recommendation for approval. The Council's Planning Officer emailed the applicant on 17 March 2023 to advise that having considered the application in depth, the application would not be put to the Planning Committee, and instead it would be recommended for refusal on account of noise and disturbance which would be caused to neighbouring residents, and insufficient information relating to bats. This email explained that the Council had no objection to the proposal in principle. The applicant pointed out that noise and disturbance had

not been raised as a concern in pre-application planning advice provided by the Council.

5. The planning application was refused for 5 reasons. The applicant claims the first reason for refusal (RfR 1), relating to the living conditions of neighbouring residents, was vague and not supported by objective technical evidence, in the absence of an objection from the Council's environmental health team.
6. It is claimed the second reason for refusal (RfR 2), relating to the absence of a bat survey concerning 24 Meadow Way, should have been avoided by the Council waiting for the applicant's scheduled bat survey to be completed at the earliest possible point in the year.
7. It is claimed that the third reason for refusal (RfR 3), relating to the loss of Grade 2 agricultural land, should not have been relied upon considering the need for housing in the district and the findings in a previous appeal decision.
8. It is claimed the fourth and fifth reasons for refusal (RfR 4 and 5), relating to the absence of a legal agreement to address affordable housing and education transport contribution matters were unnecessary, as the relevant legal agreement was always going to be forthcoming.

The Council's Response

9. The Council explained that RfR 1 refers to the change in living conditions which would be experienced by neighbouring residents, with particular regard to noise and disturbance, and that those changes would not be shown in a noise report. As such, it is claimed the Noise Impact Assessment (NIA), which was submitted as part of the applicant's Hearing Statement, would not be helpful to its environmental health team.
10. With regard to RfR 2, the Council claims the relevant bat survey should have formed part of the application and could not have been required by condition. The Council was not under an obligation to substantially delay its decision on the application. It is claimed that waiting for the relevant survey to be submitted would have required further time for the Council to consider the report, consult relevant parties, and write the officer report, all of which would have delayed the determination of the application by at least 4 additional weeks beyond its target determination date.
11. The Council has explained that the proposal would be contrary to Policy SO DM1 of the Arun Local Plan 2011-2031 (2018) (ALP) and it considered the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, with regard to paragraph 11 of the National Planning Policy Framework (the Framework). This, it is claimed, justified RfR 3. A legal agreement had not been completed by the time of the Hearing, and in its absence the Council reiterated its reasoning behind RfR 4 and 5.

RfR 1

12. The proposal would bring about a significant change to activity around properties on Meadow Way and Lamorna Gardens, amongst others. There is a great deal of interest from local residents in the proposal, and many of them objected on noise and disturbance grounds.

13. Although the Council's environmental health team did not object to the proposal, it was not unreasonable for the Council to conclude that the proposed vehicular access would result in significant noise and disturbance and a level of activity beyond that which would reasonably be expected in the rear gardens of 23 Meadow Way and 1 Lamorna Gardens. Read alongside the Council's officer report, RfR 1 was not vague to the extent that the applicant was able to understand the Council's concerns.
14. The Council should not have been prevented from reaching this conclusion, even if informal pre-application advice had not raised any noise or disturbance concerns with the proposal. The quality and value of the pre-application advice would be a concern, but that would not have constituted unreasonable behaviour leading to unnecessary or wasted expense in the appeal process.
15. The NIA was submitted as part of the appellant's Hearing Statement and comprises an objective assessment of the potential effect of the proposal on the living conditions of neighbouring residents with regard to noise and disturbance. The Council did not dispute the findings of the NIA; however, it maintained that the changes to noise and disturbance which would be experienced in the rear gardens of 23 Meadow Way and 1 Lamorna Gardens would be significant and beyond what residents of those properties would reasonably expect. This view was not supported by detailed evidence at the Hearing.
16. Having confirmed that it did not dispute the findings of the NIA, it was unreasonable for the Council to pursue RfR 1 at the Hearing without detailed evidence to justify its position. This resulted in the applicant incurring unnecessary expense in the appeal process when preparing for the Hearing after the submission of the Hearing Statement in respect of RfR 1, and the short period of time spent during the Hearing discussing RfR 1.

RfR 2

17. The planning application was accompanied by various documents relating to ecological matters, including the effect of the proposal on bats. The Ecological Impact Assessment explains: 'A Preliminary Ecological Appraisal (PEA) of the arable field was initially undertaken in 2021, with an update PEA in November 2022 to include the proposed access area located within the current residential property at 24 Meadow Way. Protected species survey work for bats, dormice, reptiles and great crested newts were undertaken on site throughout the course of 2022'.
18. It is not clear why a bat survey was not undertaken at 24 Meadow Way at an appropriate time of the year, following the PEA but before the submission of the planning application. It would have been helpful had the Council agreed an extended period of time with the applicant for the planning application to be determined following the submission of the absent bat survey, but I note the further delays this would have caused to the Council's decision making process. It was not unreasonable for the Council to proceed to issue a decision when it did on the information submitted as part of the application, as submission of the bat survey for 24 Meadow Way would not have altered the Council's other grounds for refusal.

