
Costs Decision

Site visit made on 28 November 2016

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 5th December 2016

Costs application in relation to Appeal Ref: APP/C1435/W/16/3156678 Little Hackhurst Farm, The Dicker, Lower Dicker BN27 4BG

- 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 E Russell for a full award of costs against Wealden District Council.
 - The appeal was against the refusal of the Council to grant planning permission for a replacement dwelling.
-

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appellant contends that the Council prevented a development that should have been permitted by failing to take proper account of the shortfall in the five-year housing land supply and giving inadequate reasons for its decision, thereby precipitating an unnecessary appeal process. He also contends that the Council only changed its position in response to another appeal decision¹, rather than making an objective assessment of the scheme.
4. The appeal site is outside any settlement boundary and the planning history indicates that a certificate of lawful development for the stationing of a caravan was only issued in November 2011², although the site has been in residential use since 1994, following an appeal³. Two applications to provide a dwelling on the site had previously been refused. The first in 2011⁴, prior to the publication of the National Planning Policy Framework, and the second in 2013⁵, shortly after the adoption of the Wealden District Local Plan Core Strategy. However, policies from the Wealden Local Plan 1998 had been saved. These included Policy DC22 which specifically seeks to restrict the replacement of mobile homes with permanent dwellings, with the exception of those for agricultural and forestry workers.

¹ APP/C1435/W/16/3143595

² Wealden District Council Ref: WD/2012/1988/LDE

³ Wealden District Council Ref: WD/1994/0369

⁴ Wealden District Council Ref: WD/2011/0847

⁵ Wealden District Council Ref: WD/2013/1850/F

5. It was therefore reasonable for the Council to consider that its policy position had not significantly changed since the previous refusals, and that Policy DC22 was the one that was most relevant to the application. At the time the application was determined, the Council acknowledged that it was unable to demonstrate a five-year housing land supply. However, as the scheme would not have contributed to meeting the under provision of housing, the Council did not consider it was necessary to assess the scheme in accordance with the tests set out in paragraph 14 of the National Planning Policy Framework (the Framework). This was not an unreasonable approach. Its report therefore focussed on the planning history of the site and its policy objection to the replacement of a mobile home with a new permanent dwelling, based on Policy DC22 of the Local Plan.
6. However, in rejecting the proposal the Council did not solely rely on that policy, but also referred to Policies GD2, DC3 and DC17. Policies GD2 and DC 17 seek to strongly resist development outside settlement boundaries, but in the absence of a five-year housing land supply should be considered out-of-date. Policy D3 is concerned with proposals associated with agricultural holdings, but there was no evidence before me which indicated that the current mobile home is part of an agricultural or other rural enterprise. It was therefore of limited relevance to the proposal.
7. The rejection of the scheme on the basis of these out-of-date policies and paragraph 55 of the Framework was done without undertaking an assessment of the material harm that would be caused by the site's location in the countryside. Consequently, notwithstanding the Council's view that the proposal was in conflict with Policy DC22, the decision also relied on the site's planning history and its location outside a defined settlement boundary.
8. However, in the absence of a five-year housing land supply, applications should only be refused when the adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole. In my view the report was deficient in not specifically undertaking this balancing exercise. However, it does not follow that the Council acted unreasonably in reaching its decision, bearing in mind that there was a conflict with Policy DC22. Furthermore, the balance of material considerations is dependent on the individual circumstances of the case.
9. Since the Council's decision in April, a similar proposal for the replacement of a mobile home with a permanent dwelling, elsewhere in the district has been allowed on appeal, Ref: APP/C1435/W/16/3143595. Whilst I do not have full details of that scheme, I have had regard to the Inspector's decision, which was issued on 12 October 2016. In undertaking her assessment the Inspector applied the test set out in Paragraph 14 of the Framework, taking account of the Council's lack of housing land supply. She evaluated the scheme having regard to the material considerations that were relevant to that case. She then undertook the balancing exercise and concluded that the appeal should be allowed.
10. When the Council received this decision, it re-evaluated its position in relation to the appeal before me, recognising that the decision represented a material change in circumstances. The Council offered the appellant the opportunity to re-submit the application to avoid the need for the appeal to progress further.

When that offer was rejected the Council wrote to the Planning Inspectorate on 17 October 2016, stating that it would not be providing any further evidence to support its decision and invited the appointed inspector to allow the appeal.

11. Although the PPG gives withdrawal of a reason for refusal as an example of unreasonable behaviour by a Council, I am satisfied that in view of the other appeal decision there were good reasons for it to do so in this case. It then acted responsibly by providing the appellant with the option of re-submission and by informing the Inspectorate promptly of its decision to withdraw. The Council did not act unreasonably in these circumstances.
12. Following the Council's decision to withdraw from the appeal the appellant had a clear choice, as the Council's offer of re-submission was highly likely to have resulted in the granting of planning permission. It was therefore his choice to pursue the appeal and incur the costs of so doing as the outcome would, in all probability, have been the same.

Conclusion

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

Sheila Holden

INSPECTOR