



Costs Decision

Hearing held on 10 August 2016

by D R Cullingford BA MPhil MRTPI

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

Decision date: 12 October 2016

Costs application in relation to Appeal Ref: APP/P2935/W/15/3141228 Land west of 29 Church View, Longhorsley, Morpeth, Northumberland, NE65 8UH

- 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 on behalf of Mr Peter Brotherton for a full award of costs against the Northumberland County Council.
- The appeal was against a refusal to grant planning permission for development described as an 'outline planning consent for up to 5 dwellings [with] all matters reserved'.

Summary of Decision: ~ The application succeeds and a partial award of costs is made in relation to the second and third reasons for refusal.

Submissions for the Appellant

1. It is claimed that the Council have behaved unreasonably by basing their decision on out-of-date policies, on documents not (at the time) in the public domain, on an emerging Green Belt 'inset' boundary that should have been afforded limited weight, by being inconsistent and by taking a disproportionate approach to ecological issues.
 2. The proposal received a fairly favourable pre-application response in January 2015. However, the first reason for refusal is based on a settlement boundary and supporting policies in a Local Plan that has been 'time-expired' for a decade. Those policies were given credence largely because the updated *Northumberland Five Year Supply of Deliverable Sites (2015–2020)* indicated that instead of there being provision for only some 3.6 years, sufficient land had been identified to meet the requirements within the 'central delivery area' over the next 6.1 years. But, the document was not published until 16 October 2015, the day after the Decision Notice was issued and 2 days after the Planning Officer's report was considered at committee. Leaving aside the fact that subsequent consultation has revealed several flaws in that document, no inkling of such a 'turn around' in the anticipated determination of the application was communicated to the applicant until the planning report had been prepared on 1 October 2015. Even then, the third reason for refusal relating to ecology (later withdrawn) was simply added at the committee meeting, without any chance for the applicant to respond. This is contrary to the principle of working proactively and must discourage discussion of measures that might make a scheme acceptable, thereby failing to follow the advice in the Guidance (NPPG).
 3. The second reason for refusal baldly states that the proposal would harm the openness of, and constitute inappropriate development in, the Green Belt. However, the Pre-Submission Draft of the Core Strategy had not been
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published when the Planning Officer's report was prepared or when the application was considered by the committee. Subsequently, the required consultation has elicited objections to the proposed Green Belt 'inset' boundaries and further consultations are in the offing to the Proposed Modifications to the Pre-Submission Draft of the Core Strategy. There could hardly be a clearer indication that the detailed Green Belt boundaries around settlements are very far from being fixed. It follows that it must be unreasonable to issue a decision that implies the opposite.

4. Oddly, the correct approach (in contradistinction to that applied to the appeal proposal) has been used in subsequent determinations. The advice that 'very limited weight can be attached to this [inset boundary] given its early stage within the consultation process' was offered in granting permission for up to 27 dwellings at Stannington Nurseries Tea Room in November 2015 and in approving a proposal for 1 dwelling at Stannington Station. Even more surprising is the permission for 55 dwellings at the Shoulder of Mutton in Longhorsley. Although the report was considered on 2 June 2015 (before the October emergence of the 5-year housing land supply and the Core Strategy), the Decision Notice was not issued until 11 March 2016, long after both documents were in the public domain and some 5 months after those same documents had ostensibly warranted the refusal of planning permission for the appeal scheme. Similarly, permission for a detached bungalow at Roseden Cottage, Hepscott was granted in February 2016 even though the site lies beyond the identified settlement boundary and within the general extent of the Green Belt. Such matters are not just for the Council and they do not relate just to 'the quality control of planning decisions'. Consistency is an important element of the planning system allowing policies to be interpreted reliably and Plans to provide proper guidance for all concerned. No convincing reason is advanced as to why such different considerations applied to the cited schemes compared to the appeal proposal. Such unexplained inconsistency is unreasonable.
5. The Planning Officer's report indicated 'that whilst comments from the County Ecologist were outstanding, it was likely that any mitigation measures required could be secured by planning conditions and [that] there would be no reason to withhold planning permission on these grounds'. There were good reasons to support that stance. The Preliminary Ecological Appraisal identified only a single mature oak tree within a hedgerow beyond the site as a moderate risk of supporting roosting bats, while 2 further 'boundary' trees (one also beyond the appeal site) were assessed as 'low risk'. No further survey work was proposed as the site is small, all boundary features are to be retained and no trees are proposed to be felled. Moreover, this is an outline proposal. In those circumstances, a suitable condition could have been attached to any permission if subsequent details so warranted more than the suggested mitigation, such as the retention of the 2 bird boxes and the provision of 4 bat roosts within the new development.
6. Instead, at the Planning Committee meeting it was reported that the County Ecologist had raised concerns relating to the possible demolition of No.29 (or parts of it) and to the loss of trees with potential for roosting bats. As a consequence, the Planning Officer recommended that a third reason for refusal should be added to the Decision Notice. This, once again, is contrary to the principle of working proactively and allowed no opportunity for a suitable

response. In the event, this reason for refusal was withdrawn by letter on 8 June 2016. But there was never any justification for its imposition.