19. The Council conceded RfR 2 once it had received and considered the bat survey for 24 Meadow Way, some time prior to the Hearing. This avoided the applicant incurring unnecessary or wasted expense in the appeal process in this regard.

RfR 3

20. I have been referred to appeal decisions¹ which reach different conclusions as to whether housing should be permitted on BMVAL in the district. Although one of these decisions is much more recent than the other, they show it is not a simple issue with regard to housing land supply matters, and that every case must be judged on its merits. I have concluded that planning permission should be granted in this case, but that does not mean it was unreasonable for the Council to reach an alternative view, especially taking into account the various objections to the loss of agricultural land received from neighbouring residents and the detailed points made by Aldingbourne Parish Council.
21. I shall comment on the balancing exercise undertaken by the Council below, but I do not find that the Council acted unreasonably in referring to RfR 3 in its decision notice, or that this led to the applicant incurring unnecessary or wasted expense in the appeal process.

RfR 4 and 5

22. The Council was engaged with the applicant in advance of the Hearing to complete a legal agreement which would address RfR 4 and 5. The submissions made on these points by the main parties were limited, demonstrating that they both anticipated a completed legal agreement would be provided before my Appeal Decision was to be issued.
23. It was agreed between the main parties that a legal agreement was necessary to make the proposed development acceptable. As with the absent bat survey referred to by RfR 2, even if a completed legal agreement had been provided before the Council issued its decision, it appears likely that the application would have still been refused due to the views reached by the Council on other matters. It was not unreasonable for the Council to include RfR 4 and 5 in its decision notice and this did not lead to the applicant incurring unnecessary or wasted expense in the appeal process.

Other Matters

24. The balancing exercise undertaken in the Summary section of the Council's officer report is basic and lacks detail, but it shows paragraph 11 of the Framework was taken into consideration. It explains that the Council considered significant harm would be caused to the living conditions of neighbouring residents and that the loss of Grade 2 agricultural land would not be outweighed by the proposal. It did not specifically identify how much weight the Council placed on the adverse impacts or the benefits associated with the proposal.
25. The Council's Hearing Statement explains that it assigned 'substantial/significant' weight to the benefits associated with the provision of up to 89 dwellings. The Hearing Statement also clarifies it was the Council's view that the adverse impacts of the proposal outlined in RfR 1 and 3 should

¹ Appeal refs: APP/C3810/W/19/3234972 and APP/C3810/W/22/3309365

attract significant weight individually, which significantly and demonstrably outweighed the benefits of the proposal when considered cumulatively.

26. Had the Council carried out a more detailed balancing exercise in its officer report, it may have reached a different decision. However, the significant weight the Council assigned to the adverse impacts outlined in RfR 1 and 3 suggest it is likely that the Council would have still refused planning permission, even if RfR 2, 4 and 5 had been addressed.
27. The balancing exercise undertaken by the Council was poorly detailed and executed. However, I am satisfied that it was sufficient, in basic terms, to demonstrate that the Council had considered all relevant matters before reaching the conclusion that planning permission should be refused, with regard to paragraph 11 of the Framework.
28. The Council's behaviour in refusing the planning application was not unreasonable, even though its Planning Officer had previously informally advised the applicant that the planning application would be recommended for approval. That advice was corrected less than a month later, and over a month before the application was eventually refused.

Conclusion

29. I have found that it was not unreasonable for the Council to conclude that the proposal would cause unacceptable harm to the living conditions of neighbouring residents on the basis of the information submitted with the planning application. Taking the Council's decision making process and all reasons for refusal into account, it was not unreasonable for the Council to refuse the planning application for the 5 reasons stated in its decision notice, even on the basis of a poorly worded balancing exercise.
30. It was, however, unreasonable for the Council to pursue RfR 1 following the submission of the NIA as part of the applicant's Hearing Statement. That unreasonable behaviour led to the applicant incurring some unnecessary expense in the appeal process when preparing for the Hearing in respect of RfR 1 after the submission of statements, and when spending time discussing RfR 1 at the Hearing.
31. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred in respect of the Council failing to concede RfR 1 following the submission of the NIA and a partial award of costs is therefore warranted.

Costs Order

32. 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 Arun District Council shall pay to Gleeson Land, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in: (i) preparing for the Hearing after the submission of Gleeson Land's Hearing Statement in respect of the first reason for refusal stated in the Council's decision notice only; and (ii) attending and taking part in the Hearing in respect of the first reason for refusal stated in the Council's decision notice only; such costs to be assessed in the Senior Courts Costs Office if not agreed.

33. The applicant is now invited to submit to Arun 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.

L Douglas

INSPECTOR