

Costs Decision

Site visit made on 31 October 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 21 November 2016

Costs application in relation to APP/V2723/W/16/3155950

Land Adjacent to 77 Richmond Road, Brompton on Swale, Richmond, North Yorkshire

- 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 N La'Borde for a full award of costs against Richmondshire District Council.
 - The appeal was against refusal of planning permission without complying with condition No 1 (approved plans) imposed by planning permission Ref 14/00190/FULL, dated 27 February 2015 for the erection of a dwelling.
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Decision

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

Submissions of Applicant

2. The application is for a full award of costs.
3. The Council should have set aside Core Strategy Policy CP6 and had greater regard to the clear instruction at paragraph 031, National Planning Practice Guidance (nPPG) not to seek affordable housing contributions from schemes of 10 units or less other than in designated rural areas. The guidance is clear, unambiguous and stems from a Written Ministerial Statement (WMS) supported by the Court of Appeal judgment. The guidance should be afforded significant weight but the Council has afforded it very little credence and as such acted unreasonably in refusing the application for the reason that the appellant declined to agree to make an affordable housing contribution.
4. A Flood Risk Assessment was not required and the Council acted dogmatically in insisting on one. The Council accepted that the new house would be in Flood Zone 1. The works to that part of the site in Flood Zone 3 (gabion baskets and associated earthworks) were bank stabilisation works between the two levels. They are completed and could be inspected. A layperson could see that they had little or neutral impact on the flood zone, as confirmed by consultants.
5. Consequently unnecessary or wasted expense was incurred in having to appeal against the refusal of the application, engaging the services of planning consultants and consultants to prepare a Flood Risk Assessment.

Submissions of the Council

6. The appeal site was acquired subject to a Section 106 obligation that required a contribution to affordable housing identical to that which was sought on the
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applicant's revised scheme for a house on the site. He was therefore fully aware of the Council's expectations from the outset.

7. Although the claim for costs letter suggests that the Richmondshire Local Plan area is not a "designated rural area" that is not correct. "Rural areas" are defined by section 157(1)(c) of the Housing Act 1985. A threshold of 3,000 population has previously been used for the purposes of defining "rural areas". Richmondshire with the exception of the heart of Catterick Garrison is defined as "rural" for Census purposes. The 2011 Census population of the Parish of Brompton on Swale is 1,879. It is undoubtedly in a rural area.
8. The South Cambridgeshire decision (APP/W0530/W/16/3142834) was similar to the current appeal. That appeal was rejected as national guidance did not outweigh the Development Plan. nPPG is a material consideration but the weight to be given to it depends on the circumstances. Here, the Council justified its reasoning that the nPPG does not outweigh the up-to-date local evidence of the Development Plan. It has not therefore acted unreasonably.
9. A Flood Risk Assessment would have been required in any event if permission were granted. The applicant was invited to supply that at application stage, but opted to leave the issue to be considered as part of the appeal so the Council cannot be said to have acted unreasonably.

Reasons

10. 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. Paragraph 49 of PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal such as by unreasonably defending appeals. They should produce evidence to substantiate each reason for refusal, and not rely on assertions about a proposal's impact, which are unsupported by any objective analysis.
11. I found in the Appeal Decision that a requirement for an updated flood risk assessment was justified and taking it into account, the applicant succeeded on this issue. I also found that an affordable housing contribution was justified, taking into account the substantial weight that was to be given to the WMS and nPPG, but applying the development plan policy given the pressing local affordable housing need and the absence of any reason to suppose that the viability of the scheme would be affected by the required contribution.
12. Whether the area was a rural area and therefore benefited from the qualification set in the WMS/nPPG was not strictly relevant as I found that the Council had justified its stance by reference to a threshold that was set irrespective of any such designated rural status.
13. I therefore conclude that unreasonable behaviour resulting in unnecessary expense, as described in nPPG, has not been demonstrated. An award of costs is therefore not justified.

Grahame Kean

INSPECTOR