

APPEAL BY CARDEN DEVELOPMENTS LIMITED AGAINST THE DECISION OF THE BOROUGH COUNCIL TO REFUSE TO GRANT APPROVAL FOR RESERVED MATTERS (INTERNAL ACCESS ARRANGEMENTS, LAYOUT, SCALE, APPEARANCE AND LANDSCAPING) FOR A RESIDENTIAL DEVELOPMENT OF 60 DWELLINGS AT LAND OFF WATERMILLS ROAD, CHESTERTON, APPLICATION FOR AN AWARD OF COSTS AGAINST THE APPELLANT AND APPLICATION FOR AN AWARD OF COSTS AGAINST THE COUNCIL

<u>Application Number</u>	18/00017/REM
<u>Recommendation</u>	Refusal
<u>LPA's Decision</u>	Refused by Planning Committee on 14th August 2018
<u>Appeal Decision</u>	Appeal dismissed
<u>Costs Decisions</u>	An application for an award of costs against the Council was refused and an application for an award of costs against the Appellant was allowed
<u>Date of Appeal Decision</u>	10th July 2019

The Appeal Decision

Procedural Matters

- The appellant submitted a number of revised plans with the appeal asserting that, given the site's brownfield constraints, viability is an important factor and that due to the timing of reserved matters submission, it would not be possible to resubmit a further reserved matters application and that a full application would need to be submitted along with the relevant fee.
- Whilst comments on the revised scheme have been provided by an interested party during the appeal, the Inspector was not persuaded that all those who should have been consulted on the proposed changes have been given the opportunity of such consultation.
- The matters which have been changed are material, in particular the increase in number of dwellings from 60 to 63, the repositioning of dwellings closer to the highway, the removal of the bund and the relocation of the coppice walk. Although the amended scheme is within parameters set by the outline consent and is similar to previous iterations of plans submitted to the Council, there is no substantive evidence that the necessary consultation was conducted on these previous iterations.
- Within this context the Inspector was mindful of the Wheatcroft Principles. It was his view, in the interests of fairness, that this appeal must be determined on the basis of the plans submitted to the Council and upon which it based its decision, which have been subject to consultation and not the suggested amendments. To do otherwise could prejudice unacceptably the interests of interested people and/or consultees who would not have been consulted on the amended plans and who may have observations to make.

The Inspector identified the main issues to be;

- The effect of the proposal on the character and appearance of the area; and
- Whether the proposed footpath would result in actual or perceived opportunities for antisocial behaviour.

In dismissing the appeal, the Inspector made the following comments:

Character and appearance

- The appeal scheme would comprise 60 dwellings, including a mixture of detached, semi-detached and terraced properties, a coppice walk, a village green, and bunds with an acoustic fence on top. The bunds would be located along the frontage of the site along Watermills Road and would be approximately 2m in height with acoustic fencing of approximately 2m in height on top.
- Policy CSP1 of the Core Spatial Strategy (CSS) states that development should contribute positively to an area's identity and heritage (both natural and built) in terms of scale, density and layout, amongst other things. The Design Guidance Supplementary Planning Document (SPD) states that new housing must relate well to its surroundings and advises that development should face outwards wherever possible, to address its surroundings, rather than turning its back on the wider area.
- The NPPF sets out that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Decisions should ensure that developments establish or maintain a strong sense of place, using the arrangement of streets, places, building types and materials to create attractive, welcoming and distinctive places to live, work and visit.
- A number of dwellings would back onto Watermills Road and would therefore fail to relate to its surroundings, contrary to the SPD. Furthermore, the bunds, as a result of their height and prominent location, would create a sense of enclosure, making the development appear and feel separate from the surrounding area. The bunds would appear a dominant feature, particularly to the south of the access road, and would harm the character and appearance of the area.
- Thus, the development would fail to contribute positively towards the area the appeal scheme and would harm the character and appearance of the area, contrary to Policy CSP1 of the CSS, the SPD and the NPPF.

Footpath

- Policy CSP1 of the CSS states that development should be, amongst other things, safe. The Council points out that its SPD states that promoting good design and layout in new development is one of the most important ways in which the Council can address crime issues. Paragraph 127 of the Framework states that decisions should create places where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion and resilience.
- The proposed coppice walk, which would provide a pedestrianised route from dwellings to the village green, would be located to the rear and side of dwellings and, as a result, would be enclosed by fences and would not be overlooked. This would result in a route which would not appear to be safe and would be unattractive to users being likely to be prone to anti-social behaviour. Consequently, the proposed footpath would result in actual or perceived opportunities for antisocial behaviour, contrary to Policy CSP1 of the CSS, the SPD and the Framework.

Conclusion

- For these reasons, the appeal should be dismissed.