Submissions for the Council

7. The Council have not behaved unreasonably. Although favourable pre-application advice was given by the Local Planning Authority, the penultimate paragraph makes it clear that such advice is offered without prejudice to any recommendation and involves only a preliminary assessment; it is inevitable that such an assessment must be based on the policies and circumstances applicable at the time.
8. Although the *Northumberland Five Year Supply of Deliverable Sites (2015–2020)* had not been published in advance of the Planning Committee, the claim is that, even if a dearth in the required supply could be demonstrated, it would not have amounted to 'very special circumstances' sufficient to overcome the inappropriate nature of the proposal within the Green Belt. And, although the relevant 'inset' boundaries were not published until 14 October 2015 (the day after the committee meeting), they were displayed in an earlier report to cabinet on 29 September 2015. The boundary for Longhorsley coincides with the long-established 'settlement boundary' in this part of the village and, as that boundary is set out within the adopted Castle Morpeth District Local Plan (2003), its use in defining the Green Belt in relation to the appeal proposal is reasonable.
9. As for the other decisions referred to by the appellant, the Local Planning Authority would re-iterate that each decision needs to be made on its own merits. Certainly, the comparison between the appeal proposal and the decisions made at Stannington is flawed because there never has been a 'settlement boundary' there, let alone an established one, in contrast to the situation at Longhorsley. Hence, permission at Stannington did not involve development beyond a recognised boundary even though it did entail schemes within the proposed Green Belt.
10. Although the third reason for refusal (referring to the lack of information to address the impact of the scheme on protected species) did not emerge until the day of the committee meeting, the application had already been recommended for refusal on the basis of the 2 other reasons so that, whether or not the applicant had been made aware of the third reason for refusal, the outcome would have been the same. The appeal process itself offered the opportunity to provide any necessary further information. And, although no further ecology information was submitted, the Local Planning Authority withdrew the third reason for refusal on 8 June 2016 some 9 weeks before the Hearing.

Conclusions

11. The Planning Practice Guidance (NPPG) reaffirms that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
12. It should be clear from my decision letter why I consider that the first reason for refusal is substantiated. I need not reiterate the arguments here. It follows that there was good reason to refuse this scheme and, consequently,

that in order to pursue the proposal, an appeal might well have been necessary in any event.

13. Nevertheless, the decision letter also explains why this small site just beyond the 'settlement boundary' of the village cannot possibly be treated as being within the Green Belt now. Detailed boundaries still have to be defined: there are objections to the 'inset' boundaries currently proposed: those objections, together with the emergence of the 'inset' boundaries themselves, necessitate further consultations: there is no evidence that the Green Belt boundary in the vicinity of the appeal site has been subjected to all the proper tests: the results of further consultations and the application of the appropriate tests have yet to be examined and found 'sound'. Hence, the second reason for refusal is fundamentally flawed and unreasonable.
14. Worse still, the stance reflected in maintaining that the appeal site is within the Green Belt seems to have been applied, uniquely, only to the appeal scheme. In all the other decisions cited, it appears that very limited weight was given to the 'inset' boundaries due to the early stage reached by the Core Strategy in the consultation process. And, that was also the case elsewhere at Longhorsley. For example, permission for the scheme at the Shoulder of Mutton was issued long after planning permission for the appeal proposal had been refused. Such apparent inconsistency undermines the efficiency and fairness of the planning system. It may not always be easily avoided. But, its occurrence without some kind of cogent explanation is unreasonable. In this case, the explanation offered is that the schemes at Stannington did not involve development beyond an 'established' boundary. That is true. However, what was actually involved was development within a proposed 'inset' boundary that was explicitly accorded 'very limited weight' in the Planning Officer's report. The decision thus serves to further emphasise the inconsistent approach adopted in relation to the appeal site.
15. The justification for the third reason for refusal (the lack of information about protected species) seems questionable to me and the reasons for departing from the Planning Officer's initial assessment ill-founded. Although the Preliminary Ecological Appraisal had not addressed the possible demolition (partial or otherwise) of the bungalow at No.29, there is no ecological evidence that I can discern in that document (or anywhere else) that might indicate a need to prevent development on the appeal site as a matter of principle; hence, any necessary additional information required could have been the subject of a suitable planning condition. Moreover, and rather more surprisingly, the clarification sought by the County Ecologist seems to ignore much of the information that had actually been submitted; in particular, the contingent mitigation measures suggested and the intention to retain and protect all trees and hedgerows within, or just beyond, the site. Raising such objections so 'late in the day' (nearly 3 months after the application had been submitted) must stymie any chance of initiating proactive working, contrary to the aims of the Guidance and the statement on the Decision Notice. It also means that there can be no opportunity to correct such apparent misunderstandings. In the event, no additional ecological information was submitted, although responses to the third reason for refusal had to be made initially. The fact that the Local Planning Authority withdrew this reason for refusal on 8 June 2016 (about 9 weeks before the Hearing) must have saved some time and expense; that is to be welcomed. But, it also confirms my view that there was little to substantiate this reason for refusal in the first place.

16. Hence, I find that unreasonable behaviour resulting in unnecessary expense, as described in the Guidance, has been demonstrated in relation to the second and third reasons for refusal.

Formal Decision

17. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Northumberland County Council shall pay to Peter Brotherton, the costs of the appeal proceedings, limited to such costs entailed in addressing the second and third reasons for refusal, those costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The proceedings concerned an appeal more particularly described in the heading of this decision. The second and third reasons for refusal are:
2. The proposed development would be located within the Green Belt. No special circumstances have been demonstrated and it would therefore be inappropriate development, which would be harmful in terms of its impact on the openness of the Green Belt, as defined by Joint Structure Plan Policy S5 and Northumberland Local Plan Pre-Submission Core Strategy (September 2015) which are supported by Morpeth District Local Plan Policies C1 and LHC1.
 3. Insufficient information has been submitted to enable the Local Planning Authority to fully consider any potential implications on protected species. As a result, the proposal is considered to be contrary to Policy C11 of the Castle Morpeth District Local Plan and the National Planning Policy Framework.
19. The applicant is now invited to submit to the Northumberland County Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

David Cullingford
INSPECTOR