The Planning Inspectorate

Costs Decision

Inquiry opened on 27-29 October 2015

Site visit made on 29 October 2015

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 December 2015

Costs application in relation to Appeal Ref. APP/W1715/W/15/3005761 Land to the east of Grange Road, Netley Abbey, Southampton.

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Sheet Anchor Properties Limited for a full award of costs against Eastleigh Borough Council.
- The inquiry was in connection with an application for residential development of up to 250 dwellings, including allotments and open space, with associated means of access with other matters reserved.

Decision

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

Reasons

2. Irrespective of the outcome of the appeal, costs may only 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 by the appellant in writing at the Inquiry. Briefly, it is submitted that the Council has behaved unreasonably as regards the substance of its case and that the appeal was unnecessary. The Council's response was also in writing.

4. Essentially, this is an argument that the application should have been approved in the first place, albeit much of what is alleged occurred over the course of the appeal period. The appeal was against non-determination, but a parallel application was made at the same time as the appeal. By the time the Inquiry opened only 1 of the original 11 reasons for which the Council indicated it would have refused the application remained unresolved. In this respect it is submitted that it should have been recognised at the outset that 10 of the reasons could be resolved. There is nothing in this whatsoever. The appellant, who has been professionally represented since the outset, chose to submit an appeal and parallel application in full knowledge that certain, and probably all 10, reasons would be resolved. It was a tactical move on the appellant's part that demonstrates no unreasonable behaviour by the Council in the appeal process.

5. Next it is argued that the imposition of 11 reasons must have been influential in the decision to oppose the appeal. In my experience the deemed reasons for

refusal, and their number, were typical of non-determination appeals. I do not see this as unreasonable behaviour.

6. It is then argued that the parallel or duplicate scheme could have been determined by the Council. This is tied up with negotiations between the appellant and senior Council officers which might have led to withdrawal of the appeal, but in the event they were unsuccessful and the remaining deemed reason for refusal remained unresolved. The Inquiry was therefore necessary.

7. As to the remaining deemed reason for refusal, it is submitted that it was hopeless because the conflict with LP Policy 1.CO was doomed by virtue of the absence of a 5-year housing land supply, and because the conflict with LP Policy 2.CO was not supported by the Council's landscape officer and its landscape expert. On the first point, the Council's case put at this Inquiry fairly responded to the outcome of the Sovereign Drive appeal. It accepted that the countryside protection policy was rendered out-of-date by NPPF paragraph 49, but it argued that it should not be disregarded. For the reasons given in my decision I consider this to be correct. The second point, in respect of the application of LP Policy 2.CO, concerns the evaluation of the impact of the proposal on the gap between Southampton and Netley. For the reasons given in my decision I consider that this argument can only be supported by an unreasonably rigid interpretation of the policy. The proposal clearly impinges upon, and erodes, the gap between Netley and Burlesdon, the protection of which is the subject of LP Policy 3.CO. It was clearly a relevant matter and it was not unreasonable of the Council to argue that harm to a protected characteristic should not be disregarded because of, in essence, a hierarchical approach to gap protection.

8. It is also submitted that it was unreasonable of the Council to argue that the second decision-taking pathway set out in NPPF paragraph 14 was not invoked once LP Policy 1.CO was deemed to be out-of-date. The appellant argues that, in effect, it is settled law that this is the correct route regardless of whether or not there are other relevant development plan policies in play. The reference is to the case of *Phides*[1] where Lindblom J supported an Inspector who took that approach. However, the correct application of paragraph 14 was not one of the main issues which the court had to decide, and accordingly the judgement did not render the Council's argument unsustainable.

9. Overall, I find that unreasonable behaviour on the part of the Council that has caused the appellants to incur unnecessary or wasted costs has not been demonstrated, and an award of costs is not therefore justified.

Paul Dignan

INSPECTOR

[1] Phides Estates (Overseas) Limited v SSCLG and others [2015] EWHC 827 (Admin)