



Costs Decision

Hearing held on 8 and 9 April 2025

Site visit made on 8 April 2025

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd of May 2025

**Costs application in relation to Appeal Ref: APP/C3810/W/24/3356352
Land to the rear of Meadow Way, Westergate, Chichester, West Sussex
(Easting: 493620 Northing: 104816)**

- 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 Redrow Homes for a full award of costs against Arun District Council.
 - The appeal was against the refusal of approval of reserved matters for outline planning permission AL/178/22/OUT, granted on 8 December 2023.
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Decision

1. The application for a full award of costs is not allowed but a partial award is made in the terms set out below.

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. In brief, the applicant contends that a full award of costs should be allowed as the Council's decision delayed a development that should clearly have been permitted. Furthermore, the Council were said to have refused the application on grounds which were capable of being dealt with by condition and that their approach to the application of supplementary guidance was inconsistent with other schemes nearby. Overall, there was considered to be a lack of positive engagement by the Council.
4. The Council has disputed that it acted unreasonably.
Delayed a development that should have been permitted
5. Reason for refusal 1 was essentially a matter of planning judgement. The main parties have differed on the degree of consistency the appeal proposal had with the outline permission, development plan, supplementary guidance and the Framework. On some matters I have agreed with the appellant and on others the Council. However, on the main substantive points, it is the Council's case which was the more persuasive. Consequently, given my decision on the appeal, I do not find that this was a proposal which clearly should have been permitted.
6. The applicant specifically references the Council's approach to the Parameter Plan and that this contributed towards the unreasonable behaviour. Given my overall

findings on the appeal, this is not a matter that I need to address in detail. However, while the main parties approached the Parameter Plan differently, the Council's approach could not be said to have been unreasonable. For example, despite there being no specific requirement for a western buffer, there was a requirement for open space in the development area, something which I considered the scheme lacked.

7. Similarly, although the scheme did not breach the height stipulation of the Parameter Plan, the Council's reason for refusal was based on the scale of the building not its height. I too concluded that the scale of the building was a negative feature of the scheme.
8. Overall, the Council's evidence in its officer report and statement of case set out its concerns and adequately explained why the proposal was not considered to be acceptable. Together with the arguments made at the Hearing, the Council conveyed the reasons why the proposal could not be supported. The Council's case has been adequately reasoned, and this is framed within the context of the development plan and outline permission.
9. I have found that the Council had reasonable concerns about the proposal which justified its decision. In these respects, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Reasons for refusal capable of being conditions

10. The outline permission addressed drainage matters and imposed three conditions requiring the submission of further details. Drainage is not a reserved matter per se, and while it is sensible for a layout to be informed by an agreed drainage scheme, it is not mandatory. In this case the convergence of drainage infrastructure and open space provision meant that it was particularly useful for some details to be provided as part of the reserved matters submission.
11. Similarly, there is some merit in the Council highlighting potential difficulties or areas of uncertainty which might necessitate an amended layout or which might create a tension between an approved layout and a submission in relation to the outline planning conditions. Ultimately though, if an approved layout has to be amended or drainage details cannot be agreed, then this is a matter for the developer to seek to resolve.
12. In this case, even though the Local Lead Flood Authority had concerns, these related more to a lack of information/detail rather than a fundamental disagreement as to whether appropriate drainage could be achieved. Indeed, the subsequent discussions attest to this being the case.
13. As such, not only was this a matter which could have been addressed through additional information and/or conditions but ultimately it was a matter already addressed by the outline permission. Indeed, the officer report makes clear in commenting upon the representations received that matters such as foul and surface drainage strategies were covered by conditions attached to the outline permission. The Officer Report specifically advises that 'these are not relevant to the reserved matters, it is not relevant to respond to these through this report.'

14. The subsequent imposition of a drainage reason for refusal was therefore not only contrary to the officer advice to councillors but in the light of my findings above, was also unreasonable behaviour.
15. It seems to me that the subsequent technical discussions with the LLFA and the work which took place to reach agreement on the drainage details would have been necessary at some point, regardless of the decision on the reserved matters proposal. This does not therefore appear to have been unnecessary work. However, the work undertaken on drainage in relation to the preparation of the applicant's initial statement of case and the subsequent production of the additional Statement of Common Ground (SoCG) were unnecessary and resulted from the Council's unreasonable behaviour.
16. Upon receipt of the addendum to the SoCG the Council chose not to pursue the matter. Nevertheless, their approach to the issue 'opened the door' to it being discussed by the Parish Council at the Hearing. The amount of Hearing time this took up was relatively short, but it was clearly not something which should have been necessary for the applicant to do, and no doubt some costs will have arisen in relation to preparing for and dealing with the issue at the Hearing itself.
17. With regard to the issue of highway safety, the initial consultation response from the Highway Authority elicited a number of separate points of concern. These included more than just the final surface materials in respect of the roads and footways. In addressing these concerns, some amendments to the overall layout were necessary, including widening the cycle/pedestrian access by 1m. Although they can be seen as being relatively minor issues within the overall scheme, they did raise legitimate safety concerns.
18. It would have been difficult to deal with all of them through conditions at the point the Council made its decision. Indeed, it was only following amended layout drawings and discussions with the Highway Authority that it became clear that the only outstanding issues were ones of surfacing and that they could be addressed by condition.
19. Some of the changes to the layout required by the Highway Authority were contained within the amended drawings submitted to the Council prior to its decision but which were not taken into account. I deal with this aspect of the costs claim elsewhere in my decision.

