
Costs Decision

Site visit made on 20 March 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7th April 2017

Costs application in relation to Appeal Ref: APP/D3315/W/16/3162999 Land south of Knapp Lane, North Curry, Somerset

- 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 Stronvox Homes for a [partial] [full] award of costs against Taunton Deane Borough Council.
 - The appeal was against the refusal of planning permission for residential development of 20 dwellings (including 5 affordable dwellings) and provision of public open space, children's play area and allotments.
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Decision

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

Reasons

2. Paragraph 030 of the Appeals section of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. A substantive award is sought on the basis that there were no reasonable grounds for refusal of the application.
3. The PPG advises at paragraph 049, that local planning authorities are at risk of an award of costs if they prevent or delay development which should clearly be permitted or fail to provide evidence to substantiate each reason for refusal and that realistic and specific evidence should be provided about the consequences of the proposed development. In order to protect the reputation of the planning system, it is vital to ensure that care is taken to ensure that similar cases are dealt with in a consistent manner.
4. While the Council's initial report, including the advice of planning officers and expert views of the Local Highway Authority (LHA) recommended that planning permission be granted, subsequent consideration led to the recommendation being overturned. Whilst Members do not necessarily have to agree with officer recommendation, they are required to base any refusal on relevant planning considerations. In this instance, a very recent planning appeal decision¹ was available to Members that narrowed the focus of the outstanding unresolved planning considerations in this case. Clearly this appeal decision was a significant material planning consideration that needed careful

¹ APP/D3315/W/3155452

consideration. From my understanding, the revised application sought to address the single remaining unresolved issue.

5. In this case, the decision of the Planning Committee of the Council to refuse planning permission was made despite the clear pathway that had been formed by the recent appeal decision. Moreover, having just adopted its Site Allocations and Development Management Policies Plan, the appellants were entitled to have confidence that the Council would carefully consider the application against Policy MIN7, a site specific policy incorporating relatively detailed requirements. The Government attaches considerable weight to the delivery of a plan-led system as explained in paragraph 17 of the National Planning Policy Framework, which states that local plans should provide a practical framework within which decisions on planning applications can be made with a high degree of probability and efficiency. This is listed as one of the 12 guiding principles that planning should follow.
6. Despite the previous appeal decision and policy guidance, it is evident that two new reasons for refusal were introduced very late on in the planning process. Firstly, in relation to design, the scheme presented in this appeal was almost identical to the previous scheme that the Council supported apart from the location of the proposed affordable housing. This aspect of the application was changed to reflect the Council's particular concern and that of the previous Inspector.
7. In this appeal, it seems to me that the Council has not provided any justification for the change of stance. Worryingly, both the reason for refusal and the appeal statement include little more than vague and unsupported assertions.
8. Turning to the highway reason for refusal, I am of the view that local pressure clearly played a significant part in the Committee's deliberations. Late evidence prepared by third party objectors appeared to have been taken on face value without the necessary rigorous interrogation that would be the normal expectation. I am at a loss to understand why the Committee did not defer consideration to allow the late information to be properly considered by technical advisers. Evidently, the Committee had to deal with strong local opposition but chose wrongly in my view to accept uncorroborated evidence in preference to a Transport Statement that had been tested by the LHA and which had previously been accepted by the same Committee. The vague reference in the reason for refusal that "*on the balance of probabilities*" the impacts on the local highway network would be severe is insufficient justification for such a dramatic turnaround in the decision.
9. Whilst I found that there is a degree of conflict with SADMPP Policy MIN7, this matter was resolved by the Inspector's decision on the previous appeal. It is difficult to understand what further harm would be caused by the present scheme in landscape terms as the development would be further constrained to an area of the site that is better aligned to the Design Brief requirements. The Council has therefore failed to demonstrate the harm that would be caused by such a minor departure to Policy MIN7 in terms of landscape effects.
10. I am satisfied that the appellants satisfactorily addressed previous concerns, which were narrow in focus. The Council introduced new reasons for refusal which has undermined the decision making process in this particular case. I conclude that realistic and specific evidence was not provided and each reason

for refusal was not substantiated. It has failed to appreciate the importance of a plan-led system and, in relation to this appeal, has undermined confidence in the planning system at a local level as a result.

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated.

Costs Order

12. 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 Taunton Deane Borough Council shall pay Stronvox Homes the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to the Taunton Deane Borough 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.

Gareth W Thomas

INSPECTOR