



Costs Decision

Inquiry opened on 12 January 2010

Site visit made on 20 January 2010

by Joanna C Reid BA(Hons) BArch(Hons)
RIBA

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Decision date:
16 February 2010

Costs application in relation to Appeal Ref: APP/C3810/A/09/2112065 Chalcroft Nursery and associated land, Chalcraft Lane, Bognor Regis, West Sussex PO21 5TS

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Orchard Enterprises (Southern) Ltd for a full award of costs against Arun District Council.
- The inquiry was in connection with an appeal against the refusal of planning permission for the demolition of all existing buildings and redevelopment of the site with up to 70 dwellings (up to 28 Affordable), public open space and strategic landscaping.

Summary of Decision: The application is refused.

The Submissions for Orchard Enterprises (Southern) Ltd

1. The costs application was submitted in writing. The following additional points were made orally.
2. Regarding paragraph 10 in the written application, in addition, the site had not been assessed under the Strategic Housing Land Availability Assessment (SHLAA). With regard to paragraph 22, in addition, it was for the Local Planning Authority to be content. They cannot hide behind West Sussex County Council.
3. The claim for costs has been particularised in the written details. The Council has failed to grapple with the acceptability of the scheme in relation to *The South East Plan – Regional Spatial Strategy for the South East of England* (SEP), which is part of the Development Plan, and Planning Policy Statement 3: *Housing* (PPS3). It is not enough to say that there is conflict with saved Policies GEN2 and GEN3 of the *Arun District Local Plan 2003* (LP). The Council has expressly chosen not to assess the suitability of the scheme against PPS3. PPS3 does not override the Development Plan, but in the reasoned debate about the housing land supply the Council's figures do not comply with paragraph 54 of PPS3 because they rely on a draft Annual Monitoring Report (AMR) which incorporates SHLAA provision and future unidentified Local Development Framework sites. The debate has been clouded by the Council's witness who takes a different approach to paragraph 54. The Council's AMR is the Council's AMR. It does not support the unreasonable discounting in the Council's witness's version, which is not endorsed by the Council.
4. Whilst reason for refusal 3 was reviewed and withdrawn that is not a reason to say there should be no costs. The appellant's witness had addressed this in the grounds of appeal. There was no explanation as to why reason for refusal 3 was withdrawn. It seems that it was withdrawn because of conflict with SEP.

This is an example of inconsistency with SEP policy. With regard to the lack of cooperation in the housing land supply figures, even though the Council say the draft AMR was sent as soon as possible, the appellant needed to have an understanding of the Council's position. To understand the Council's draft AMR the appellant's witness needed the draft SHLAA, which he had to buy because it was not sent to him by the Council, which is another example of the Council's unreasonable approach.

5. Paragraph 2.3.10 in the Council's Statement of Case says that "PPS3 Housing will also be considered ... and the contribution to supply of housing sites with planning permission will be featured. The contribution of the appeal site to that supply will also be examined." But how did the appellant's witness know that drains were a deliverability point? The Council say that this was for the appellant to demonstrate. The appellant's witness has explained, but the Council's drainage engineers did not know that this was a deliverability issue. With regard to the unilateral undertaking there is a general absence of correspondence.
6. The appellant seeks a full award of costs because the Council has approached this proposal improperly and behaved unreasonably throughout.

The Response by Arun District Council

7. The appellant's claim for costs is in relation to the appeal process itself. Whilst it is for a full award it consists of assertions which are not particularised. The Council's witness has put forward full and reasoned arguments for each of the remaining reasons for refusal, both of which relate to saved Policies in the Local Plan. It is noteworthy that it is accepted by the appellant that the proposal is contrary to those policies.
8. PPS3 is clearly material and it has been considered. It does not override all other considerations. Indeed, the Council does not suggest that it does.
9. A reasonable debate has taken place at the inquiry setting out the differences between the 2 parties on housing land supply. The range of figures with different assumptions has been presented, and the Council invites the Inspector to prefer the Council's witness's analysis. In response to the costs application, the Inspector is asked to conclude that his analysis is at least a reasonable position. Even if there is a small shortfall, it is important to consider the extent to which PPS3 applies.
10. The Council reviewed the 5 reasons for refusal 2½ months before exchange of proofs, and in the light of the evidence the Council withdrew reason for refusal 3. It has not been suggested by the appellant that any particular costs have been incurred, for example, by appointing a firm of landscape architects to deal with the LP Policy AREA10 point.
11. Mr Keen at paragraph 20 asserts a lack of cooperation in relation to the housing land supply figures. This has been clearly shown to be a non-point, because as soon as the draft AMR for 2009 was available it was sent to the appellant's witness. He already had the 2008 AMR figures on which he relied, but he had the choice of the 2.

