

Costs Decision

Site visit made on 13 September 2016

by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI

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

Decision date: 10 October 2016

Costs application in relation to Appeal Ref: APP/B1740/W/16/3150326 Land off Lower Pennington Lane, Lymington, Hampshire SO41 8AL

- 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 New Forest District Council for a full award of costs against HJC Land Trust.
 - The appeal was against the refusal of planning permission for the construction of a bungalow with an attached garage.
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Decision

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

Reasons

2. National guidance on the award of costs is set out in the Government's *Planning Practice Guidance* (PPG). This advises that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. It states that unreasonable behaviour may be either procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
 3. Paragraph 53 of the PPG states that the right of appeal should be exercised in a reasonable manner, and that an appellant is at risk of an award of costs being made against them if the appeal or ground of appeal had no reasonable prospect of succeeding.
 4. It provides some examples of the types of behaviour that would be held to be unreasonable, and which may give rise to an award of costs against an appellant. For instance, when the development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the decision should have been made otherwise, or where other material considerations are advanced, there is inadequate supporting evidence.
 5. In summary, the Council considers that the appellant behaved unreasonably because the appeal had no realistic prospect of succeeding. It considers that the appellant's case relied on the proposal falling under two of the exceptions to the general presumption against inappropriate development in the Green Belt; limited infilling in villages, and redevelopment of previously developed sites. However, there were no reasonable grounds for considering the site to be in a village and no evidence supporting the claim of a previously developed
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site. Nor did the appellant put forward any substantial argument that would amount to the very special circumstances necessary to justify inappropriate development in the Green Belt. It also claims that the appellant did not provide a Flood Risk Assessment with the application or with the appeal, or evidence to justify the lack of one.

6. The appellant refutes the assertion of unreasonable behaviour and contends that it did submit a Flood Risk Assessment with the appeal. The National Planning Policy Framework does not qualify that the infilling must be within a defined settlement boundary and the site exists between two dwellings. As the matter turns on the interpretation of policy, the appellant considers the appeal was justified.
7. Regarding the Green Belt exception of limited infilling in villages, the appellant accepted that the site falls outside the settlement boundary of Pennington and Lymington, but argued by reference to surrounding development and the distance between the appeal site and the settlement boundary, that it should be considered as falling within the village. While I concluded that the spatial and policy context of the site precluded it from being considered as part of the village, the appellant's supposition was not unreasonable.
8. The appellant referred to buildings previously standing on the site, but its case did not rely on the exception of the land being found to be a previously developed site; but as a consideration to weigh in favour of the proposal, alongside the ground of infilling. On the ground of the exception of limited infilling in villages, the appeal cannot be said to have had no reasonable prospect of succeeding. The appellant made reference to sustainable development and the location of the site as another consideration. While I did not find this amounted to the very special circumstances necessary to justify the development, it was not unreasonable of the appellant to advance such an argument.
9. The appellant's Flood Risk Assessment was submitted at the time the appeal was made, but there was a delay in a copy reaching the Council. It has provided comments on the Assessment. In this respect the appellant did not behave unreasonably.

Conclusion

10. I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Patrick Whelan

INSPECTOR