



Costs Decision

Hearing held on 13 and 14 August 2024

Site visit made on 14 August 2024

by S M Holden BSc (Hons) MSc CEng MICE CTPP FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Costs application in relation to Appeal Ref: APP/U1430/W/24/3339879 Land off Turkey Road, Turkey Road, Bexhill-on-Sea

- 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 Bellway Homes Ltd (South London) for a full award of costs against Rother District Council.
 - The appeal was against the refusal of planning permission for development of 89 residential dwellings (including affordable housing), ancillary structures, new access road from Turkey Road, internal roads, car parking, landscaping and public open space, drainage features, and other associated and necessary works.
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Decision

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

Reasons

2. 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.
3. The application was made on substantive grounds and in short was an allegation that the Members failed to follow the advice of their officers, ignored a raft of technical supporting evidence, and provided no alternative evidence or effective spokesperson to justify their decision. The consequence was that the appellant incurred considerable additional expense and the delivery of much needed housing has been delayed.
4. The Council defended its stance on the basis that Members' do not have to go along with officers' recommendations. The Council's environmental health officer (EHO) and the Minerals and Waste Planning Authority (MWPA) both raised concerns about the lack of detailed information pertaining to the acoustic fence which was proposed as mitigation. They also considered there could be harm from dust and light pollution. Members believed they had insufficient information to permit a development which could jeopardise the well-being of future residents. They were also concerned that the proposal could restrict the future growth of an important local business. Members were not satisfied that their concerns could be addressed by the imposition of conditions, so refused planning permission contrary to the advice of their officers.
5. A decision to permit a housing development on the appeal site was always going to be a matter of planning judgement. Firstly, it lies in the countryside beyond the settlement boundary of Bexhill and is not allocated for housing in the Local Plan. Secondly, it is immediately adjacent to the Ashdown Brickworks

and Quarry, a Minerals Safeguarding Area (MSA). The existing operations of quarrying, manufacturing and distributing bricks already causes some noise, dust and other adverse effects on residents living in the surrounding area.

6. However, the Council can only demonstrate a five-year supply of housing land of between 2.93-3.09 years. Officers were therefore acutely aware of the need to identify sites for new homes and that in assessing the scheme it would be necessary to strike an appropriate balance between the competing interests of the brickworks and future residents. The appellant, as the agent of change, knew that they would have to address other issues including accessibility, flood risk, effects on landscape and ecology, as well as the potential impact on the living conditions of future occupants of locating homes close to the brickworks.
7. The fact that the scheme was amended during the Council's consideration of the proposal is testament to the efforts the appellant and officers gave to addressing the many issues raised. Initial objections from statutory consultees including National Highways, East Sussex County Council as local highway authority and Local Lead Flood Authority, were ultimately overcome. Improvements to the layout and increased provision of open space were also secured.
8. The judgement as to whether any adverse effects, in respect of noise, dust and light pollution from the existing operation at Ashdown Brickworks on future residents would be unacceptable, was informed by the view of the Council's EHO. He had agreed the assumptions and standards on which the appellant based the noise assessment. The results of the assessment were predicated on the delivery of a 5m tall acoustic fence to mitigate noise for which no details were supplied. It was nothing more than a line on the plan. It was therefore understandable that Members wanted more details, even if the officers were satisfied that the matter could be addressed by conditions. The initial dust and odour assessments, the scope and methodology for which had also been agreed with the Council's EHO, satisfied the Council's officers that there would be no unacceptable harm for future residents arising from these pollutants. However, Members were not convinced.
9. The Minerals and Waste Planning Authority (MWPA) also had an important role as a statutory consultee. Its primary responsibility, for which there is strong policy support, is to protect the MSA from non-mineral development. It stated that it was for the appellant to demonstrate that the proposal would 'not give rise to complaints about the active brickworks site'. The MWPA did not comment on the methodology of the initial assessments, restricting its concerns to the paucity of information about the acoustic barrier and the lack of a visual assessment of the proposal. I found this response surprising given its approach at the pre-application stage which suggested objection due to the incompatibility of a housing development with the adjacent brickworks. However, rather than formally objecting and requiring additional information to address these matters it effectively 'sat on the fence'. In my view, this placed the Council's officers in a difficult position.
10. In neither of its formal responses did the MWPA address the possible effects of introducing homes so close to the MSA on the ability to exploit the clay reserves under the existing brickworks buildings in the longer term. The Council's EHO raised additional concerns about this future scenario due to the increased noise disturbance that occupants of the western side of the site would experience if these activities took place. However, as this would require

