
Costs Decision

Site visit made on 19 December 2016

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 23rd December 2016

Costs application in relation to Appeal Ref: APP/T3535/W/16/3157668 The Rosary, Hulver Street, Henstead, Suffolk NR34 7UE

- 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 Lee Ebdon for a full award of costs against Waveney District Council.
 - The appeal was against the refusal of planning permission for a new dwelling.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made 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 considers there was a substantive failure by the Council in considering the supporting text to Policy DM22 of the DMP¹ as if it were planning policy. In particular, the appellant refers to the Council's proposition that the appeal site would not be within a frontage of at least six properties contrary to guidance in Paragraph 7.58 of the supporting text to Policy DM22. I share the view of the appellant that the supporting text to Policy DM22 does not require infill proposals to be within a continuous built frontage of six dwellings, although it does state that this will usually be the case. The reference to six properties is not planning policy but rather an attempt to assist and guide the interpretation of Policy DM22 by setting out what form of development will typically constitute infilling.
4. A precise definition of what constitutes a built frontage is not set out in the development plan and therefore the Council were entitled to commence its considerations of the application by assessing whether the proposed dwelling would be in a frontage of six houses, as this is usually what is considered to constitute a built frontage. The Council's assessment explains why it found the appeal site to be outside a built frontage. This assessment was specific to the site. In particular, the Council did not consider a frontage could turn a corner. Whilst I do not share the Council's ultimate conclusion on this point, it was not

¹ Policies to Help Make Decisions on Planning Applications – Development Management Policies DPD 2011

irrational or illogical. Therefore, the Council's conclusion on this point was not an unreasonable one, although it was over literal.

5. The Council failed to properly explain the different conclusions it reached in finding the appeal scheme unacceptable whilst approving a new dwelling approximately 20m north of the appeal site. Paragraph 049² of the PPG states that a substantive failure may arise if a local planning authority has not determined similar cases in a consistent way.
6. Nevertheless, in this instance the Parish Council explained that the local bus service has been curtailed between the two applications and this is material change that has affected the appeal site's accessibility to public transport. As such, the Council's failure to satisfactorily address in its evidence this apparent inconsistent did not prove to be determinative and thus a cost award predicated on this point would be unreasonable.
7. For the reasons given in my formal decision, I do not share the appellant's view that the appeal scheme should clearly have been approved.

Conclusion

8. My overall conclusion is that the Council did not act unreasonably in its assessment of the appeal scheme and thus there were no substantive failures. For the reasons given above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Graham Chamberlain,
INSPECTOR

² Reference ID: 16-049-20140306