
Costs Decision

Site visit made on 16 August 2024

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

an Inspector appointed by the Secretary of State

Decision date: 25th November 2024

Costs application in relation to Appeal Ref: APP/N1730/W/24/3345743 166 Fleet Road, Fleet, Hampshire GU51 4BE

- 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 P. S Rahal and K. K Rahal for a partial award of costs against Hart District Council.
 - The appeal was against the refusal of planning permission for the erection of a four storey building following demolition of existing two storey building, with ground floor commercial unit and undercroft car parking and servicing area and 26 residential apartments at first, second and third floors (14 x 1 bedrooms, 12 x 2 bedrooms).
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that all parties are expected to behave reasonably to support an efficient and timely appeal process. 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 irrespective of the outcome of the appeal.
3. The basis of the Appellants' application for costs relates to four matters. Firstly, that the Council acted unreasonably by refusing to discuss the proposals during the progress of the planning application and selectively responded to emails and telephone calls. The Appellants contend that had further discussion been allowed this would have likely led to further information being provided to help demonstrate the impact on the locality.
4. Secondly, that the Council unreasonably refused to allow the TRICS highways assessment to be carried out and submitted for consideration. Thirdly, that the Council unreasonably refused to allow the additional SuDs information to be submitted. In this regard, the Council failed to consider that the issues raised by Hampshire County Council could have been conditioned as they did not impact on the viability of the SuDs scheme. The approach adopted resulted in more work being necessary during preparation of the appeal for the relevant reasons for the refusal of planning permission.
5. Finally, not assessing the Daylight and Sunlight Assessment Report correctly. In particular, failing to note that the majority of the windows in Branksome Chambers that were slightly under the BRE guidance had more than one window serving the same room, which means there is suitable light levels due

- to the dual aspect. The Appellants consider that there were multiple mistakes and assumptions made when assessing this report for Branksome Chambers which could have been mitigated had discussions been allowed during the consideration of the application.
6. In considering the first ground, it is clear that there was a considerable amount of pre-application discussion which culminated in a final formal response from the Council dated 22 August 2022 (Ref: 22/00772/PREAPP). This concluded that the development proposed raises serious concerns which relate to the scale/quantum of development, architectural design, appearance and character of the locality, dominance to the public domain along Branksomewood Road, detrimental amenity impacts to residential occupiers at no.164 Fleet Road and those at Branksome Chambers, quality/quantity of outdoor communal space, potential for vehicle conflicts between residential/commercial movements in the car parking proposed and cycle parking shortage.
 7. The above demonstrates that some of the issues that formed the basis of the Council's reasons for the refusal of planning permission were identified as concerns at the pre-submission stage. Therefore, in my view, the Appellants had sufficient information regarding the areas of concern and what needed to be addressed in the submission.
 8. Whilst it is alleged that the Council engaged in limited discussion during the consideration of the application, I have no evidence to confirm or otherwise the nature of this nor any conclusive evidence to indicate the date or nature of emails/telephone calls that were not responded to. In any event, the actions of the Council with regard to communication with an applicant during the consideration of a planning application do not constitute matters that are relevant to my consideration of the planning issues in the appeal nor my consideration of the matters relevant to a partial award of costs.
 9. There are mechanisms through the Council's Complaints Procedure and Local Government Ombudsman in relation to concerns regarding communication with the Council during the consideration of a planning application which are not relevant to the issues for consideration in this appeal. In my view, the Appellants were adequately aware of the matters that would need to be addressed in a planning application by virtue of the formal response to the pre-application consultation. In the absence of any conclusive evidence to the contrary, the extent to which some of these issues could have been addressed during the consideration of the planning application is a matter of speculation.
 10. Taking the above factors into account, it cannot be reasonably argued that an alleged lack of communication response during the consideration of the planning application would have enabled the Council's concerns to be fully addressed and have prevented the submission of the appeal. The Council identified its concerns regarding some aspects of the proposal at an early stage. Thereafter, the Council properly considered the proposed development against the relevant policies contained within the development plan.
 11. I do not consider that the Council acted unreasonably in the consideration of the appeal scheme and coming to a reasoned conclusion that planning permission should be refused. Therefore, further communication would not necessarily have conclusively led to the appeal being avoided.

12. Turning to the second issue regarding the TRICS assessment, the formal pre-application response clearly advised the Appellants to engage with Hampshire County Council, in its capacity as highway authority. This was necessary to find out and resolve any issues that the highway authority may have with the proposal and to understand the specific information that a Transport Statement supporting any future application would need to contain.
13. The formal response from the highway authority to the planning application consultation, dated 6 October 2023, clearly identified that the submitted Transport and Parking Statement accompanying the planning application was unconvincing in that it advised that there would be a reduction in multi-modal trips without a full explanation how this would be achieved in reality. Furthermore, in the absence of industry standard information (TRICS), the highway authority recommended a holding objection.
14. The concerns of the highway authority, as formally set out in the consultation response, are a matter of public record. The response to the consultation was provided some weeks before the Council formally determined the planning application. Notwithstanding the advice in the Council's formal pre-application response, the information available in the public domain was adequate to alert the Appellants to the fact that a TRICS Assessment was necessary and should be provided well before the application was determined.
15. Furthermore, the Appellants were advised to discuss the planning application proposals with the highway authority prior to submission. I do not have any evidence to demonstrate whether any such discussions occurred. However, there is some merit in the Council's view that had the pre-application advice been followed, then the Appellants would have been aware of what information would need to be submitted to support the contention that there would be a reduction in multi-modal trips.
16. I have taken into account the Appellants' concerns that the weblink address for the County Council may link to an out-of-date guidance document and, as such, should be removed from the District Council Website. The Appellants consider that were the guidance document correct and up to date then a TRICS assessment would have been provided. However, I am not convinced that this would have been the case. Given the nature of the highway authority's concerns, in my view, more formal discussions with the relevant officer in the highway authority would have been necessary. In this regard, the planning application consultation response from the highway authority included contact details and the relevant officer's name. It was a matter for the Appellants to consider whether further dialogue with the highway authority would be necessary in the light of the consultation response.
17. Taking the above factors into account, I have no substantive evidence to suggest that the Council refused to allow the TRICS highways assessment to be carried out and submitted for consideration. In my view, the need for a TRICS assessment was identified well before the determination of the planning application. It was therefore a matter for the Appellants to consider how best to address the concerns of the highway authority during the determination of the application, or at an earlier stage had the advised discussions occurred. Consequently, there is no basis to suggest that the Council acted unreasonably in this regard.

