
Costs Decision

Site visit made on 11 April 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 17 May 2017

Costs application in relation to Appeal Ref: APP/R1038/W/16/3166102 Belmont Park, Holymoorside S42 7DN

- 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 Mr Daryll Camm for a full award of costs against North East Derbyshire District Council.
 - The appeal was against the refusal of planning permission for Outline application with all matters reserved for the erection of one dwelling.
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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 applicant considers that the Council has behaved unreasonably, by not determining similar cases in a consistent manner; and failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances. In setting out their case, the applicant has referred me to the examples of unreasonable behaviour listed in the Guidance¹. I have regard to the Council's response in writing and the applicant's comments.
4. Central to the applicant's case is the outline planning permission which was granted on the site in 23 May 2013² by the Council. The Council concluded that this scheme was in accordance with Policies GS5 and H12, among others of the North East Derbyshire Local Plan (Local Plan). These policies are now central to the Council's case in opposing the appeal scheme. I note and indeed the Council confirmed that Local Plan Policies GS5 and H12 remain unchanged.
5. In this context, the description of development and the indicative size and position of the dwelling are the same and while the site edged red is not the same, the 2013 version is actually larger and would have removed more of the surrounding land from the grounds of Belmont Park. These are important points, as I am unaware that the site's surroundings are any different and in

¹ Planning Practice Guidance, Ref ID: 16-049-20140306

² Council Application Ref: 12/01025/OL

- part the same Local Plan policies are relied upon to support a contrasting view. Despite this, the Council suggest there have been material changes in circumstances and the appeal scheme requires the issues to be balanced.
6. Elected members are entitled to make a judgement on a development proposal before them and they are not bound by their officer's recommendations. However they must be able to reasonably justify their stance having regard to the development plan, unless material considerations indicate otherwise. While they considered matters of character and appearance and resident's living conditions outweighed other considerations, this does not explain why they took a different stance, as a Council, to the 2013 outline planning permission. Despite points around a much improved housing supply position, evidence still points to the lack of a five-year supply. Also, this did not appear to be a decisive factor when permission was granted in 2013. Nevertheless the provision of a five-year supply is not an upper threshold and an extra dwelling, albeit a modest contribution, attracted positive weight in the scheme's favour rather than a material change that supported the Council's stance.
 7. I acknowledge the Council have, since refusing planning permission, published the emerging *North East Derbyshire Local Plan (2011-2033) Consultation Draft*. While its aim is to focus housing growth in higher order settlements in the north, of the vision and objectives before me, it does not prevent housing development in the west sub-area either. However, for the reasons set out in my decision this document was not decisive in the outcome of the appeal.
 8. A further suggested change in circumstances was the emerging *Holymoorside and Walton Parish Submission Draft Neighbourhood Plan 2016-2031* (Neighbourhood Plan). Emerging Neighbourhood Plan Policy S2 expects the decision-maker to form a view on whether a development proposal would adversely affected the special character of the parish or the living conditions of existing and future occupants. Thus, the policy does not strictly limit garden development as the Council suggest. Furthermore, of the policies in the Neighbourhood Plan before me, none specifically restrict new housing development in the village. It is also unclear why, even with the passage of time, a similar scheme of this scale that was considered to be in keeping with the site and its surroundings, which included Belmont House and its grounds is now unacceptable. However, despite this, I concluded that the proposal complied with the policies in the Neighbourhood Plan notwithstanding the question of weight to be attached to this document.
 9. Even with the policy developments, they were not decisive in the outcome of this appeal, given the need to determine this appeal in accordance with the development plan. Nevertheless the 2013 outline permission was a significant consideration and it is unclear how the Council grappled with this in their balancing exercise. There is no substantive evidence to suggest that elected members did so, especially as the site's surroundings do not seem to be any different and the same Local Plan policies are relied upon for decision-making.
 10. Given the above, I consider that the Council has behaved unreasonably by not determining similar cases in a consistent manner; failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances; and 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.

Costs Order

11. 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 North East Derbyshire District Council shall pay to Mr Daryll Camm, 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.
12. The applicant is now invited to submit to North East Derbyshire District 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 link to the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Andrew McGlone

INSPECTOR