



Costs Decision

Hearing Held on 28 September 2021

Site visit made on 6 July 2021 and 28 September 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 November 2021

Costs application in relation to Appeal Ref: APP/G2245/W/21/3271595 Kent and Surrey Golf and Country Club, Crouch House Road, Edenbridge TN8 5LQ

- 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 Pacalis Group Companies, BLCP Eden 1 Ltd and BLCP Eden 2 Ltd for a full award of costs against Sevenoaks District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for replacement of existing golf clubhouse and hotel following demolition of existing to create a continuing care retirement community (CCRC) for the elderly alongside a new golf clubhouse with hotel accommodation containing shared social, managerial and operational space to operate and service the continued golf course use and the CCRC with all matters reserved except for access.
-

Decision

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

The submissions for Pacalis Group Companies, BLCP Eden 1 Ltd and BLCP Eden 2 Ltd

2. The submissions were made verbally. In summary, the applicants are seeking an award of costs on the grounds that the Council has behaved unreasonably and that this has directly caused another party to incur unnecessary or wasted expense in the appeal process. Specifically, in accordance with paragraph 49 of the Planning Practice Guidance (PPG)¹, the Council has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
3. The applicants disagreed on the amount of weight to be attributed to the very special circumstances, in particular in relation to housing supply, housing needs of older people, downsizing and economic benefits. The applicants consider the Council's behaviour in this regard to be unreasonable in view of the figures it presented to support the scheme and the critical need to make provision for housing for older people as set out in the PPG. They also refer to the Council's failure to take a positive approach to schemes that propose to address that need in accordance with paragraph 16² of the PPG. Moreover, it did not take into account the Framework's objectives to significantly boost the supply of housing and support economic growth, for which the Framework sets out

¹ Paragraph: 049 Reference ID: 16-049-20140306

² Paragraph: 016 Reference ID: 63-016-20190626

should be accorded significant weight, taking into account both local business needs and wider opportunities for development.

4. The Council's Strategic Housing Land Availability Assessment (SHLAA) sets out that there are just over 750 units within development boundaries which are available for development. This is not enough to meet need, on that basis, they consider it unreasonable of the Council to have refused planning permission because the site is not within the development limit, particularly given the critical need and the fact it is recognised in the emerging Local Plan as being a good thing.
5. The Council did not engage and respond to figures put forward in 2020 on the need and identifying the need. They relied on an emerging Local Plan which is no longer progressing. The Council has relied on its position, set out in paragraph 33 of its Statement of Case, that it can meet its housing targets without the need to release land in the Green Belt and by focusing development within the existing urban and village locations of the District, in accordance with paragraph 3.9 of the Sevenoaks Allocations and Management Plan 2015. This is an incorrect statement and coloured how the applicants' proposal has been dealt with.
6. Together this amounts to unreasonable behaviour. For this reason, a full award of costs is being sought.

The response by Sevenoaks District Council

7. The Council responded verbally at the Hearing. In summary, the decision of the Council was based on local and national policy at the time. This does not amount to unreasonable behaviour. The Council stands by paragraph 33 of its statement, as the release of Green Belt land is done through the local plan process to ensure there is not a creation of urban sprawl and loss of Green Belt, in accordance with the Framework.
8. As per paragraph 11 of the Framework, the Council felt the adverse impacts would significantly and demonstrably outweigh any benefits when assessed against the Framework taken as a whole.
9. The Council has acknowledged its local plan is out of date. It has also agreed on certain points. During the application process there were a number of discussions on other issues that could have been reasons for refusal in response to other consultee comments. The Council agreed an extension of time with the applicants to agree these.
10. The applicants were made aware of the Council's consideration of the application and its position in relation to the local plan. The applicants were made aware of the decision that was going to be taken. The decision was made correctly in terms of the Framework.

Reasons

11. The PPG advises that the local planning authority is at risk of costs on substantive grounds if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

12. The applicants disagreed with the weight the Council attached to the very special circumstances put forward to justify their case for development within the Green Belt. The weight to be attributed to material considerations are matters of judgement for the decision maker. The Council was entitled to reach a different conclusion on these matters but its reasons for this should be justified.
13. The Council agreed that there is a need for the type of housing proposed but disagreed as to what the extent of that need is and therefore whether the location or the scale of the proposal would be appropriate.
14. The evidence of housing need for older people within the District is not clear cut, with different assumptions and methodologies for assessing the requirement. It will be seen from my decision that I was presented with conflicting evidence on the need for the type of housing for older people as being proposed, some of which suggested a much lower level of provision was required. There was also incomplete and conflicting evidence of current levels of provision. In such circumstances, the conclusions reached by the parties are likely to diverge. This does not amount to unreasonable behaviour.
15. The Council primarily relied on the evidence set out within the Strategic Housing Market Assessment 2015 (SHMA). As an evidenced-based document, which had been subject to scrutiny, this was not unreasonable. In these circumstances, whilst I have not ultimately agreed with the Council, it was not unreasonable for the Council to reach a different conclusion about the weight to be attributed to housing need.
16. The applicants put forward an alternative approach to calculating need. It is not evident the extent to which the Council considered these alternative figures. In view of the age of the SHMA, the status of the emerging local plan and the very special circumstances being put forward by the applicants, it would have been helpful if the Council had done so. Given these alternative figures were presented, I find the Council has demonstrated some unreasonable behaviour in not providing a response to them. Notwithstanding this, these figures were subsequently discussed at the Hearing. However, the Council did not agree that they provided justification for the location and scale of development. I do not therefore find that the need for an appeal would have been avoided.
17. The Council acknowledged its local plan is out of date and there is evidence that it is undertaking work to look at housing needs for older people, the appeal scheme pre-dated the completion of this work. This does not suggest that the Council has not recognised the critical need to provide for the type of housing proposed.
18. At the Hearing the Council confirmed that less than 1,000 units could be delivered on allocated sites. It has however maintained its position that it can meet its housing targets without the need to release land from the Green Belt. These respective positions do appear to conflict with each other. However, this does not alter the fact that the release of Green Belt land should be done through the local plan process. The release of such land should be assessed against national and local policy, which the Council did. However, it found that the very special circumstances to justify the proposal did not exist.
19. From what I have read and heard, there is nothing to suggest the Council has not taken a positive approach nor that it did not take into account the National

Planning Policy Framework's objectives for boosting the supply of housing and supporting economic growth. It provided clear reasons as to why it did not consider the proposal to be acceptable based on its location within the Green Belt and outside the settlement boundary. The Council took the view that there was insufficient evidence to justify the scheme.

20. Drawing together my overall findings on this matter, the appeal proposal was finely balanced between Green Belt harm and housing supply, in particular for older people. The evidence provided a range of conclusions on what the housing need for this group was. Whilst I find the Council could have engaged more directly with the applicant on their alternative figures, in view of the evidence submitted, I do not find that this would have changed the Council's view that material considerations did not outweigh the harm to the Green Belt.
21. I therefore find that the Council, in reaching a different conclusion on these matters, has not behaved unreasonably but has indicated a difference of opinion as to the likely effects and acceptability of the proposed scheme. For this reason, I do not find that it has prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

Conclusion

22. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. An award of costs is therefore not justified.

Rachael Pipkin

INSPECTOR