
Costs Decision

Site visit made on 9 May 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 25 May 2017

Costs application in relation to Appeal Ref: APP/T3725/W/17/3169080 Land adjacent to No 8 Birmingham Road, Stoneleigh, Coventry CV8 3DD

- 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 Court (Warwickshire) Ltd for a full award of costs against Warwick District Council.
 - The appeal was against the refusal of planning permission for demolition of dilapidated garage and erection of two semi-detached dwellinghouses with garaging, parking and access provision.
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Decision

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

Reasons

2. The Government's Planning Practice Guidance advises that, irrespective of the outcome of the appeal, 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. Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the appeal, for example by unreasonably refusing an application or by a failure to produce evidence to substantiate each reason for refusal on appeal.
 3. The delegated report noted the Council's lack of a 5 year housing land supply and, for this reason, acknowledged that Policy RAP 1 of the Warwick District Local Plan should not be considered up to date. The report does not repeat the full text of paragraph 14 of the National Planning Policy Framework (Framework) but sets out the main issue in the application using words that are clearly imported from that paragraph. The concluding section of the report might possibly have been set out more clearly. However, I find that the Council had regard to the Framework and did carry out a balancing exercise between the adverse impacts and benefits of the proposal in its determination of the application.
 4. The delegated report lists the emerging Warwick Local Plan (WLP) under the heading of 'Relevant Policies' and explains the effect of WLP Policies H1 and H11. At a later point the report concludes that the proposed development complies with H11 and is, therefore, acceptable in principle subject to compatibility with additional local plan policies and the Framework. Having recognised that compliance the Council concluded that limited weight should be
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given to the WLP because, at the time of the Council's decision, it had not been subject to examination. The weight to be given to policies in an emerging plan is a matter of planning judgement and the judgment made by the Council was not at odds with the advice in paragraph 216 of the Framework, given the stage that the plan had then reached.

5. For these reasons I find that there was no unreasonable behaviour on the Council's part in the manner in which it considered and determined the planning application.
6. The Council opted not to submit a written statement in relation to the appeal. That decision was conveyed in the appeal questionnaire completed on the 17 March 2017 which was the same date on which the post-Examination modifications to the WLP were published for consultation. The appellant's statement of case provided an update on progress with the preparation of the WLP and placed considerable weight on WLP policies which he considered to be supportive of the proposal. Given that it had had sight of the appellant's statement before completing the appeal questionnaire it is surprising that the Council did not think it either necessary or appropriate to provide its own progress report on the emerging plan. It is also surprising that the Council chose not to make any submissions on the application of the relevant WLP policies and the weight to be given to them.
7. I accept that the questionnaire form only requests information on emerging plans that are expected to be adopted before a decision on the appeal is likely to be issued. However, paragraph 1.7 of The Planning Inspectorate's Procedural Guide to Planning Appeals (August 2016) states that the local authority must alert the Planning Inspectorate in writing, as soon as possible, if it becomes aware of any material changes of circumstances which have occurred since it determined the application, for example a newly adopted or emerging policy that is directly relevant to the appeal.
8. The Council had previously accepted, within the delegated report, that Policies H1 and H11 are directly relevant to the issues in the appeal. In my view, the receipt of an Examining Inspector's report and the publishing of modifications, in line with that Inspector's recommendations, to make the WLP sound are material considerations of direct relevance to the appeal. The Council's failure to provide a position statement on the progress of the WLP and to make submissions on the application of the relevant policies to the appeal did, therefore, amount to unreasonable behaviour.
9. However, in view of my finding that the Council did not act unreasonably in refusing the application, there is nothing in its subsequent actions that would have rendered the appeal unnecessary. It would have been necessary for the appellant to make submissions on the relevance and application of the emerging WLP policies and the weight to be given to these, irrespective of whether or not the Council had submitted a statement setting out its position on these matters. No additional work has been needed in this respect. Neither has any evidence been submitted to demonstrate that the appellant has incurred additional costs in the preparation of his appeal submissions because of the absence of a written statement from the Council.

Conclusions

10. I find that the Council did not act unreasonably in its consideration and determination of the planning application. However, there was unreasonable behaviour on the Council's part in its failure to provide a progress report on the emerging WLP and to set out its position in writing on the application of relevant policies in that plan to the issues in the appeal and the weight to be given to those policies.
11. However, for the reasons set out above, I do not find that the Council's behaviour in this regard has resulted in any unnecessary or wasted expense being incurred by the appellant in the appeal process. The application for an award of costs against the Council is, therefore, refused.

Paul Singleton

INSPECTOR