



Costs Decision

Hearing held on 17 April 2024

Site visit made on 17 April 2024

by N Praise BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Costs application in relation to Appeal Ref: APP/R3650/W/23/3335283 Land South of Ridgley Road, Chiddingfold

- 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 Elivia Homes for an award of costs against Waverley Borough Council.
 - The appeal was against the refusal of planning permission for development described as 12 dwellings with associated access, and hard/soft landscaping.
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Decision

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

The submissions for Elivia Homes

2. The applicant considers, in summary, that the Council behaved unreasonably as despite the applicant working with the Council during the lifecycle of the application for 14 months with regular engagement and meetings, the Council refused the application without warning. The decision also contained reasons for refusal that had not been previously discussed and the applicant was not given opportunity to respond.
3. The applicant also considers the proposed development complies with policy and the Council failed to apply the presumption in favour of development at a time when housing is in need. The applicant states that the Council failed to provide sufficient evidence to substantiate each reason for refusal on appeal, with vague and imprecise impacts of harm.
4. The applicant also asserts that the council failed to co-operate as there was a delay of two weeks after the decision was made before the publishing of the Officer Report and it took the Council 6 weeks to respond to the applicant in respect to the drafting of a legal agreement.

The response by Waverley Borough Council

5. The Council states the 14-month period was a result of addressing the responses to consultations and regular meetings took place over this period with the applicant to resolve issues where possible. The Council stated that agreement could not be achieved in every aspect, and it proceeded to decision.
6. The Council also said that their computer system should have published the report immediately after the decision was entered. As soon as they were notified of the issue, the system was checked, and the decision was published without any further delay. The Council accepts that it took 6 weeks to respond to legal queries stating that this was because of workload pressures.

Reasons

7. Parties in planning appeals normally meet their own expenses. However, 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.
8. While there are no formal minutes or agreed actions before me in respect of the various meetings, it appears the Council did work with the applicant during the 14-month period and some matters were agreed. However, there comes a point where total agreement may not be possible and the Council eventually makes a formal decision in the interests of expediency.
9. While it is good practice for the Council to work pro-actively with applicants, I have also not been made aware of any formal requirement for a Council to warn an applicant of the detail and likely outcome of a planning application before a decision is formally issued.
10. The reasons for refusal are set out in the decision notice of the planning application and are complete, precise, specific and relevant to the planning application. The reasons are also linked to the policies of the development plan and are expanded upon in the Council's Delegated Report and Statement of Case.
11. The impact of the development proposal on the character and appearance of the area was a matter of planning judgement. Additionally, while the Council felt the applicant had not explored the footbridge in sufficient detail, the degree of detail required is also a matter of judgment. The reasons for refusal have been supported by a satisfactory level of evidence and planning arguments and I do not consider them to be vague or imprecise.
12. While I ultimately disagreed with the Council, I consider that the Council had reasonable concerns about the impact of the proposed development which supported its decision. The Council also acknowledged its housing supply position and found the adverse impacts of allowing the development would significantly and demonstrably outweigh the benefits. Again, this was a planning judgement for the Council to make and was not unreasonable in the way its approached this matter.
13. While there was a 2-week delay in publishing the Council's Delegated Report, this appears to be a technical error and the Council immediately corrected it when the matter was brought to their attention.
14. Notwithstanding the 2-week delay, the appeal was still submitted in good time and the applicant has not clearly identified how unnecessary or wasted costs occurred during the 2 weeks. The Council took immediate steps to publish the report as soon as the applicant brought the matter to the Council's attention and the appeal was still submitted in time.
15. I have also considered the 6-week period in respect to the drafting of a legal agreement. However, it has not been clearly shown that had this period been reduced it would have significantly changed the content of the appeal coming before me. Particularly as the appeal had been lodged for four months before the hearing date. From the evidence before me, the applicant still had to address the reasons for refusal which was articulated in their evidence.

Conclusion

16. As a result, having considered the above, I conclude that unreasonable behaviour by the Council, as described in the Guidance, has not been clearly demonstrated. Therefore, unnecessary or wasted expense in the appeal process has not been incurred by the applicant. Consequently, the application for an award of costs is refused.

N Praine

INSPECTOR