
Costs Decision

Site visit made on 25 October 2016

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 12 December 2016

**Costs application in relation to Appeal Ref: APP/U2370/W/16/3153121
Northern Cobblestones, Fairfield Nurseries, Puddle House Lane, Singleton,
Lancashire, FY6 8LB**

- 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 & Mrs Lyons for a full award of costs against Wyre Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for development described as an outline application for residential development for up to 15 dwellings with access, siting and scale applied for (all other matters reserved).
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Decision

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

Reasons

2. The appellants' costs application, the Council's response and the appellants' final comments were submitted in writing.
 3. 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 or wasted expense in the appeal process. In summary, the appellants argue that the Council has acted unreasonably by: preventing development which should clearly be permitted having regard to its accordance with the Development Plan, national policy and other material considerations; failing to produce evidence to substantiate each reason for refusal; relying on vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis; refusing planning permission on a planning ground capable of being dealt with by conditions; and, not determining similar cases in a consistent manner. The application is for a full award of costs.
 4. The Council's first reason for refusal relates to the effect of the scheme on the character and appearance of the surroundings. In its appeal submissions, with particular reference to its Delegated Report Sheet, the Council has presented an assessment of the character and appearance of the appeal site and its surroundings, including references to: existing patterns of development; density of development; and, topography. It also acknowledges the extant outline planning permission Ref. 14/00429/OUTMAJ, for residential development. Against that background, it has provided an analysis of the likely
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impact of the scheme, with reference to the layout, scale and massing of the proposed units. In support of its conclusions, it makes reference to local and national policy. In my judgement, the Council's analysis does not amount to vague, generalised and inaccurate assertions about the impact of the scheme. I share its concerns regarding the likely impact on the character and appearance of the surroundings and this had led to the dismissal of the appeal.

5. The Council and appellants agree that the informative attached to outline planning permission Ref. 14/00429/OUTMAJ, to the effect that the site '*may be suited to between 3 and 5 single storey dwellings*', carries no weight in this case and it is not self-evident, based on the submissions before me, that it has unduly influenced the Council's decision to refuse planning permission. On the contrary, in correspondence with the appellants whilst the application was with it for consideration, the Council's planning officer expressed a view to the appellants that the site could accommodate more than 5 bungalows.
6. In my judgement, the Council has substantiated its first reason for refusal, with reference to the Development Plan, national policy and other material considerations.
7. The Council's second reason for refusal relates to the effect of the proposal on the living conditions of neighbouring residents and future occupants of the appeal site. Whilst my appeal decision conclusions differ from those of the Council in relation to these issues, it is a matter of judgement and I consider that the evidence it has produced at appeal, including references made to factors such as: the width of the rear garden of proposed plot 5; the requirement of SPG4 with which the layout conflicts; and, the absence of any compelling evidence to demonstrate that the consented use of the site is harmful, provide a respectable basis for its stance. Furthermore, had I shared the Council's concerns, I agree that it would be unlikely to be possible to overcome them through the imposition of conditions. In my view, it would be difficult to envisage an appropriate design for the proposed plot 5 dwelling which would not include a rear facing first floor habitable room window providing adequate light and outlook, in the interests of the living conditions of future residents. The appellants have not provided any details to show otherwise. Furthermore, fencing or planting along the rear boundary of that property sufficiently tall to prevent overlooking of the neighbouring gardens, would be likely to appear unduly dominant when seen from plot 5.
8. The circumstances in appeal decision Ref. APP/U2370/W/15/3010721, regarding the application of the SPG4, were materially different. In that case, which related to a different site, it appears that the distance between rear elevations and rear boundaries would comply with the SPG4. This previous appeal decision appears to me to be of little relevance in relation to the case before me.
9. In my judgement, the Council has provided substantial evidence in support of its second reason for refusal, with reference to the Development Plan, national policy and other material considerations.
10. In its Delegated Report Sheet, the Council has acknowledged the 3 dimensions to sustainable development: economic; social; and, environmental. A number of relevant factors, including benefits of the scheme, were weighed in the planning balance, which lead to its conclusion that the harm, arising from a combination of factors including the density of development, would significantly

and demonstrably outweigh the benefits. It follows that the scheme would not amount to sustainable development under the terms of the Framework; a matter which the Council has not failed to substantiate. I have reached the same conclusion in my appeal decision.

11. Whilst consistency is desirable, each proposal must be considered primarily on its own merits. Although the appellants have indicated that the Council has granted planning permission elsewhere in the rural Wyre for higher density and 2-storey development, I have not been provided with details to show that they were directly comparable to the proposal before me. Under these circumstances, I am not convinced that the Council has failed to determine similar cases in a consistent manner.
12. In my appeal decision, I have concluded that the appeal should be dismissed. It follows that the Council has not prevented or delayed development which should clearly be permitted. Furthermore, under these circumstances, the Council's decision to refuse planning permission in this case does not support the appellants' contention that it failed to work proactively with the appellants and it does not indicate a lack of co-operation on the Council's part. Correspondence between the Council and appellants prior to its determination of the planning application indicates that it did seek to engage with the appellants, with the aim of seeking solutions to its concerns regarding the scheme. Its approach was not contrary to the requirements of paragraphs 186 or 187 of the *National Planning Policy Framework*. In addition, the Council's decision notice indicates, with reference to *Article 35 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 (as amended)*, how it had worked with the appellants.
13. In my appeal decision, I did not agree with the view of the Council that a financial contribution towards Affordable Housing should be provided in lieu of provision on-site. Nonetheless, the evidence submitted by the Council in support of its position provided a respectable basis for its stance. It did not behave unreasonably in relation to this matter.
14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

I Jenkins

INSPECTOR