a future planning application, and the MWPA had not raised potential sterilisation of the resource as a reason to object to the current proposal, the Council's officers had little choice other than to concede that the scheme was acceptable. However, I consider the MWPA's formal responses to the application fell well short of what should be expected of a statutory consultee with responsibility for protecting limited mineral resources throughout its plan area.

11. In view of all the above, it is not surprising that Members took a different view, as they are entitled to do, notwithstanding the professional advice of their officers. They represent local people who live close to the brickworks and understand the problems of noise, dust and light pollution that nearby residents have to contend with. Whilst that might not be technical evidence that is equivalent to the assessments presented by Ardent, the lived experiences of neighbours should not be swept aside as of no relevance.
12. There were also very real concerns raised by Ibstock who were far from convinced that the proposed acoustic fence would provide adequate mitigation. They were genuinely concerned about the prospect of having to deal with a significant number of additional complaints about their operations due to the proximity of the proposed dwellings to their site. They had asked for consideration to be given to a bund to provide greater separation and protection. However, there was no evidence to suggest that such a proposition had ever been considered by the appellant or the Council's officers. I therefore do not consider that Members' behaviour was either irrational or unreasonable in refusing the scheme. The fact that the vote was split demonstrates that it was not a decision that they took lightly.
13. However, once the Council had refused the scheme and the appeal had been lodged, Members should have realised that it would be necessary to defend their decision by providing detailed and cogent planning, evidence-based reasons for their decision. This simply did not happen. The lack of substantive evidence in its appeal statement, and the absence of any suitably qualified person to justify the decision of Members, either by their own EHO or a consultant acting on their behalf, significantly restricted the manner in which the Council was able to present its case at the Hearing.
14. This was unreasonable and left the appellant's evidence to be challenged by local people and Ibstock through the appeal process. However, as well as the qualitative concerns articulated by residents, Ibstock appointed AECOM to pursue their objection to the proposal. They contended that different assumptions and standards should have been applied to the assessment. This was a serious criticism which suggested that the impact of noise and dust had been under-estimated, and light inadequately considered. These were matters which I sought to test through the Hearing.
15. Although ultimately, I found in the appellant's favour, that was by no means a foregone conclusion. The appeal process was not a waste of time or expense, it provided an open forum where those matters could be discussed by experts who had different perspectives. In respect of noise, the condition securing the acoustic barrier was strengthened and its future maintenance ensured by that condition and through the planning obligation. Enhanced glazing for properties on the western side of the appeal site was also secured by condition. These were significant improvements over and above what had been previously agreed with officers. In respect of dust, I was satisfied that existing controls on

the activities of the MSA would provide adequate protection for future residents. I found concerns about light pollution were not a determinative factor in the assessment of the scheme's acceptability.

16. When the scheme was refused, the appellant could have chosen to undertake further negotiations with the Council and could have offered some, or all of the above improvements. Instead, they exercised their right of appeal. Although the Council provided a short appeal statement, it behaved unreasonably in not more fully substantiating its reason for refusing the scheme at the Hearing, Nevertheless, through the appeal process other interested parties were provided with an opportunity to put forward their concerns in ways that would not have occurred if the officers' recommendation had been accepted. Whilst the appellant has incurred the additional costs of presenting the case at appeal, this has not been wasted. On the contrary, planning permission for an improved scheme offering better protection for future residents has now been granted.
17. I have been asked to consider another appeal in Rother District where Members refused an application for housing contrary to officers' recommendations. In that case costs against the Council were awarded. However, that scheme related to a site that was allocated for housing whereas this was not. That site's suitability in respects other than the reason for the refusal, had already been tested through examination into the Development and Site Allocations Local Plan, whereas this had not. Neither was that site anywhere near a Minerals Safeguarding Area. That application for an award of costs is therefore not directly comparable with the current proposal.
18. For all the above reasons, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

S M Holden

INSPECTOR