



Costs Decision

Site visit made on 9 January 2025

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Costs application in relation to Appeal Ref: APP/L1765/W/24/3341310

Land to the south-west of Woodlands Park, Poles Lane, Otterbourne, Hampshire SO21 2DZ

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 78, 322 and Schedule 6, and the Local Government Act 1972 (as amended), section 250(5).
- The application is made by Mr G Scott-Welsh (The Incuhive Group Ltd) for a full award of costs against Winchester City Council.
- The appeal was against the refusal of planning permission for construction of flexible incubation space for new businesses within a two storey, BREEAM Excellent, office building.

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.

Procedural grounds

3. The Local Planning Authority's (LPA) formal pre-application advice¹ was positive in tone, but was clearly caveated by the statement 'without prejudice' on its first page, and by the disclaimer given on its last page, which mentioned that, "Please note that pre-application views and opinions are given without prejudice to the consideration by the Council of a formal planning application, which will be subject to wider consultation or publicity, and the advice given does not constitute a guarantee about the decision that will be made on any subsequently submitted planning application".
4. In relation to the planning merits of the proposed development, the pre-application advice mentioned that any diversion from Local Plan policy, including Policy MTRA4 of the Winchester District Local Plan Part 1: Joint Core Strategy (adopted 2013) (JCS), must be fully justified with cogent reasons presented as to why other material considerations override these.
5. Following the issuing of the LPA's pre-application advice, the LPA's Senior Planning Officer mentioned in an e-mail of 24 August 2023 that they were in the process of writing the application up for approval, but that some resistance had been met from other parties in relation to the non-compliance of the proposed development with Policy MTRA4 of the JCS.

¹ LPA's letter of 8 March 2023

6. Hence, whilst the proposed development had merit and it was clear that the LPA's Senior Planning Officer was considering the proposed development favourably, it had been made sufficiently clear that the approval of the planning application was not a foregone conclusion. For these reasons, and taking account of all of the factors mentioned in this costs application, there was not a legitimate expectation before the publication of the Officer's Committee Report (CR) that the planning application would be approved.
7. Aside from the CR, the LPA's correspondence with the applicant before the date of the Planning Committee was short on detail with respect to exactly why the other material considerations did not indicate that a departure from the development plan was appropriate, but I am not aware of any specific requirement for such reasons to be given via correspondence in advance of the Committee, the purpose of which was to discuss the application in detail. The information provided pertaining to the deliberations of the Committee suggest that the applicant was able to mount a robust defence to the various issues raised in the CR, despite there being only a short period between the publication of the CR and the Committee itself.
8. As explained in detail in the associated appeal decision, the proposed development would conflict with a number of development plan policies. I am mindful of the PPG which mentions that where a LPA has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the LPA for unreasonable refusal of an application².
9. Although, as explained in detail in the associated appeal decision, I found that the other considerations indicate that the appeal should be determined otherwise than in accordance with the development plan, the LPA's decision to refuse planning permission for the application (discussed in further detail below) was nevertheless within the range of reasonable options open to them. As such, even if full and detailed reasons had been provided to the applicant via correspondence and meetings prior to the Committee, an appeal would have been required to contest the final decision in any event. It follows that even if I were to find that the LPA's behaviour with respect to the procedural matters cited by the applicant was unreasonable, no unnecessary or wasted expense in the appeal process has been incurred.
10. The LPA's e-mail of 28 November 2023 indicates that the LPA's Senior Planning Officer consulted with Hampshire County Council's Minerals and Waste Principal Policy Officer before the refusal of planning permission was issued, who advised that the applicant would need to assess the impact of the proposed development on the safeguarded site. After the LPA's decision was issued, the Principal Policy Officer advised that the submitted Minerals Statement did not address the site safeguarding issues, other than noting that there will be screening to the proposed development site. It therefore appears that appropriate consultation was carried out by the LPA in relation to this matter.
11. Prior to the submission of the planning appeal, the LPA confirmed³ to the applicant that the 2nd reason for refusal given in the LPA's decision notice, relating to the site being situated within the buffer zone of a safeguarded waste site, would not be

² Paragraph 16-050-20140306

³ LPA's e-mail of 19 February 2024

pursued at appeal. The PPG is clear that costs can only be awarded in relation to unnecessary or wasted expense at the appeal⁴. Thus, even if I were to find that the LPA acted unreasonably with respect to the handling of the minerals and waste issue, as the applicant was not required to address this matter at appeal, no unnecessary or wasted expense in the appeal process has been incurred in relation to this matter.