Inconsistency

20. As part of their appeal submissions the applicant drew attention to other sites where the Council's supplementary guidance had been applied flexibly and standards below those proposed in the current scheme had been accepted by the Council.
21. Supplementary guidance by its very nature tends to be applied flexibly where the situation allows. However, as this can be dependent upon the circumstances of each case, direct comparisons are not always instructive.
22. As became clear during the course of the appeal and Hearing, some of the concerns which the Council initially highlighted were capable of being addressed through conditions or were subsequently shown to not necessarily be harmful in and of themselves. Some of them may have been resolved had discussions and

amendments been part of the process prior to the Council's decision. This is a matter I address further in the next section.

23. In this case, while the transgressions of guidance might be considered to be minor in nature, they can be seen as proxy indicators of some more significant deficiencies in how the site had been laid out. Whilst some of the more substantive issues carried greater weight in my decision, the breaches of the guidance reinforced my view that the scheme as a whole was not acceptable. Consequently, I do not find it unreasonable for the Council to have highlighted these matters within its overall reason for refusal or for them to have been discussed at the Hearing.

Proactive engagement

24. A Council is not obliged to accept amendments to a scheme when dealing with a 'live' application. Indeed, this would not be an efficient use of a Council's resources where for example, the amendments did not address a Council's concerns or were insufficient to influence the overall outcome. I note that the Council publicise how it will deal with applications in relation to amendments, which no doubt helps bring some certainty to the process and allows the Council to make decisions in a timely manner.
25. As part of its approach to handling applications the Council also offers a pre-application advice service. It appears that the applicant chose not to use the service, relying instead upon the Parameter Plan. As I have noted, such a document provides an overall context for the development but does not necessarily mean that a detailed scheme according with such broad parameters is guaranteed to be successful.
26. I have some sympathy with the applicant in terms of the amended plans which were submitted before the decision was made by the Council and which addressed a number of issues that formed part of the eventual reasons for refusal. It seems that these could have been accepted by the Council without too much difficulty and although this may not have prevented a refusal, or subsequent appeal, it may have narrowed down sooner some of the discussions. I also note that the Council did not object to my taking the amended drawings into account as part of the appeal process.
27. Nevertheless, while some flexibility might not have gone amiss, it is difficult to conclude that the Council acted unreasonably given their widely stated approach to dealing with amendments. For that reason, it is not clear that even if the Council had acted more quickly in some of its administrative duties and re-consultations had been undertaken earlier, that the amendments and comments would have been taken into account in the final decision. Indeed, had the Council gone against its stated approach this might be seen by others as being inconsistent or unreasonable.
28. Although the applicant is correct that a reserved matter application is technically an application pursuant to a condition, it is often perceived differently, including by professionals. Indeed, as was noted at the Hearing, one of the conditions in the Statement of Common Ground referred to the reserved matters as a permission rather than approval. So, while I disagree that the Council's advice in relation to how it will deal with 'discharge of conditions' provides sufficient support to the applicant's case, the Council may wish to look at clarifying its wording to avoid similar suggestions in the future.

Conclusions

29. For the reasons given above, a full award of costs is not justified in this case. However, a partial award is justified. I have concluded that there was unreasonable behaviour in relation to raising drainage as a reason for refusal when there were conditions on the outline permission capable of dealing with the matter.
30. The unreasonable behaviour caused the appellant to incur unnecessary expense in the appeal process as the appeal statement needed to address this issue and an addendum SoCG needed to be produced. A further consequence of all this was that the matter needed to be discussed, albeit briefly, at the Hearing. This would all have resulted in additional professional time being spent.

Costs Order

31. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Arun District Council shall pay to Redrow Homes, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the issue of drainage in the Statement of Case, producing the Addendum Statement of Common Ground (Drainage); to prepare and deal with the drainage issues at the Hearing; such costs to be assessed in the Senior Courts Costs Office if not agreed.
32. The applicant is now invited to submit to Arun District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Stewart Glassar

INSPECTOR