
Costs Report to the Secretary of State for Communities and Local Government

by Louise Nurser BA (Hons) Dip UP MRTPI

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

Date: 28 September 2016

TOWN AND COUNTRY PLANNING ACT 1990

STAFFORD BOROUGH COUNCIL

APPEAL BY

MR N HAWLEY (MOORE FAMILY TRUST)

Site visit made on 27 July 2016

Shenley Cottage, Main Road, Little Haywood, Stafford ST18 0TR

File Ref: APP/Y3425/W/16/3149840

File Ref: APP/Y3425/W/16/3149840

Shenley Cottage, Main Road, Little Haywood, Stafford ST18 0TR

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Mr N Hawley (Moore Family Trust) for a full award of costs against Stafford Borough Council.
- The appeal was against the refusal of planning permission for residential development of 60- 65 dwellings to include the provision of 3.27 hectares of public open space and networks including details of access only.

Summary of Recommendation: that no award be made.

Recommendation

1. That the application for an award of costs be refused.

Procedural matter

2. As the appeal was made by means of written representations the application for costs and the Council's response were similarly made.

The submissions for Mr N Hawley (Moore Family Trust)

3. The appellant referred to Paragraph 49¹ of the Planning Practice Guidance (PPG), where it advises that local planning authorities are at risk of an award of costs against them: where they prevent or delay development which should be clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; fail to produce evidence to substantiate each reason for refusal on appeal or provide vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The following procedural matters were also listed under Paragraph 49 of the PPG, but clearly should be considered in the light of Paragraph 47²: only supplying relevant information at appeal when it was previously requested, but not provided, at application stage and introducing fresh and substantial evidence at a late stage, necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.
5. The main points in the appellants' application were as follows. There was no change in circumstances or relevant policy since the previous appeal for the same development was dismissed solely on the basis that the landowner's mortgagee had been unable to sign the S106 obligation within the prescribed time scale. This obstacle has been overcome. The previous appeal concluded that the site was an appropriate location for development and that the proposal accorded with adopted policy, including Policy SP7 of the Plan for Stafford Borough (PSB)³. A partial award of costs was made against the Council on the basis of unreasonable behaviour. The Council did not give consideration to this previous appeal.

¹ Reference ID: 16-049-20140306

² Reference ID: 16-047-20140306

³ Adopted 19 June 2014

6. The Council refused the current application for different reasons. There were no technical objections to the proposal. Little evidence was provided on the harm caused by the proposal or how this outweighed the general benefit of development in the context of the presumption in favour of sustainable development and the need to boost housing nationally.
7. The Council's Statement of Case introduced an additional policy (Policy SP7 of the Plan for Stafford Borough (PSB)) which was not referred to within the Reasons for Refusal.
8. The Council gave weight to policies and a settlement boundary which have yet to be examined. Their sole justification for refusal related to the perceived impact on the housing requirements/ proportions set out in the Development Plan. As the amount of development will have a very marginal impact on any proportional housing requirement, and housing levels should not be seen as a ceiling, particularly so early in the Plan period, the proposed development will not affect the overall vision for the Development Plan.
9. The Council misinterpreted its own policies. In particular, it continually conflated the two Key Service Villages of Little Haywood/ Colwich and Great Haywood, and as such, this resulted in inaccurate figures and a consequential broad- brush approach to development management.

The response by Stafford Borough Council

10. The Council response set out that they had not acted unreasonably in refusing the application or in dealing with the application and subsequent appeal, and therefore had not caused the appellant to incur unnecessary or wasted expense in accordance with Paragraph 50 of the PPG⁴. The Council refused the application as not being in accordance with development plan policy, and no material considerations were put forward by the appellant or considered relevant, including national policy, to indicate that planning permission should have been granted. The fact that the applicant did not agree with the determination of the application is not a reason for an award of costs.
11. The Council considered that they correctly understood the proposal, and applied the correct and relevant policies.
12. It acknowledged that the previous appeal had been refused for three reasons, two of which were withdrawn and that the Inspector had dismissed the previous appeal on the basis of the lack of a planning obligation. The partial award of costs related to the two reasons for refusal which had been withdrawn.
13. The Council argued that in the 18 months, since the previous application was dismissed at appeal, there has been a change in the planning context. Evidence was provided demonstrating that the Council could provide for a five year supply of housing land, including a 20% buffer, and that the housing committed at the Key Service Level of the settlement hierarchy exceeded the 12% set. Further development at the Key Service Village level of the hierarchy would undermine the development strategy set in Spatial Principle 4 of the PSB.

⁴ Reference ID: 16- 050-20140306

14. The emerging Part 2 of Plan for Stafford Borough is at a reasonably advanced stage. Hearings into the Examination of the Plan were set for July and adoption is anticipated to take place at the end of 2016.

Inspector's Reasons

15. The Planning Practice Guidance 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.
16. The appellant considered that the Council should have allowed the proposed development as the policy context was the same in which the previous appeal decision had been made, and that there were no technical planning reasons to refuse the appeal. The Council acknowledged that the previous appeal had been dismissed solely on the basis of the planning obligation⁵, but disputed that the policy position had not changed since the original application had been refused. The Council cited housing figures within its Statement of Case that the level of development at the Key Service Villages of the settlement hierarchy exceeded the 12% set out in the Plan for Stafford. The Council considered this to mean that the proposal would be contrary to Policy SP4 of the adopted Plan for Stafford Borough, which would impact on the strategy of the plan, a position which I have supported.
17. I am aware that the housing figures for the two Key Service Villages of Little Haywood with Colwich, and Great Haywood were treated as if they were one settlement, and at the time of the refusal of the application, the Colwich Neighbourhood Plan and the emerging Part 2 Plan for Stafford Borough were at a significantly less advanced stage than they are now. However, I do not consider that the Council acted in an unreasonable manner in this respect. It was a question of planning judgement as to how much weight should be given to the settlement boundary defined within the two emerging plans, and the levels of commitments within the KSVs, when considered against the outcome of the previous appeal..
18. While I note that the Council did introduce concerns regarding conflict with Policy SP7, I have no evidence before me that this was deliberately withheld. Policy SP7 had not been cited within the Reasons for Refusal. However, reference was made to the proposed settlement boundary and, as the setting of settlement boundaries is proposed in Policy SP7 of the PSB and it has clear links to the implementation of Policy SP4 of the PSB, the Council's reference to the policy in its Statement of Case should not have been considered as a surprise, and therefore should not be considered to be fresh or substantial evidence. The Council has followed the appeal procedure and has not provided any further evidence at a late stage which would require extra unnecessary expense to be incurred. Consequently, I consider that the Council has not acted unreasonably in relation to procedural matters.
19. I have found that the Council exercised its duty to determine the planning application in a reasonable manner and did not act unreasonably in relation to procedural matters.

⁵ Local Planning Authority Statement of Case Paragraph 3.2 and Planning Officer's Report

20. In conclusion, I find that unreasonable behaviour resulting in unnecessary or wasted expense as described by the Planning Practice Guidance has not been demonstrated. For this reason, I recommend that an award of costs is not justified.

Recommendation

21. I recommend that the application for an award of costs be refused.

L. Nurser

INSPECTOR