

Costs Decision

Site visit made on 4 October 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 7th November 2016

**Costs application in relation to Appeal Ref: APP/R1038/W/16/3153336
1 Shire Lane, Heath, Chesterfield S44 5SQ**

- 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 John Morris for a full award of costs against North East Derbyshire District Council.
 - The appeal was against the refusal of planning permission for an outline application with all matters reserved for the construction of one detached dwelling.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that costs may 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. The PPG states that local planning authorities are at risk of an award of costs if they fail to produce evidence to substantiate each reason for refusal.
 3. The basis of the appellant's application for costs is on the grounds that the Council acted unreasonably during the consideration of the planning application by failing to take into account the Grove Bungalow appeal decision, located approximately 70m to the east of the appeal site, and by citing coal mining risk as a reason for refusal without giving the applicant the opportunity to submit further information prior to the decision to refuse planning permission.
 4. Both in the determination of the application and in the evidence submitted in the appeal, the Council identified other more recent appeal decisions in the Borough relating to development within the countryside. I agree with the Council that the appellants' assertion that the appeal decision at Grove Bungalow should be apportioned appropriate weight is based on proximity of that site to the appeal site.
 5. However, in the case of the Grove Bungalow the Council did not find any material harm to the character and appearance of the area. Grove Bungalow is located on Mansfield Road and from my site visit I observed that the position of the proposed dwelling would also have frontage to Mansfield Road. The location of the development in that case is very different to the location of the proposed development in this appeal which would have access and frontage to Shire Lane and extend the extent of built development slightly to the north of
-

Mansfield Road. As such, it would not form part of the ribbon development that currently exists along Mansfield Road. Therefore, the relevant planning considerations relating to the matter of character and appearance are very different between the Grove Bungalow case and this development.

6. As each application is required to be considered on its own individual circumstances I do not find it unusual that there may be differences in the outcome of appeal decisions within the Borough relating to the sustainability of development within the countryside. The fact that the Council took into account more recent appeal decisions than the Grove Bungalow case does not suggest that it acted unreasonably, particularly taking into account the locational differences between the two sites.
7. Turning to the issue of the mine entry, the limited information provided by the applicant was considered by the Coal Authority who determined that the information failed to identify the recorded mine entry within the site and consider the risks to both public safety and stability. In addition, The Coal Authority suggested that it would expect a definitive construction stand-off zone or no build zone to be illustrated on any proposed site layout plan, which could not be achieved without knowing the precise location of the shaft or discounting it from being within the site entirely. It concluded that these issues would not be appropriate to be the subject of the imposition of conditions in this case.
8. The approach taken by the Coal Authority in this appeal is different to that of the Grove Bungalow case where no objections were raised to that application, presumably as a consequence of its distance from the indicative position of the mine entry.
9. Given the previous history of the effect of coal mining workings on the appeal site associated with the construction of the storage building, I do not consider it unreasonable for the Council to have expected more detailed information to be submitted with the application or as a consequence of the Coal Authority's response to the consultation on the planning application.
10. Although I have found that the issue relating to the mine entry can be adequately dealt with by means of a planning condition, given the concerns of the Coal Authority in its response to the consultation by the Council and the paucity of information on this matter submitted application stage, I do not consider that the Council acted unreasonably in identifying the issue as a reason to refuse permission.
11. Given the other reasons identified for the refusal of permission, I consider that the Council acted reasonably in not placing any further unnecessary and substantial expense on the applicant in seeking to address the mining matter. In addition, I note that no additional expense has been incurred in undertaking any further ground investigations.
12. Taking all of these matters into account, I find that the reasons for the refusal of the planning application were complete, precise, specific and relevant to the application. I have found that the Council had reasonable concerns about location of the development in the countryside and the impact on character and appearance, sustainability of the development and the risks posed by known mine entries which led to the decision to refuse the application. Just because I have found differently from the Council this does not mean to say that the

reasons for refusal had no basis. Accordingly, I do not find that the Council failed to properly consider the merits of the scheme and therefore the appeal could not have been avoided.

13. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified.

Stephen Normington

INSPECTOR