The decision on the application, by the appellant, for an award of costs against the Council

In refusing the application for an award of costs against the Council the Inspector made the following comments:

- The applicant states that the Council has refused to extend negotiations on key technical points which were capable of being resolved.
- The PPG sets out that the aim of the costs regime is to: discourage unnecessary appeals by encouraging all parties to consider a revised planning application which meets reasonable local objections. It goes on to advise that a local planning authority's handling of the planning application prior to the appeal may lead to an award of costs if, for example, the Inspector or Secretary of State concludes that

there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether. Such a decision would take into account any unreasonable behaviour on the part of the applicant in causing or adding to the delay.

- The evidence indicates that a process of negotiation commenced following submission of the application, and that the applicant agreed to extend the statutory period for determination a number of times. The Council gave the applicant advanced warning that it intended to determine the application given the length of time that it had been in for, and set out a timetable for final submission of revised plans. Prior to consideration of the application by Planning Committee, but after the deadline for submission of revised plans, the applicant requested that the Council delay or defer its determination so that concerns could be resolved, however, the Council declined to do so.
- The applicant did not seek advice from the Council prior to the submission of the reserved matters and the application was submitted shortly before the period within which it was required to do so by condition. This necessitated negotiation during the period for determination. The National Planning Policy Framework highlights the value of pre-application and front-loading and whilst Councils cannot require that a developer engages with them before submitting an application, it can assist local planning authorities in making timely decisions.
- The PPG sets out that once a planning application has been validated, the local planning authority should make a decision on the proposal as quickly as possible, and in any event within the statutory time limit unless a longer period is agreed in writing with the applicant. The government's Planning Guarantee is the government's policy that no application should spend more than a year with decision makers, including any appeal. In practice this means that planning applications should be decided in no more than 26 weeks. Although this is not an upper limit and a longer period of time can be agreed, it is not unreasonable for the Council to set out deadlines to ensure that the application is dealt with in a timely manner. The applicant did not adhere to those deadlines and so the Council determined the application on the basis of the plans and representations submitted prior to its deadline of 8 August 2018.
- Given the above, the Council was not unreasonable in determining the application and, on the basis of that scheme, the Council was not unreasonable in coming to its decision. The applicant's costs associated with the appeal were therefore a necessary part of the appeal.
- The Inspector found that unreasonable behaviour by the Council resulting in unnecessary or wasted expense had not been demonstrated.

The decision on the application, by the Council, for an award of costs against the Appellant

In allowing the application for an award of costs against the Appellant the Inspector made the following comments:

- The Council's case is that the appellant has pursued an appeal rather than submit a revised planning application. The Council's letter of notification of the appeal was based on the plans and description submitted with the original application and correctly invited comments to be made to the Planning Inspectorate.
- When the appeal was made, the appellant requested that the Inspector make his decision on the basis of revised plans submitted with the appeal. The amendments comprised an increase in number of dwellings from 60 to 63, the repositioning of dwellings closer to the highway, the removal of the bund and the relocation of the coppice walk.
- Whilst the appellant has engaged with the Council and an interested party following determination of the application, there is no substantive evidence that the necessary consultation was carried out on the proposed changes and that the interests of some parties would not be prejudiced. The Inspector therefore concluded within the appeal decision that the appeal should be determined on the basis of the plans submitted to the Council and upon which it based its decision.

- The appellant has not sought to defend the reasons for refusal but used the appeal process to progress the amended scheme rather than submit a fresh application which would incur a fee. Whilst the concerns raised by the appellant regarding viability are noted, the Procedural Guide), published by the Planning Inspectorate, whilst acknowledging the 'Wheatcroft' principles, advises that the appeal process should not be used to evolve a scheme and that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Whilst amendments to a scheme might be thought to be of little significance, in some cases, even minor changes can materially alter the nature of an application and lead to possible prejudice to other interested parties.
- The appellant's reliance on significant material changes to the appeal documents, contrary to the above advice was unreasonable and directly caused unnecessary expense to the Council. Unreasonable behaviour, resulting in unnecessary expense has occurred and a full award of costs is justified. The application for an award of costs is allowed.

Your Officer's comments

Members will note both the appeal decision and the costs decisions. The decision of the Council to express the view to the Inspector that consideration of the revised plans on the ground that it would in this particular case be contrary to the principle of fairness established by the Wheatcroft judgement - was one made by your Officer following appropriate consultation with the Chair, and a decision that was reported to the Committee in June. Subsequent to the submission of the LPA's Statement of Case it became known that Ibstocks had become aware of the revised plans, but it is of interest to note that the Inspector in the absence of wider publicity and consultation considered that he had to determine the appeal on the basis of the original scheme.

When the amount of the costs has been agreed the sum will be reported to the Committee for information.

Subsequent to the appeal decision the appellant's agents have asked for a meeting to discuss a proposed site layout prior to the submission of an application and arrangements have been made for that.

Recommendation

That the appeal and costs decisions be noted.