12. Drainage was not a new point, and its relationship with delivery was identified in 2.3.10 of the Council's Statement of Case. Southern Water clearly identified in July 2009 the difficulties which may affect timing. It was for the appellant to demonstrate that there are other solutions that would enable the development to proceed within the 5 years.
13. Regarding the unilateral undertaking the appellant has had the opportunity to get things off his chest. No evidence has been provided to suggest that the Council have behaved unreasonably, other than to say that documents have gone back and forth with track changes, which is a normal way to proceed.
14. In the light of this, the application should be refused.

Conclusions

15. I have considered this application for costs in the light of Circular 03/2009 *Costs Awards in Appeals and Other Planning Proceedings* and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
16. The appellant made a timely application for an award of costs.
17. The Council is not bound to accept the recommendations of its professional officers. It has provided substantial evidence to support its case, and it has provided a respectable basis for the Council's stance.
18. Reasons for refusal 1 and 2 did not allege conflict with SEP policies or national policy. No conflict between SEP policies and saved LP Policies GEN2 and GEN3 was identified at the inquiry. The main parties did not dispute that the proposal was contrary to saved LP Policies GEN2 and GEN3, and these policies were identified in reasons for refusal 1 and 2. Reasons for refusal 1 and 2 are complete, precise, specific and relevant to the application. The Council used its judgment and concluded that the proposal would cause harm.
19. The Council had taken account of relevant national policy, including PPS3, in reaching its decision and had exercised its judgment, which it is entitled to do. The Council took the view that PPS3 did not automatically outweigh relevant Development Plan policy and other national policy, which is a view that is supported by an appeal decision that was referred to in the appellant's Proof of Evidence. The reasonable clarification about the Council's PPS3 paragraph 69 points was dealt with in little time at the inquiry. The Council's suggested condition for the applications for reserved matters to be made within 6 months was in response to the deliverability issue raised in PPS3.
20. The Council's witness provided substantial and credible evidence in support of his assessment of housing land supply, including other relevant evidence. As an independent professional consultant, he was entitled to exercise his judgment and to comment on the adopted approach and methodology of the Council, to support the Council's case in this appeal within a reasonable timescale. The Council was entitled to exercise its judgment, and it has not behaved unreasonably.
21. The Council acted reasonably in actively reviewing its reasons for refusal at an early stage. The appellant was informed that reason for refusal 3 regarding the

- strategic gap was withdrawn on 12 October 2009. No reason for its withdrawal was given, but the Council explained that it was content to rely on reasons for refusal 1 and 2. No substantial evidence from the appellant to address reason for refusal 3 as part of the appeal process was evident in the representations or put to the inquiry.
22. It is normal procedure for a discussion about planning conditions to take place during the inquiry, and for matters, such as drainage, which could have an impact on the delivery of the proposal in the event that permission were to be granted, to be raised. The Council's suggested conditions were discussed at the inquiry. Although the Council's engineers had not raised concerns, the point about foul drainage was evident from the Council's questionnaire. It was reasonable for the Council to raise this.
23. Reason for refusal 4 was necessary because a suitably-worded completed planning obligation, which satisfied the tests in Circular 05/2005 *Planning Obligations* as well as saved LP Policy GEN8, had not been received by the Council at the time the decision notice was issued. It was a legitimate concern of the Council. Because the Council continued to cooperate with the appellant on this matter, reason for refusal 4 was withdrawn before the inquiry opened. In doing so the Council reviewed its case and accepted the appellant's stance that 2 of the 5 infrastructure contributions sought were not necessary, and this was confirmed to the appellant on 9 October 2009. The Council did not behave unreasonably.
24. The Council has a responsibility to ensure that affordable housing is provided. Saved LP Policy DEV17 states that "The Local Planning Authority will either use planning conditions or obligations to ensure provision of the agreed social housing element as part of the overall development". The appellant proposed a condition. The advice in Circular 11/95 *The Use of Conditions in Planning Permissions* is that it may be possible to overcome a planning objection to a development equally well by imposing a condition or by entering into a planning obligation, and in these circumstances a condition is preferable. The Council was entitled to exercise its judgment that a condition would not overcome the planning objection in this proposal equally well as a planning obligation. It cooperated with the appellant to enable a planning obligation for affordable housing to be completed. It reviewed reason for refusal 5 and withdrew it before the inquiry opened. The Council did not behave unreasonably.
25. In the light of all these circumstances, I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated and that an award of costs is not justified.

Formal Decision

26. I refuse the application for an award of costs.

Joanna C Reid

INSPECTOR