
Costs Decision

Site visit made on 4 October 2016

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 4th November 2016

Costs application in relation to Appeal Ref: APP/A0665/W/16/3152549 Land adjacent to The Firs, Chester Road, No Man's Heath, Cheshire

- 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 J Blake for a full award of costs against Cheshire West & Chester Council.
 - The appeal was against the refusal of outline planning permission for two dwellings.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The *Planning Practice Guide* (PPG) advises that parties will normally be expected to meet their own costs in relation to appeals, and that costs may only be awarded against a party who has acted unreasonably, and thereby caused the party applying for costs to incur unnecessary, or wasted, expense in the appeal process.
 3. The application for an award of costs is made on the basis that the appellant considers that the Council's reason for refusal is inconsistent with other decisions made in the locality, and is incorrect. The PPG indicates that, in such circumstances, costs may be awarded against an authority.
 4. Whilst there is only one reason for refusal, it encompasses a number of issues. These are whether the site lies within the built-up envelope of the village, whether it has good accessibility to services and facilities, its impact on the character and appearance of the area, and the loss of land designated as greenspace.
 5. The appeal decision outlines that as the settlement boundary is not defined in the development plan, it is a matter a judgement. Nevertheless, in this regard my attention has been drawn to a number of other applications and appeals for small scale housing schemes in the immediate vicinity of the appeal site. These include sites on the same side of the road as the appeal site, which are a greater distance from the village, and where it was concluded that the sites were within the built up envelope of the village, and not part of the open countryside. In the light of these previous decisions, I consider that it is unreasonable to conclude that this site lies outside the settlement boundaries.
 6. Similarly, previous decisions, including one about a month before the decision was made on this site, have concluded that sites further away from the village, could be considered to be "sustainable locations" due to being within walking
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distance of the services and facilities of the village itself, and because of the good access to the nearby settlement of Malpas. As such, to conclude that this site, which is nearer to these services does not have good accessibility, is inconsistent and unreasonable.

7. The Council have argued that many of these decisions were taken at a time when they could not demonstrate a 5 year housing land supply, which is no longer the case. Be that as it may, whilst the presence, or absence, of this may alter the balance given to matters it does not directly impact on whether the site is within the settlement boundary or not, or on the accessibility of the site to services and facilities. Reference has also been made to pre-application advice provided on the site in 2013 in which the Council indicated that the site was outside the built-up envelope. I have not been provided with a copy of this advice, but it does not appear to have taken any account of the decisions outlined above where sites a greater distance from the village were considered to be part of the settlement.
8. In terms of assessing the impact of a proposal on the character and appearance of the area, consideration of planning applications and appeals can involve matters that are finely balanced, and are matters of judgement. Nevertheless, in this respect the Council's concerns appear largely to relate to matters regarding the scale and the siting of the proposed houses which are not matters that are to be determined at this stage. No substantive evidence has been provided as to why a scheme for the site could not be designed that could successfully address these issues. In addition, the Council have accepted that the reference to the site as being designated as greenspace is incorrect and therefore Policy ENV17 of the *Chester District Local Plan (adopted May 2006)* should not have been used in determining the application.
9. Overall, I consider that the Council has not taken adequate account of previous decisions, and so has been inconsistent in its decision making. I therefore, conclude that the Council's approach does represent unreasonable behaviour, and this has resulted directly in the need for this appeal. Consequently, I find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the PPG, has been demonstrated, and a full award of costs is justified.

Costs Order

10. In exercise of the 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 enabling powers in that behalf, IT IS HEREBY ORDERED that Cheshire West & Chester Council shall pay to Mr J Blake, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Cheshire West & Chester 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.

Alison Partington

INSPECTOR