12. Given that numerous e-mails were exchanged between the LPA and the applicant prior to the refusal of planning permission, the applicant's allegations of the LPA's lack of engagement at application stage is a matter more properly to be taken up directly with the LPA, rather than through this costs application which primarily relates to unnecessary or wasted expense in the appeal process.
13. I therefore find that the LPA did not behave unreasonably with respect to the procedural grounds raised.

Substantive grounds

14. As explained in detail in the associated appeal decision, the proposed development would conflict with a number of development plan policies. The LPA were required to consider other material considerations, and in this regard the LPA's CR referred to the future need for employment land, and to relevant studies, before concluding that the development strategy for employment land as set out in the adopted Local Plan is being delivered.
15. The CR assessed the applicant's report: The Need For and Economic Impact of Flexible Incubation Space at Otterbourne (Version No. 2.0) (Hardisty Jones Associates Ltd) (March 2023). The CR mentioned that while the report sets out an economic case for new small business accommodation in the District, there is no detailed explanation of the demand for office space in the rural part of the Winchester District that demonstrates compliance with the current Local Plan, and that the proposal is therefore considered to be contrary to paragraph 87 of the version of the Framework applicable at that time.
16. The CR mentioned that the relevant evidence that informed the emerging Local Plan do not identify a need for additional employment land, including start-up units, in the site's location, and referred to the stage of preparation of the emerging plan. The LPA therefore provided adequate justification for their stance that emerging Policy E9 should not be afforded any weight.
17. The CR mentioned that the Green Economic Development Strategy does not provide any clear argument for allowing a commercial development outside of the settlement boundary, and referred to its status in being part of the evidence base for the emerging Local Plan, which the CR had previously highlighted as not being at an advanced stage of preparation. These factors informed the LPA's opinion that it should be accorded no material weight.
18. Given the unambiguous policy conflicts mentioned above, and the rational arguments put forward in the CR relating to the weight to be given to the other material considerations identified, the planning application was not one that should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Weight is a matter for the

⁴ Paragraph 16-033-20140306

decision-maker, and the LPA were entitled to make a balanced planning judgement. The analysis provided in the CR demonstrates that their overall conclusion in that report was within the range of reasonable options open to them.

19. It was not necessary for the CR to refer to every material consideration. It can be seen from the above that the CR discussed the other relevant material considerations, including the need for employment land and emerging Policy E9, in an appropriate level of detail. Hence, the LPA did not make vague, generalised or inaccurate assertions about the impact of the proposed development, which were unsupported by any objective analysis.
20. The concern raised in the CR, regarding the proposed development setting a considerable precedent for any other new build commercial development on the edge of settlements in the countryside, could potentially have been addressed through the LPA working with the applicant on the submission of a legal agreement to ensure that the proposed office building would only be let to start-up / move-on businesses. Due to the restrictions on the use of land required, this was not a matter that was capable of being dealt with by conditions. However, given that the LPA had strong in-principle concerns relating to the nature of the proposed development in this location, the LPA did not act unreasonably by not pursuing this avenue with the applicant.
21. Overall, the substantive ground raised by the applicant relates to a difference of opinion on matters of planning judgement. These matters are fully covered in the associated appeal decision. I therefore find that the LPA did not behave unreasonably with respect to the substantive grounds raised.

Conclusion

22. For the reasons given above, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process has not occurred and an award of costs is not warranted.

Alexander O'Doherty

INSPECTOR