
Costs Decision

Site visit made on 18 October 2016

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 15 November 2016

Costs application in relation to Appeal Ref: APP/D2510/W/16/3151196 Old Fen Lane, Scrub Hill, Lincolnshire LN4 4XD

- 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 Mrs Eileen Keown for a full award of costs against East Lindsey District Council.
 - The appeal was against the refusal of planning permission for One detached dwelling and garage.
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Decision

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

Reasons

2. The national Planning Practice Guidance (PPG) advises that, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs.
3. The PPG advises that an award of costs against a local planning authority may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal. It makes clear that a local planning authority is required to behave reasonably in relation to both of these elements and provides examples of unreasonable behaviour.
4. Examples of substantive unreasonable behaviour referred to in the PPG¹ include (1) 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 and (2) failure to produce evidence to substantiate each reason for refusal on appeal.
5. The first ground of the Appellant's costs application is, in summary, that the Council failed to adequately take account of the extent to which the appeal site is served by public transport.
6. As stated in my appeal decision, buses currently run regularly during daytime until early evening on Mondays to Saturdays between Scrub Hill and New York, Coningsby, Boston and other locations. It would, for example, currently be possible to commute from the proposed dwelling using the IC5 service to and from a weekday '9 to 5' job in Coningsby. School buses also operate in the

¹ Paragraph: 049 Reference ID: 16-049-20140306

- area and additional services are available via CallConnect. I agree that the Council's reference to these services as a 'Shoppers' bus service could give the impression that it under-estimated the range of services which is provided.
7. However, the bus service also has weaknesses. As the last bus back from Coningsby each day using the IC5 service is currently in the early evening there would be limitations on the ability to access any evening shift work or leisure activities in this town. The service does not run sufficiently early and late on each day for '9 to 5' jobs in the larger centres of Boston or Lincoln to be accessed and the service does not operate at all on Sundays. The evidence indicates that the CallConnect service does not run later than early evenings during weekdays or at all on Sundays, and is also subject to availability. The limitations in the bus service, together with my findings related to cycling and walking, have led me to conclude that the proposed development would not be sited in a location which is sufficiently sustainable in terms of its accessibility by a choice of transport to jobs and services.
 8. For these reasons, I do not consider that the Council's assessment of bus service provision in Scrub Hill or the way that this influenced its decision to refuse permission constituted unreasonable behaviour as defined in the PPG.
 9. The second ground of the Appellant's costs application is, in summary, that the Council failed to take account of Policy H10 of the ELLPA under which infill housing development will be permitted in the small villages and larger settlements provided it would not '*...add to or intensify...*' ribbon development extending into the countryside.
 10. I agree that Policy H10 formed an important factor to be taken into account when the Council determined the application. There is no evidence, for example in the Council officer report that it did this.
 11. However, I have found in my decision that Policy H10 does not offer un-qualified support for the appeal proposal. For example, by adding a further dwelling the proposal would to some extent intensify the ribbon of development of which it would form part. The requirement in Policy H10 that proposals should satisfy '*...other relevant policies of the Plan*' should also be considered in the context of the fact that the proposal would be in a location where, under Policy A3² of the ELLPA, new housing should essentially be limited to proposals which serve a local need.
 12. Furthermore, I have found that whilst supporting paragraph 8.79 to Policy H10 expressly supports infilling in urban areas and the serviced settlements, Scrub Hill does not fall into either of these categories and is not sufficiently accessible by a choice of transport to services in the surrounding area, particularly during weekday evenings and on Sundays. I have found that its approval would conflict with the strategic approach to the location of general market housing which is set out in Policy A3 of the ELLPA and the relevant provisions of the Framework.
 13. For these reasons, whilst the Council's failure to expressly take Policy H10 into account represented a shortcoming in its decision making process, I do not consider that it led to a decision which prevented or delayed development which should clearly be permitted having regard to local and national policy

² As explained by paragraph 2.73 of the ELLPA

and other material considerations. The Council has also produced evidence to justify its decision to refuse permission. The decision did not constitute unreasonable behaviour as defined in the PPG.

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and that an award of costs is not therefore justified.

Jonathan Clarke

INSPECTOR