
Costs Decision

Site visit made on 19 September 2016

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 13th October 2016

Costs application in relation to Appeal Ref: APP/J3720/W/16/3152535 Stables site, Tommy's Turn Lane, Upper Brailes, Banbury OX15 5BB

- 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 Mr Edward Warmington for a full award of costs against Stratford on Avon District Council.
 - The appeal was against the refusal of planning permission for demolition of existing stables and erection of one new dwelling.
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Decision

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

Reasons

2. The National Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters including preventing or delaying development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations. It also includes the failure to produce evidence to substantiate a reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. Other substantive matters include not determining similar cases in a consistent manner.
 4. The appellant's application for costs relates to substantive matters listed as examples above, with particular reference to the failure to produce evidence to justify the decision to refuse planning permission following pre-application meetings.
 5. The reason for refusal set out in the decision notice is complete, precise, specific and relevant to the application. It clearly identifies what the Council considers to constitute harm and states the policies of the Stratford-on-Avon Local Plan Review (2006) and emerging policies of the Stratford-on-Avon District Core Strategy 2011-2031 (CS) to which the proposal was considered to be in conflict at the time of the decision, together with paragraphs within the National Planning Policy Framework (the Framework) considered to be relevant.
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6. The Council's evidence relies upon an officer's delegated report to substantiate the reason for refusal in this respect, rather than specifically responding to the appellant's statement and associated evidence prepared for the appeal. Nevertheless, such a course of action remains at the Council's discretion where the reason for refusal is substantiated with respect to judgements made, which I consider to be the case. In this regard, based on the outcome of the appeal, I also cannot conclude that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations.
7. The appellant expresses additional concern that although the Council provided information to the appeal with respect to the adoption of the CS and the resultant status of Stratford-on-Avon Local Plan Review (2006), it did not identify the relevant CS policies to which there was conflict. Whilst such a course of action may have been helpful to assist the focus of the appeal, when taking into account that the relevant policies of the CS are listed in the Council's delegated report, I do not consider that the Council's approach constitutes unreasonable behaviour.
8. The appellant has drawn my attention to a number of examples of development granted planning permission by the Council within the District, including 14 affordable dwellings and 4 market dwellings to the east of the site, a single dwelling nearby on Henbrook Lane, 2 dwellings nearby to the west and south of Tommy's Turn Lane and a single dwelling at the junction of Tommy's Turn Lane and Sutton Lane. However, based on the evidence before me, the site specific circumstances that led to each of these proposals being accepted are not the same as the appeal before me, including with respect to individual locations and relevant development plan policies at the time of each decision. In such circumstances, I cannot conclude that the Council has determined similar cases in an inconsistent manner.
9. Informal advice provided before an application is given without prejudice and cannot pre-determine the outcome of the subsequent application, which must take account of all material factors. The information provided as part of this appeal includes a formal record of the pre-application advice and from this evidence it is clear that the Council's 5-year housing land supply position was different at pre-application stage compared to when the Council's decision was made. In such circumstances, it is reasonable that a different view may be taken with respect to the principle of development in terms of policies relating to the supply of housing in the development plan and in the context of the Framework. I therefore cannot conclude that informal advice given before the submission of the planning application was misleading so as to amount to unreasonable behaviour on the part of the Council.

Conclusion

10. I conclude that unreasonable behaviour on the part of the Council has not been demonstrated. I therefore determine that the costs application should fail.

Gareth Wildgoose

INSPECTOR