18. Turning to the third issue, the formal pre-application advice also sets out the information regarding flooding/drainage issues that would need to be provided, including the submission of a proforma which would have to be completed and submitted with any future planning application. The County Council, in the capacity of Lead Local Flood Authority (LLFA), provided a response on 23 October 2023 to the District Council's consultation on the planning application. This identified, that in order for a substantive response to be provided, further information was required with regard to improved drainage layout plans showing connections to the surface water sewer and more clearly highlighting the links from the 'blue roof' to the underground drainage system and improved maintenance information.
19. I have no evidence to indicate how the Council may have "refused" to allow the additional SuDs information to be submitted. The evidence provided in the appeal demonstrates that in the absence of the further information, at the time the application was determined the LLFA were not in a position to recommend any planning conditions.
20. In my view, there is substantive evidence to demonstrate that further information was required some weeks before the planning application was determined and therefore there was time to address this matter as part of the planning application process. In the absence of any further response from the LLFA prior to the determination of the planning application, it was not unreasonable for the Council to identify that there was inadequate surface water management information as one of the reasons for the refusal of planning permission.
21. Although this matter has now been addressed as part of the evidence provided in the appeal, I do not consider that the Council acted unreasonably and a partial award of costs in this regard would not be warranted.
22. Turning now to the final matter, the submitted Daylight and Sunlight Report was prepared in accordance with the Building Research Establishment (BRE) Report 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice'. Whilst the BRE Guide is a technical document to aid in the consideration of the impact of new development on daylight and sunlight, it is not adopted planning policy or guidance at local or national level.
23. In my view, the Council correctly identified the windows at No. 164A Fleet Road and Branksome Chambers that would be affected by the proposed development and would receive some reduction in light. In this regard, a fundamental difference between the Council and the Appellants is the extent to which this would cause harm to the living conditions of the relevant occupants based on the interpretation of the BRE guide.
24. With regard to the Officer Report in respect of the Vertical Sky Component (VSC) Test for Branksome Chambers, I do not find the officer's comments to be incorrect as these appear to be based on the data provided in Appendix 2 of the submitted Daylight and Sunlight Report and are a matter of fact. The Daylight and Sunlight Report itself clearly identifies that there would be a reduction in VSC to some windows but argues that mitigating circumstances should be taken into account.
25. Whilst I accept that the Officer Report could have been more explicit with regard to explaining the weight to be attached to mitigating circumstances, this

does not alter the fact that some windows would experience a reduction in VSC. I also concluded that the proposed development would cause a degree of loss of daylight to some windows in the apartments at Branksome Chambers.

26. Although I found that the above concerns would not be of an extent that would cause a material harmful effect on the living conditions of the occupants of those apartments, this does not imply that the Council's concerns had no merit. In circumstances where there is clear evidence that there would be a reduction in VSC, in my view, it is a matter for the decision maker to consider the extent to which mitigating circumstances may apply, particularly as the BRE guide does not constitute adopted planning policy. Consequently, I do not consider that the Council acted so unreasonably in its consideration of the Daylight and Sunlight Report to the extent that a partial award of costs would be justified.
27. In conclusion, I recognise that it may have been helpful for dialogue to have occurred during the consideration of the planning application. However, I do not consider that this would necessarily have led to a different decision. It is clear that the Council had fundamental concerns regarding several aspects of the proposed development which were identified during pre-application consultation and some of these concerns were maintained during the consideration of the application and the appeal.
28. The Council is obliged to determine a planning application on the basis of the plans and supporting documents contained therein. In this regard, my attention has been drawn to Appendix D of the Council's Constitution which specifically states that "unsatisfactory applications will, however, be refused without discussion..." and goes on to set out the circumstances where this action would apply, including where pre-application advice has been given, but the applicant has not followed that advice. As explained previously, the fact that the Council may have engaged in limited dialogue during the determination of the application does not necessarily suggest that this constitutes unreasonable behaviour.
29. I do not find that the Council failed to properly evaluate the application or failed to properly consider the merits of the scheme. The reasons for the refusal of planning permission were adequately stated by reference to the appropriate policies contained in the development plan that the proposal was in conflict with.
30. At the time the application was determined, the Council had reasonable concerns about a number of matters which justified its decision. As such, the Council did not act unreasonably in considering the appeal scheme and coming to a reasoned conclusion that planning permission should be refused. Therefore, the appeal could not have been avoided.
31. For these reasons, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified.

Stephen Normington

INSPECTOR