
Costs Decision

Site visit made on 30 January 2017

by S D Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 17th February 2017

**Costs application in relation to Appeal Ref: APP/H0520/W/16/3163322
Land at and to the rear of 36 Breach Road, Grafham, Cambridgeshire,
PE28 0BA**

- 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 B Fletcher for a full award of costs against Huntingdonshire District Council.
 - The appeal was against the refusal of planning permission for erection of dwelling with improved access to Breach Road.
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Decision

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

The Case for Mr B Fletcher

2. The applicant considers the Council did not properly apply the development plan or the presumptions in favour of sustainable development and support for rural communities set out in the National Planning Policy Framework (the Framework) and therefore delayed development which should clearly have been permitted in accordance with the development plan, national policy and any other material considerations. Moreover, in opposing the officers' recommendation, the Development Management Committee (the Committee) did not identify harm other than conflict with planning policies or provide an adequate reasoned justification for refusing the planning application as non-essential development outside the built up area of the settlement. Sufficient weight was not given to material considerations namely: whether conditions could overcome the reason for refusal related to the effect on the character and appearance of the area; the "fall-back position"¹; and the duty with regard to the Self-build and Custom Housebuilding Act 2015 (the SCHa).

The Case for the Council

3. The Members of the Committee were entitled to exercise their own judgement in concluding that the site was not inside the built-up area of the settlement. Material considerations were taken into account. The Committee was entitled to conclude that material considerations did not out-weigh the development plan: the fall-back position was fundamentally different to the proposal and none of those on the SCHa Register identified Grafham as a location of interest.

¹ The Town and Country Planning (General Permitted Development)(England) Order 2015 Schedule 2, Part 1, Class E provides for buildings in the curtilage of a dwelling without the need for express planning permission provided certain conditions are met.

Reasons

4. The Planning Practice Guidance says 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 process².
5. Planning applications and appeals should be determined in accordance with the development plan unless material considerations indicate otherwise³. Development plan policies seek to protect the open countryside⁴ and the principles of the Framework seek to protect the countryside both by recognising its intrinsic character and beauty and by supporting thriving rural communities. The development plan specifically excludes gardens on the edge of settlements from the definition of being within the built-up area.
6. Planning policies can pull in different directions. I acknowledge that the Committee chose not to follow the recommendation of officers. However, Councillors are not obliged to accept the recommendations of officers and were entitled to exercise their judgement and conclude that the appeal site was not in the built up area and therefore to exert policies that require special justification for new dwellings in the countryside irrespective of support for the rural community. Although the Council could have provided more details to describe their conclusion I find no unreasonable behaviour in this regard.
7. The Committee were entitled to take account of the linear form of frontage development in terms of the building line along Breach Road. Having concluded this, conditions could not address the impact of the proposal given the shape of the site and its position relative to Breach Road. I therefore find no unreasonable behaviour in this regard.
8. Without repeating all the reasons set out in the appeal Decision I have found that I could give little weight to the fall-back position or the duty under the SCHA. The Council should have specifically referred to these considerations in reaching a decision on the planning application. However, whilst in this way the Council may be held to have exhibited unreasonable behaviour, it is not evident what time or expense has been wasted by the appellant in the appeal process in regard to these matters.

Conclusion

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

SDHarley

INSPECTOR

² Paragraph: 030 Reference ID: 16-030-20140306

³ Section 38 of the Planning and Compulsory Purchase Act 2004

⁴ The Huntingdonshire Local Plan 1995 as amended by the Local Plan alteration 2002 and the Huntingdonshire Core Strategy 2009