
Costs Decision

Site visit made on 10 April 2017

by Thomas Bristow BA MSc MRTPI

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

Decision date: 8 May 2017

Costs application in relation to Appeal Ref: APP/X1118/W/16/3161403 Homelands, road from Red Post Cross to Balls Corner, Burrington EX37 9JH

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Gouldman Farms Ltd. for a full award of costs against North Devon District Council.
 - The appeal was against the refusal of planning permission for development described in the application form as 'proposed residential development for 2 open market dwellings and access and parking for Homelands'.
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Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (the 'Guidance') sets out that 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 process.¹
3. The appellant's case for a full award of costs relates primarily to two matters, one substantive and one procedural. Substantively the appellant contends that the Council failed to justify their reasons for opposing the development proposed.² Procedurally, and to some extent linked to the substantive argument made, the appellant avers that the Council failed to provide evidence supporting their position in a timely manner.
4. The appeal decision considers the merits of the proposal with reference to the substantive argument made by the appellant here, i.e. whether the absence of a financial contribution towards off-site open space provision in association with the proposal was sufficient justification to withhold consent.
5. I explained in the appeal decision that in my view on account of the planning history of the site and the relationship of the appeal proposal to a previous consent, the appeal site represented part of a larger development site. I therefore established that the provisions of saved policy REC5 of the North Devon Local Plan adopted originally in July 2006 (the 'Local Plan'), supported

¹ Reference ID: 16-030-20140306.

² With reference to Guidance Reference ID: 16-049-20140306.

- by associated Council documents, applied.³ My finding in this respect was consistent with that of the Council.
6. Contrary to the Council's position, however, I explained in the appeal decision that the approach in saved policy REC5 of the Local Plan was effectively a 'tariff-based' approach with reference to relevant elements of the Guidance.⁴ I also explained that there was no evidence before me of a specific project or projects that would be funded by a financial contribution towards open-space provision related to the development proposed (were such a contribution to be sought or proposed).
 7. Accordingly I could not conclude that the contribution sought by the Council would be justified as it could not be described as 'directly related to the development proposed', as is a test set out both in paragraph 204 of the National Planning Policy Framework (the 'Framework') and Regulation 122 of the Community Infrastructure Regulations 2010 (the 'CIL Regulations').
 8. Nevertheless the statutory basis of decision-taking is that proposals must be determined in accordance with the development plan unless material considerations indicate otherwise. The Council highlight in their appeal statement the Court of Appeal judgement handed down on 11 May 2016 in Secretary of State for Communities and Local Government v West Berkshire District Council & Anor (the '2016 judgement'),⁵ which does not alter that statutory position.
 9. Saved policy REC5 and the requirements that it sets for open-space provision are part of the development plan and indeed its aims, if not means by which it operates, align with relevant elements of the Framework and Guidance as explained within my appeal decision.⁶ The Council explain within their appeal statement that in their view as the open-space contributions sought via policy REC5 are based on location-specific evidence and relate proportionately to the requirements resulting from new development the approach in REC5 is not 'tariff based'.⁷ These are in my view reasonable arguments to have been made.
 10. The Council's response of 19 April 2017 to my correspondence of 6 April 2017, which asks for clarification as to the position in respect of compliance with Regulation 123 of the CIL Regulations, is somewhat opaque. It references that that the Council is aware of the relevant restrictions, but does not explicitly state whether or not the financial contribution sought by them in this instance would or would not be pooled with four or more separate planning obligations to fund an open space infrastructure project.
 11. However I asked for clarification in order to establish the exact situation here with reference to statutory provisions and without prejudice to the outcome of the appeal. No specific argument was made by the appellant in his appeal

³ Documents entitled 'Creation and enhancement: the development of an open space strategy for North Devon supplementary planning document' dated 2001 (the 'SPD'), and 'Provision of public open space, sport and recreation code of practice supplementary planning guidance dated 2004' (the 'SPG'), with particular reference to paragraph 4.14 of the latter.

⁴ Reference ID: 23b-031-20161116.

⁵ EWCA Civ 441.

⁶ In particular paragraph 73 of the Framework and Guidance Reference ID: Reference ID: 37-001-20140306.

⁷ In paragraph 6.2 and 6.3 of their appeal statement and with reference to the Planning Advisory Service advice which I identified in the appeal decision is essentially consistent with relevant elements of the Guidance.

statement that the contribution sought failed to comply with the requirements of CIL Regulation 123, the argument instead focussing on whether saved policy REC5 constituted a tariff-based scheme and was therefore compliant, inter alia, with Regulation 122 of the CIL Regulations. Indeed this matter did not influence the appeal decision.

12. Therefore taking account of the context above, whilst I reached a different conclusion to the Council in respect of the harm arising from the absence of an open space contribution, this is clearly a matter of planning judgement. Accordingly, in my view, the Council have suitably explained the reasoned consideration that led them to maintain an objection to the development proposed based on what they considered to be a conflict with saved policy REC5 of the Local Plan.
13. Turning to the appellant's procedural argument, I accept that the Council's decision notice is dated 2 November 2016 with the application having been made on 20 June 2016 (a period of approximately 19 weeks compared to the statutory 8 week time period for development of this type). However the Guidance is clear that costs may only be claimed in relation to unnecessary or wasted expense in the appeal process, and I have established above that the Council did not behave unreasonably in maintaining an objection in respect of the merits of the proposal.
14. The start letter for the appeal set out that the Council's statement of case should be received by 28 March 2017, and it was indeed received on that date. As referenced above, the Council's response to my request for clarification on 6 April 2017 was 7 days later than initially requested. However the appellant commented on the Council's response on 25 April 2017. These exchanges were necessary for the sake of clarity, and I cannot therefore conclude that the timeliness of the Council's actions at appeal resulted in unnecessary expense to be incurred by the appellant.
15. For the above reasons, and having taken account of all other matters raised, I therefore conclude that unreasonable behaviour resulting in unnecessary expense has not been demonstrated. Accordingly, and with reference to the approach in the Guidance, an award of costs is not justified in this instance.

Thomas Bristow

INSPECTOR