The Planning Inspectorate

Costs Decision

Hearing Held on 17 and 24 January 2024

Site visit made on 17 (unaccompanied) and 24 (accompanied) January 2024

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Costs application in relation to Appeal Ref: APP/R0335/W/23/3330085
Chussex, Crowthorne Road, Bracknell RG12 7EH

- 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 M T and P T Rajani for a full award of costs against Bracknell Forest Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the proposed erection of 2 storey building providing 5 x 1 bed flats and 1 x 2 bed flat with associated parking, refuse and cycle store, following removal of existing bungalow and ancillary building.

Decision

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

The submissions for Mr M T and P T Rajani

2. The appellants are of the view the Council had no technical grounds for refusing the proposal for the first reason in its decision notice. It also included grounds based upon non-technical matters which the Council's officer considered were not sustainable reasons for refusal and the matter of overdevelopment is not a policy test. The first reason was contrary to detailed specialist evidence submitted during the application and appeal process, which the Council has ignored. It has also failed to properly balance its consideration of the application in the context of its benefits. The second reason for refusal would be addressed by means of a planning obligation as a matter of course.

The response by Bracknell Forest Council

3. The Council is of the view it has not behaved unreasonably, and even if this could be considered the case, the appellants have not been put to additional unnecessary or wasted expense. The development would impinge upon a Root Protection Area (RPA) and so there were technical grounds to refuse the application. A decision-making officer is entitled to reach a view contrary to the planning officer as part of the decision-making process. The Council considered, as a matter of judgement, the benefits of the scheme were outweighed by the harmful effects. Exercising planning judgement is not unreasonable behaviour.

Reasons

4. Paragraphs 16-028-20140306 and 16-030-20140306 of the Planning Practice Guidance (the PPG) advise that, irrespective of the outcome of an appeal, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. Paragraph 16-049-20140306 of the PPG states authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. This includes preventing or delaying development which should clearly be permitted, failure to substantiate reasons for refusal, or making vague, generalised or inaccurate assertions about the impact of a proposal unsupported by objective analysis.

5. Based upon what I heard and my consideration of the evidence, when applying what appears to the Council's corrected measurement of the T4 RPA, a retaining wall would impinge upon an RPA, so the Council was reasonable in raising a concern in this regard. The Council has clearly considered and explained its reasoning for disagreeing with much of the technical evidence, including in respect of matters such as tree growth, and I find some of the appellants' views upon future tree size to be very modest. The Council cannot be said to have ignored the technical evidence, and I do not find the Council has behaved unreasonably in this regard.

6. The consideration of character and appearance can encompass many aspects of scheme design. Simply because overdevelopment is not specifically referenced in a planning policy does not preclude it from being a relevant consideration in reaching a view upon the effect of a development. Coming to such a view is a matter of planning judgement. I find the Council's reasoning for its conclusion adequate. Though the relationship of the trees and building might not appear strident, for the reasons set out in my decision letter the future relationship is likely to result in significant harm and could be regarded as symptomatic of overdevelopment of the plot. Therefore, the Council has not exhibited unreasonable behaviour in reaching the view it did for the reasoning it set out.

7. The planning officer appears to have offered reasoned impartial advice insofar as they are able to, in the capacity as an officer of the Council. While the Council's decision-making officer may have disagreed with it, they are entitled to do so and come to an alternative view, so long as it is a well-reasoned judgement on the planning merits of a development. The views appear well-reasoned and well founded, and demonstrative of harm from the scheme.

8. From my reading the Council has not expressly set out its planning balance exercise in its delegated report, which is unreasonable behaviour. However, based on its substantive case and reasoning, it does not appear this would have altered the decision upon the application. This is a matter that would need to be addressed in determining the appeal, so the appellants have not incurred unnecessary or wasted expense in the appeal process.

9. As a matter of planning judgement, the Council found the proposal would not result in harm to the setting of White Cottage. However, despite reference to it in representations to the application, and its statutory duties under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the delegated report does not expressly assess the effect of the proposal upon the setting of the Church of St Michael and St Mary Magdalene as a designated

heritage asset. This should have been considered and views reached on this material consideration during the determination of the application.

10. I specifically raised the issue of the effect upon the setting and significance of designated heritage assets in advance of and at the hearing, and have found harm. As it is a matter that needed to be fully addressed that took place during the appeal process, addressing this particular issue did not result in the appellants incurring unnecessary or wasted expense.

Conclusion

11. For the reasons set out above, unreasonable behaviour that has resulted in the appellants incurring unnecessary or wasted expense in the appeal process, has not been demonstrated.

Dan Szymanski

INSPECTOR