
Costs Decision

Site visit made on 17 May 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 9th June 2017

Costs application in relation to Appeal Ref: APP/N2739/W/17/3169716 Land to the north east of Church Lane/Weedling Gate, Stutton LS24 9BS

- 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 Keith Tillett for a full award of costs against Selby District Council.
 - The appeal was against the refusal of planning permission for a detached dwelling.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. The PPG indicates that local planning authorities are at risk of an award being made against them if, amongst other things, they have not determined similar cases in a consistent manner and/or have made vague generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
3. The applicant has argued that the Council has been inconsistent in its approach to this proposal on the basis that they granted permission for another scheme in a similar location in 2015¹. In both cases, the Council accepted that it did not have a five year supply of deliverable housing land and that the site lay outside the defined settlement boundary of Stutton.
4. While noting the similarities between the cases, I am also mindful that since that decision was made, the Council has also received an appeal decision² on the appeal site. The Inspector in this case was quite clear that he considered the site to be in an unsustainable location with regard to access to services and facilities. This post-dates the Council's earlier decision and thus is a more up-to-date assessment of the accessibility of this location and its relationship to national policy. Therefore, while the two decisions pull in different directions, the appeal decision is in itself a significant material consideration which the Council is required to take into account. The change in five year supply context does not alter the relative level of service provision or accessibility to services that exists in the area.

¹ 2015/0271/OUT

² Appeal reference: APP/N2739/W/16/3164518.

5. In addition to this, whilst I acknowledge that the conflict the previous Inspector found in relation to the settlement hierarchy policies carried significant weight in his decision, this was not the only area of concern that was raised. In my view, the decision letter does not imply that the outcome rested entirely on whether the Council had a five year supply or not. While this was clearly important in his thinking, the poor access to facilities and reliance on the car were also significant factors in his conclusion that the site is in an unsustainable location. Moreover, while the five year supply context changes the weight that might be given to certain development plan policies, these would still apply.
6. However, I recognise that as a result of the change in the five year supply situation, the Council were required to balance the impacts of the proposal against the benefits of the scheme in the context of paragraph 14 of the National Planning Policy Framework (the Framework). In doing so, they were entitled to make a judgement as to whether the harm identified by the Inspector was sufficient to outweigh the benefits of the development. Their conclusions on this are a matter of planning judgement and do not constitute unreasonable behaviour. While I am less convinced of the Council's argument in relation to the differences between the two proposals, the fact remains that they were entitled to take account of the Inspector's conclusions and come to a different view to the previous permission in light of this important material consideration. I see nothing in the officer report or subsequent evidence which suggests that the approach taken is not consistent with the requirements of the Framework.
7. The Council has produced a guidance note explaining their approach to development in light of not having a five year supply. The note is not policy and simply appears to explain to applicants that the lack of a five year supply does not automatically mean that permission will be granted. Nor does it suggest that all development outside settlement boundaries will be refused. It contains nothing which conflicts with the basic planning principles outlined in planning law and the Framework. The note makes specific reference to the Council still having regard to the settlement hierarchy policy and the level of services and facilities that are provided. Moreover, the list of issues that the Council indicates will be taken into account does not appear exhaustive, particularly as it is prefixed with "*factors such as*".
8. The officer report addresses the planning balance exercise in a thorough fashion and highlights the areas where no harm was found. However, it also sets out those factors against which there is harm and the weight given to them. I have seen nothing to suggest that the Council's approach is inconsistent with their guidance note or that the decision was not based on the individual merits of the proposal taking all relevant factors into account. The Council also appear to have addressed the weight to be given to the housing land supply and the settlement hierarchy policies appropriately in their decision. The weight that given to different factors is again a matter of planning judgement and is not a sign of unreasonable behaviour.
9. The background or timing to the production of the note does not appear to me to be a determinative factor in whether the Council has acted unreasonably. It is not unreasonable for the Council to have regard to appeal decisions and those highlighted by both parties only serve to demonstrate that decisions must be based on the individual merits of the proposal. This is consistent with

the advice within the note. There is also nothing to suggest that the Council's decision related to any complaints or costs decisions that may have previously been made. This is an unsubstantiated assertion from the applicant, which I have given little weight.

10. Turning to the matter of making vague and generalised assertions, there is nothing to suggest that the Council did not approach the issue of the relationship with services and facilities in an appropriate manner. The previous Inspector concluded that even with the path to Tadcaster in place, it was likely that the majority of trips from this location would be car-borne. I also see nothing unreasonable in the Council's approach with regard to dealing with comments from interested parties. The Parish Council commented on the application and it is not necessary for the Council to solicit views about specifics of the proposal, particularly when the presence and nature of the path is to an extent self-evident. The applicant is also at liberty to make whatever case they feel is appropriate in support of their application and was able to address this issue in their submissions.
11. The use and importance of the path is not the only factor in considering access to facilities or car use. While it is recognised that this provides some opportunities for walking or cycling to a small parade of shops, this is unlikely to provide for all future occupants needs or significantly reduce the reliance on the car. Notwithstanding the applicant's comments on the extent the path was discussed at the hearing, there is nothing to suggest that the previous Inspector was in any way misinformed over the use of the path or could not come to his own conclusion as to whether the path was likely to be sufficient to provide reasonable and realistic travel choices. The Inspector's views on this issue remained relevant when considering the application. Equally, I am satisfied that I had sufficient evidence to come to my own conclusions on this matter. I find therefore that the Council has not relied on vague, generalised or unsubstantiated assertions in this regard.
12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, no award is made.

S J Lee

INSPECTOR