
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: 20 March 2017

Costs application in relation to Appeal Ref: APP/R0660/W/16/3163461 Land south of Hassall Road, Winterley, Sandbach CW11 4RJ

- 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 Himor (Land) Limited for a partial award of costs against Cheshire East Council.
 - The appeal was against the refusal of planning permission for Outline application for the erection of 29 dwellings with associated works. (Re-submission of 15/2844N).
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Decision

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

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 contends 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; made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and 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 acting contrary to, or not following, well-established case law.¹
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. Although, the appellant has drawn my attention to the Council's officer report which was presented to Members of the Southern Planning Committee and I understand a discussion took place regarding this scheme and the nearby scheme at Pool Lane, Members are not bound by their officer's recommendations. The Council does nonetheless need to justify its approach and rationale for making that decision and submit evidence to support this if necessary at appeal.

¹ PPG, Ref ID: 16-049-20140306

5. The Council in refusing planning permission on the basis of the spatial distribution of Winterley cited emerging Cheshire East Local Plan Strategy (Local Plan) policies PG2 and PG6. I recognise the Council has expressed a view that they should be afforded a greater degree of weight following the examining Inspectors further interim views in December 2016 and the Local Plan's progress to Main Modifications stage. Thus Policies PG2 and PG6 attract a degree of weight and the Council were entitled to use them to inform their decision, as case law has held that the amount of weight to be attached is a matter of judgement.
6. Considerable reliance is placed by the appellant on recent appeal decisions in Winterley and in particular the decision reached in February 2016 for a scheme at Pool Lane² which shares a small section of common boundary. While this decision along with the recent appeal decision³ on a section of the same site is, given the proximity and matters considered, of relevance to the development subject of this appeal, the two sites are still independent of one another.
7. Notably the findings of the February 2016 decision conveyed an opinion that at some point a judgement would need to be taken as to whether future development in Winterley would be sustainable. Even accounting for the lower number of dwellings that have transpired in Winterley since February 2016, the findings of the Pool Lane decision in February 2016 did not provide a universal approach for development in Winterley.
8. While I appreciate the findings of the recent Pool Lane decision⁴, these were taken having regard to the specific circumstances associated with that scheme.
9. Although I have not agreed with the Council's evidence, I am of the view, even though the appeal system should not be used to re-try cases with similar merits, the issue of whether a proposal is sustainable development or not is an exercise of balancing contrasting elements of a proposal. It is ultimately a judgement that the Council was entitled to arrive at, given the proposal would in any event add development to Winterley on a distinctly different site to the other schemes. These considerations run alongside the backdrop of the emerging Local Plan which has continued to progress since the Council refused planning permission. While not every of the appellant's points have been specifically addressed by the Council, I consider the Council was entitled to approach the case as it sought fit and they have on balance presented sufficient evidence to justify their stance.
10. Even though I concluded the appeal scheme complied with the emerging Local Plan policies referred to, notwithstanding the appeal decisions in Shavington⁵ and Alsager⁶ which have been brought to my attention in the Council's response, this was a matter of judgement by the Council. I also recognise that the Council did, in their appeal submissions, set out the scheme's conflict with Policies RES.5 and NE.2 of the development plan. This should not have come as a surprise to the appellant given the stance taken in recent appeal decisions, including the 2016 Pool Lane decision.

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

³ Appeal Decision Ref: APP/R0660/W/16/3161426

⁴ Appeal Decision Ref: APP/R0660/W/16/3161426

⁵ Appeal Decision Ref: APP/R0660/W/16/3147420

⁶ Appeal Decision Ref: APP/R0660/W/16/3156959

11. I concur with the appellant that the Council's appeal submissions have not properly undertaken the exercise of applying paragraph 14 of the National Planning Policy Framework. While I have not agreed with the Council's conclusion, I do consider that the appellant would have, given the housing land supply position, needed to demonstrate how the scheme represented sustainable development regardless.
12. Due to current appeal procedures, the appellant has needed to present much of their case upon lodging their appeal which I am sure has resulted in a considerable amount of work. However parties should normally meet their own expenses. While the appellant may consider that they have been put to unnecessary expense, I do not consider the Council has acted unreasonably in respect of the second reason for refusal. They have not therefore prevented development that should clearly have been permitted.

Conclusion

13. Thus, I do not consider that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance has been demonstrated.

Andrew McGlone

INSPECTOR