
Costs Decision

Hearing held on 13 July 2016

Site visit made on 14 July 2016

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 27 September 2016

Costs application in relation to Appeal Ref: APP/K2610/W/16/3145283 Land at Lodge Road, Lingwood, Norwich, Norfolk

- 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 Brineflow Properties & Handling Ltd for a full award of costs against Broadland District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for Live Work Development with standalone B1 office space.
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Decision

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

Procedural matter

2. The Council had not been provided with a copy of the appellant's written submissions and therefore I adjourned the hearing briefly to allow its representatives time to consider a response.

The submissions for by Brineflow Properties and Handling Ltd

3. The submissions for full costs were made in pre-prepared written form at the end of the hearing. The gist is as follows:-
 - The Council members unanimously decided not to follow the advice of their officers and the reasons for refusal are neither reasonable nor backed by evidence.
 - The procedure at committee was inadequate to the task at hand and a proper opportunity to explain the proposals was not given.
 - The Council members misunderstood the nature of the live work units and equivocated over reasons for refusal with much speculative discussion.
 - The Council erroneously required a need to be demonstrated for the live work units and simplistically took the view that because such need is not readily quantifiable it does not exist.
 - There are differences in the Council's approach to the landscape issue as between the reason for refusal and the statement of case and the officer's advice in the committee report.
 - Moreover there was confusion between this proposal as negotiated with officers and earlier proposals about which the officers had concerns.

The response by Broadland District Council

4. The Council's response was given orally at the hearing, essentially as follows:-.

- The Council made a decision which was reasonably open to it and not perverse. The Council and its consultants have demonstrated an absence of need for live work units in the Norwich area and Arnolds Keys have tried to market such units in a similar type of settlement.
- The Council recognises that the impact of the proposal on the character and appearance of the area is somewhat subjective but has taken a reasonable approach in refusing the application on these grounds.
- The appellant company alleges the ground has shifted somewhat on landscape matters and that extra costs have been incurred as a consequence. The content of its statement suggests that it knew the reasons for refusal relied on and had a clear understanding of the Council's position. No new evidence has been submitted in response to the Council's statement of case.
- The appellant alleges disregard of new and persuasive evidence of more people living in the surrounding and that undue weight has been given to specific need at the expense of all other considerations. Simply stating that more people live in the area doesn't equate to a need. The Council reaffirms that a need has not been demonstrated.
- It is a point of agreement that the site is outside the settlement limit and is unallocated. Therefore there is good reason to expect a need to be demonstrated. Having considered the application the committee took on board the information submitted and exercised its duty in a reasonable way.
- No complaints have been received via the Local Government Ombudsman regarding events at the planning committee or how the application was determined by it.
- The appellant's agent was sent a letter of notification of the committee meeting and a procedural note on how to address it including the advice "should you wish to speak at the meeting it is essential that you contact the Democratic Services Department". It was open to the appellant to contact and ask for advice if unsure of procedure.
- The Council does not consider the costs application to be warranted.

Reasons

5. Planning Practice Guidance indicates that the purpose of the costs regime is to encourage reasonable behaviour albeit the emphasis is on such behaviour in the appeal process and, notwithstanding the alleged administrative deficiencies associated with the planning committee's consideration of the proposal, it appears that in part at least this may have been attributable to a misunderstanding of the requirement to notify in advance an intention to speak. In any event there are established procedures for raising complaint of this nature, including the Local Government Ombudsman, and I am not persuaded on the evidence that the outcome of the committee's deliberations would have been materially different so as to avoid the recourse to appeal.

