
Costs Decision

Inquiry held on 8, 9, 10 and 11 November 2016

Site visit made on 11 November 2016

by Kenneth Stone BSc Hons DipTP MRTPI

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

Decision date: 18 January 2017

Costs application in relation to Appeal Ref: APP/W0530/W/16/3148949 Land to the west of Mill Road, Over, Cambridge, Cambridgeshire.

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Bloor homes (Eastern) and Cambridgeshire County Council for a partial award of costs against South Cambridgeshire District Council.
 - The inquiry was in connection with an appeal against the failure of the Council to issue a notice of their decision within the prescribed period on an application for outline planning permission for the construction of up to 55 dwellings with associated access, infrastructure and open space (all matters reserved apart from access).
-

Decision

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

The submissions for Bloor homes (Eastern) and Cambridgeshire County Council.

2. The appellants seeks a partial award of costs related to the second putative reason for refusal; that related to landscape matters and character and appearance.
3. In essence the appellants contend that the Council should not have refused permission on this basis as all of the concerns raised went to matters that fall for determination at the reserved matters stage. In this regard reference is made to previous decisions including a costs decision at Foxton¹.
4. The appellants further contend that the refusal for this reason was not substantiated by the evidence and that the Council did not reasonably demonstrate why the issues it did raise were issues of principle, going to the heart of the proposals as opposed to matters that were not more properly considered in relation to scale, appearance, layout and landscaping
5. The appellants contend that this has resulted in a significant delay to housing development which is desperately needed and that the appellants were put to considerable expense in responding to these issues and which took up significant Inquiry time.

¹ APP/W0530/W/15/3084325

The response by South Cambridgeshire District Council.

6. The Council in response submit that it is its case that no development of the maximum number of units (55) could be acceptably accommodated on the appeal site without adverse impact upon character and therefore the issue it takes is with the maximum quantum of development. A local planning authority could not complain at a reserved matters stage that the maximum permitted number of dwellings for which permission is sought was too great to be acceptably accommodated as a matter of principle if outline permission is granted for development up to that specified quantum.
7. Whilst the Council recognises it can object to reserved matters applications on the basis of issues relating to scale, landscaping and layout these do not include considerations relating to quantum.
8. The Council further contends that if the maximum number of units is used as a positive aspect of the scheme due to its contribution to the district's five year housing land supply then it is also reasonable to use the same maximum figure for other purposes, including assessing its impact.
9. The Council's final point is by way of example, namely that to adopt the appellant's approach could mean that an applicant could make an outline application for any number of units and that the decision maker would not be entitled to raise a landscape objection if they accepted that some development might be acceptable, no matter how small a proportion of the total quantum of development that was referred to in the application, provided they included the words "up to". This would be a nonsense.

Reasons

10. 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. The PPG advises that preventing or delaying development that should clearly be permitted having regard to its accordance with the development plan, national policies and other material considerations and failure to produce evidence to substantiate each reason for refusal on appeal are two particular examples of unreasonable behaviour that may give rise to a substantive award against a local planning authority.
11. The Council provided evidence from two witnesses to support its concerns in relation to putative reason for refusal 2. The evidence addressed wider landscape issues and the more detailed finer grain impact that may result from the development of the site. The reason for refusal was based on conflict with policies in the development plan, DP/2 and DP3 in the South Cambridgeshire Development Control Policies, and relied on further support from supplementary planning documents including the South Cambridge Village Capacity Study and the District Design Guide.
12. It was not in my view unreasonable for the Council to test the proposed scheme, for up to 55 dwellings, against the maximum number of units that were applied for, to address whether such a quantum of development could be achieved on the site. The Council did this in the context of policies and guidance that were appropriate and took account of the context of the

character and appearance of the area within which the scheme would be developed. This is not unreasonable behaviour.

13. There is the potential in an outline application to stray into detailed consideration of illustrative material and a scheme that is put forward as only one potential option. However, I do not believe that that criticism is reasonably made against the Council in this case. The Council sought to identify the characteristics of the local area that were important to be reflected in any scheme with reference to its appraisal of the area, published documents and professional judgement. It sought to take those matters that were considered to be reflective and important of the area as a whole and consider how they could be accommodated on the site within the context of the proposed quantum of development. I see no concerns with that approach. I do accept that there were aspects of the evidence, in particular with regard to height, building sizes and plot boundaries as well as the relationship with the hedge, which strayed into matters that were more properly addressed at a reserved matters stage, but that did not make the whole approach wrong or fundamentally flawed.
14. The effects of development on landscape, character and appearance are fundamentally matters where there is considerable room for disagreements on professional judgement, the level of impact and the weight to be attributed to such. Whilst I have concluded that the development would not materially harm the character of the area, that does not mean that the Council's position was unreasonable.
15. In respect of the costs decision at Foxton² the critical issue there was that the Inspector noted that the Council's witness stated that the site could accommodate the proposed quantum of development and that she considered that the detail of the design was capable of resolution at a subsequent stage³. That is fundamentally different from the case argued by the Council here where it has, and maintains, its objection to the maximum quantum of development.
16. I therefore conclude that the Council has not acted unreasonably in refusing and defending the appeal on this ground. It has not prevented or delayed development that should clearly have been permitted or failed to produce evidence to substantiate this reason for refusal. Given this conclusion there is no need to consider further the question of unnecessary or wasted expense.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Kenneth Stone

INSPECTOR

² APP/W0530/W/15/3084325

³ Paragraph 25 of Foxton decision.