
Costs Decision

Site visit made on 28 March 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 19 April 2017

Costs application in relation to Appeal Ref: APP/R0660/W/16/3166345 Holly Bank, Byley Lane, Cranage CW10 9LP

- 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 Cheshire East Council for a full award of costs against Mr Craig Ridge.
 - The appeal was against the refusal of the Council to grant planning permission for 3 No. 3 bedroom single storey cottage.
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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 (PPG) advises that, where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeal process, they may be subject to an award of costs. The PPG advises that an award of costs against an appellant may be procedural, relating to the appeal process, or substantive, relating to the planning merits of the appeal.
3. The PPG states¹ that an appellant is at risk of costs being made against them if they pursue an appeal which had no reasonable prospect of succeeding. It goes on to state that this may occur where '*...the development is clearly not in accordance with the development plan, and ... where other material considerations are advanced, there is inadequate supporting evidence*'. Examples of unreasonable procedural behaviour referred to in the PPG include '*...providing information that is shown to be manifestly inaccurate or untrue...*'².
4. The following section assesses the costs application against these criteria in relation to each of the three main issues in my appeal decision.

Main issue 1 - suitability of the location for housing

5. As set out in my appeal decision, the currently adopted development plan is the Congleton Borough Local Plan (CBLP) 2005. Policies PS8 and H6 of the CBLP confirm that new residential development will not be permitted in areas of open countryside such as the appeal site unless it falls within one of a number of exceptions.

¹ Paragraph: 053 Reference ID: 16-053-20140306

² Paragraph: 052 Reference ID: 16-052-20140306

6. The proposed dwellings would not be required for workers in a rural enterprise, secure the conversion of an existing building or satisfy any of the other exceptions set out in policies PS8 and H6. Furthermore, these policies are clear in their terms and the proposal would clearly conflict with them. As they are listed in the decision notice the appellant would have been aware of them before submitting the appeal. Similar points could be made about Policy PG5 of the emerging Cheshire East Local Plan Strategy (CELPs).
7. Paragraph 55 of the National Planning Policy Framework (the 'Framework') confirms that isolated homes in the countryside should be avoided unless there are special circumstances, whilst paragraph 17 requires the planning system to manage patterns of growth to make the fullest possible use of public transport, walking and cycling. Whilst the assessment of these issues are matters for judgement and I have noted the proximity to the site of the Lowes farm shop, the appellant's case places substantial reliance on the availability of services in Holmes Chapel, which he acknowledges is a '50 minute walk' away.
8. Furthermore, whilst the appellant has repeatedly referred to walking distances to various services and facilities, the figures presented do not appear to represent the actual distances from the appeal site. For example, whereas his evidence refers to a primary school being within 321 metres walking distance, the nearest primary school to the site (Byley County Primary School), as indicated in the Council evidence, is about 1 kilometre away. Similar points could be made about other services and facilities referred to by the appellant some of which, as also indicated in the Council's analysis, appear to be absent from the area around the appeal site.
9. The proposed dwellings would also not satisfy the guidelines for accessibility to services set out in table 9.1 of the emerging CELPS. Lengthy sections of the roads linking the site to Byley, Holmes Chapel and Middlewich contain no footways or street lighting and no substantive public transport linking the site to these settlements has been brought to my attention.
10. Whilst the appellant has put forward some benefits that would arise from the appeal proposal (see the 'other considerations' in my decision on the appeal), none of these are unusual or fall within the 'special circumstances' listed in paragraph 55 of the Framework.
11. I understand that the information presented by the appellant constitutes the outcome at face value of an internet search. However, the evidence submitted in relation to this issue is insufficiently convincing to create any reasonable prospect of the appeal succeeding.

Main issues 2 and 3 – hedgerow and highway safety

12. The Hedgerow Regulations 1997 (as amended) set out statutory provisions to protect 'important hedgerows' from unjustified removal.
13. The appellant has not refuted that the hedgerow along the Middlewich Road frontage of the site would be substantially affected by the appeal proposal due to the need to form an access with adequate visibility splays. As no technical evidence has been submitted to demonstrate the importance or otherwise of this hedgerow it could be an 'important hedgerow' as described in the Regulations. In the absence of such information, allowing the appeal would clearly conflict with policy NR3 of the CBLP which requires that applicants must

submit '*...a comprehensive assessment of a proposal's impact on nature conservation...*' as part of an application to develop a site which may affect an important hedgerow.

14. The appellant has argued in effect that reducing the height of the hedgerow would be justified by the resultant improvement to visibility and hence highway safety on Middlewich Road. I note that the relevant section of Middlewich Road is fairly narrow and has limited visibility. However, the appellant has submitted no substantive technical evidence, for example concerning traffic levels or speeds, to justify lowering the hedge without complying with Policy NR3.
15. In addition, the appellant has submitted no firm evidence to demonstrate that the new access to the proposed development would itself, even following the removal of the hedgerow, have adequate visibility in accordance with recognised standards. Such evidence would reasonably include either scaled drawings demonstrating either that the visibility splays of 2.4 X 215 metres referred to in my appeal decision can be achieved in land controlled by the appellant or, if a case is to be made out for shorter splays to be provided, speed survey information to justify this.
16. Whilst the appellant has indicated that there is an existing driveway access in the hedgerow serving the house at Holly Bank, this was closed off at the time of my site visit. Although the appellant states that he was advised by the Council to use the Middlewich Road frontage to provide vehicular access to Holly Bank, no substantive details have been submitted of why the current access arrangements to this property would need to change.
17. Although the lowering of a section of hedge near the junction of Byley Lane and Middlewich Road may have improved visibility for drivers exiting Middlewich Road onto Byley Lane, the appeal site is clearly not in a position where it affects drivers whilst they are making that manoeuvre.

Other matters

18. For reasons stated in my main decision, the appeal must be determined on the basis of the original application which proposed the erection of 3 dwellings. The question of whether the Council was willing to enter into a dialogue about any alternative proposal therefore has no bearing on the prospects of the appeal succeeding.

Conclusion

19. Having regard to the points set out above I conclude that the appeal proposal clearly conflicts with the development plan. Whilst the appellant has submitted some arguments in support of his case these are lacking in substance. There was no reasonable prospect that they would result in the appeal being successful and they have led to the Council incurring expense in contesting the appeal. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

20. 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 Mr

Craig Ridge shall pay to Cheshire East Council, 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.

21. The applicant is now invited to submit to Mr Craig Ridge, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathan Clarke

INSPECTOR