6. Costs decisions by their very nature are intimately bound up with the particular circumstances of any particular appeal and there is no reason to suppose that the award of costs in the case cited by the applicant¹ lends weight to the application at issue. It seems to me that the policy considerations (in respect of a housing proposal) were distinctly different and in any event I am not apprised of the full details of the application and the background circumstances.
7. In this case it seems to me that the Council, having refused the application contrary to officer advice (as it was entitled to do), subsequently and reasonably decided not to pursue those reasons for refusal which it believed could not be substantiated and it made clear its intentions in this regard in a sufficiently timely fashion.
8. In the normal course of events participants in appeal proceedings are expected to meet their own costs and the appeal proceedings in this case, as far as the Council was concerned, centred on those reasons for refusal remaining at issue, notwithstanding that strong representations from local residents and the undoubtedly rural location of the site led me to identify its accessibility as a main issue for the purposes of my own deliberations. These encompass safety issues potentially arising from the nature of the rural road network.
9. The objections maintained by the Council concerned potential conflict with development plan policy in terms of where development should be located in a plan-led context and the effect on the character and appearance of the area, again in the context of the development plan.
10. That the proposal is not on all fours with the development plan is clear from the officer's report, as it is from my own decision, certainly in terms of where development should normally be expected to take place. The planning officer ultimately took the view that material considerations sufficient to outweigh that conflict in this case justified the proposal, and I have also come to that view on the basis of the evidence before me and the exercise of my own judgement. But the balance is a fine one, as the proposal is relatively novel and policy pulls in opposing directions.
11. These matters, clearly, are rarely a simple equation of right and wrong and many shades of opinion are reasonably admissible. In this case I am satisfied that so far as procedure in the appeal process is concerned, the Council has acted reasonably and that its defence of its position at the hearing was sufficiently respectable, bearing in mind the fineness of the judgement involved and the fact that approval of the proposal requires a departure from important aspects of the development plan, to negate the charge of unreasonable refusal.
12. Equally, the effect of the proposal on the character and appearance of the area, including the desirability of maintaining gaps between settlements in the landscape in the context of policy in the development plan is inherently a matter of judgement and the lay members of a planning committee are entitled to substitute their own judgement for those of their officers if they have sufficiently good reason to do so and their reasoning is material in planning terms and sufficiently credible as to form the basis of a respectable case.

¹ APP/K2610/A/13/2198950

13. The landscape appraisal deployed by the appellant was commissioned for the purposes of the appeal but equally, that level of analysis was not available to planning committee members at the time of their decision and this aspect of the case is essentially judgemental in any event.
14. As far as the matter of need is concerned it is routinely the case that demonstrable need is a pre-requisite of departure from development plan policy and whilst somewhat tangential to the main thrust of the Council's objection on this count, policy 15 of the JCS refers to employment of service development appropriate to the scale and needs of particular villages. The requirement to satisfy need is therefore rooted in the development plan but the novelty of the proposal militates against tried and tested techniques of measuring such need and I have ultimately concluded that reliable measurement is not a practicable possibility at this juncture in the absence of an established market for live work such that it is considered a mainstream form of development. That may change in the future but, for present purposes, I am constrained to look to rely primarily on high level policy intentions to encourage such forms of development for the purposes of assessing the proposal against development plan policy.
15. Given that background, I do not consider that the Council merits particular blame for seeking to satisfy itself on that score and it follows that it was not unreasonable for it to be sceptical about that element of the proposal, not least in the light of the advice of its own economic development officer. It did not, moreover, seek to dispute the need for the more conventional office element of the proposal.
16. This is an especially difficult case involving balanced judgements about the planning advantages of departure from the development plan. The Council is not obliged to follow the advice of its officers and the stance it has taken is not inherently unreasonable, certainly given that it acted to remove objections which, on reflection, it did not believe it could substantiate. The residual case it presented at the hearing was sufficiently respectable in my estimation to avoid a conclusion of substantive unreasonableness. In the final analysis, although I take a different view from the Council, I therefore have no real basis for concluding that it was not reasonably entitled to take the view it did.
17. All in all, I do not consider that in this case it has been conclusively demonstrated that unreasonable behaviour has led to unnecessary or wasted expenditure in the appeal process. For that reason, the application must fail.

Keith Manning

Inspector