
Costs Decision

Site visit made on 14 February 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 2 March 2017

Costs application in relation to Appeal Ref: APP/R0660/W/16/3161426 Land at Pool Lane, Winterley

- 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 Footprint Land and Development for a full award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for an Outline Application for residential development of up to 33 units with all others matters reserved, except for access and landscaping.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (the 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.
3. The appellant suggests that the Council has behaved unreasonably, by preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failed to produce evidence to substantiate each reason for refusal; persisted with objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable; and not determined similar cases in a consistent manner. In setting out their case, the appellant has referred me to the examples of unreasonable behaviour listed in the Guidance¹.
4. In response, the Council is correct that parties should normally meet their own expenses and I also recognise that Council officers did engage with the appellant. This resulted in the submission of revised plans and an extension of time, to enable the Council to make an informed decision on the development proposed. Whilst, officers ultimately recommended the proposal for approval subject to a series of conditions and a s106 agreement, I am mindful that Members of the Southern Planning Committee are not bound to follow their officers recommendations. However, the Council does in any event need to justify its stance.

¹ PPG, Ref ID: 16-049-20140306

5. The reason for refusal cites adopted development plan and emerging Cheshire East Local Plan Strategy (Local Plan) policies. Also as I set out in my decision the Local Plan is material to some degree and Members were entitled to use it to inform their decision. Nevertheless the Council has only expressed a view that it should be afforded a greater degree of weight and even though the Local Plan has continued to Main Modifications stage, for the reasons set out in my decision, I have concurred with the appellant in this regard. However, these matters do not alter the findings of the previous appeal decision from February 2016² that pre-dates the refused application and indeed this appeal.
6. The Council has sought to defend its decision on the basis of the previous appeal decision on this site. Although this decision considered a higher number of dwellings across the entire site (phases 1 and 2), rather than just phase 2, the Inspector clearly expressed a view regarding developing phase 2 for housing, noting that outline planning permission had already been granted on phase 1. So, the previous appeal decision had explored the merits of new dwellings on the appeal site and the spatial distribution of development in Winterley. While, my colleague Inspector did express a view that at some point a judgement would need to be taken as to whether future development would be sustainable, the Council has sought to apply this judgement to the very same site that was considered to be a sustainable form of development for a marginally larger number of dwellings than included in this scheme.
7. Although the Council is of course entitled to make a judgement, the approach taken in respect of this proposal is strange given the appeal scheme is a re-submission for a slightly lower number of dwellings. I recognise a separate development proposal at Hassall Road³ is also subject of appeal and that applications have continued to be submitted to the Council since that appeal decision. However the Statement of Common Ground sets out the parties' agreement that there has in fact been a reduction in the number of dwellings which benefit from planning permission since the appeal decision in February 2016. So, in terms of this site the Council's approach has failed to take into account the previous appeal decision and the full circumstances of subsequent planning applications, which were available to them. Thus, notwithstanding the Hassall Road scheme, the scheme subject of this appeal was not determined by the Council in a consistent manner.
8. Despite this, the stance has been pursued at appeal. I have had regard to the evidence presented, but I did not find this to be compelling or sufficient to justify taking a different stance to the findings of previous appeal decision, even in light of the recent progress being made with the Local Plan. In any event, I found no harm with regards to Local Plan Policies PG2 and PG6. Thus, the Council has continued to object to a lesser scheme which an Inspector has previously indicated, on this ground, would be acceptable on the basis of a higher number of dwellings. I am also mindful that this attracted an award of costs against the Council.
9. Given the above, I consider that the Council has behaved unreasonably by preventing and delaying development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

² Appeal Decision Ref: APP/R0660/W/15/3130803

³ Appeal Ref: APP/R0660/W/16/3163461

Costs Order

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cheshire East Council shall pay to Footprint Land and Development, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
11. The applicant is now invited to submit to Cheshire East Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew McGlone

INSPECTOR