
Costs Decision

Site visit made on 22 May 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 12 June 2017

Costs application in relation to Appeal Ref: APP/R1038/W/17/3169558 Land adjacent The Acres, Locko Road, Lower Pilsley S45 8DN

- 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 Poplar Developments Ltd for a full award of costs against North East Derbyshire District Council.
 - The appeal was against the refusal of planning permission for a residential development (13no. dwellings).
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Decision

1. The application for an award of costs is partially allowed, in the terms set out below.

Reasons

2. The Government's Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party that has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The PPG provides examples of unreasonable behaviour by local planning authorities. This includes substantive matters such as preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate a reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis. Unreasonable behaviour also includes refusing planning permission on a planning ground capable of being dealt with by conditions and not determining similar cases in a consistent manner. The applicant's application for costs relates to each of these substantive matters listed as examples.
 4. The reason for refusal set out in the decision notice is complete, precise and specific to the application. It clearly identifies what the Council considers to constitute harm and states the Saved Policies of the North East Derbyshire Local Plan (LP), adopted November 2005 to which it considers that proposal would be in conflict, together with the National Planning Policy Framework (the Framework). Furthermore, the Council's evidence includes a statement of case which seeks to substantiate the reason for refusal, given that the decision taken at the Council's Planning Committee was different to officer recommendations. In that respect, I consider that the Council did substantiate the reason for refusal on appeal in terms of the judgements made at the time of decision, notwithstanding the appeal outcome.
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5. In terms of the detail of the case, the evidence provided by the applicant as part of the appeal submission included a landscape and visual impact appraisal (LVIA). The LVIA informed my conclusions relating to the effect of the development on the landscape and whether the edge of the existing settlement had any significant historic value in that context. In contrast, the Council's decision was based upon an assessment of information submitted as part of the original application, which did not include the LVIA. As a consequence, I cannot conclude that the Council behaved unreasonably in making their original decision based on the evidence before them at the time.
6. With regard to the above, it will be seen from my decision that I take a different view to the Council's Planning Committee with respect to whether any conflict with Saved Policies GS1, GS6, NE1 and H3 of the LP arising from the development would result in unacceptable harm to the landscape. I also reach a different conclusion in terms of the weight to be attributed to the conflict with some of the Saved Policies of the LP as part of the planning balance required when paragraph 14 of the Framework is engaged.
7. The above matters are decisive upon the outcome of the appeal, but reflect matters of judgement whereby the Planning Committee at the time of the decision did not have the LVIA before them. In those circumstances, the Planning Committee, therefore, were not unreasonable in reaching a different view to my own and attributing considerable weight to what they perceived to be a harmful landscape impact, even though contrary to the officer report and advice at the Committee meeting. Consequently, I cannot conclude that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. In reaching their decision, it reasonably follows that the Planning Committee in exercising their judgement were not satisfied that the harm which they identified could be addressed by the conditions recommended in the officer report. Such a view also reflects a matter of judgement that to my mind was not unreasonable based upon the information before the Planning Committee when making its decision.
8. It will be seen from my decision that I do not think that the example of an extant outline planning permission for up to 32 dwellings on adjoining land is an influential factor when assessing the effect of the development. In the particular circumstances of the area, changes in topography and mature boundary screening limit inter-visibility of the respective sites within the landscape. Consequently, the cases are not sufficiently similar to conclude that the Council have behaved unreasonably in determining each of the schemes upon their own merits.
9. Having regard to all of the above, the applicant has not suffered from any wasted expense in so far as pursuing the appeal. However, during the appeal the Council did not provide any contrary evidence to the applicant's statement of case and the accompanying LVIA that would lead me to a different conclusion as part of a planning balance. Whilst it is reasonable that the Council submitted the statement of case to substantiate the reason for refusal which led to the appeal, when considered against the evidence in the LVIA it offers no more than vague, generalised and inaccurate assertions about the proposal's impact.

10. Taking account of a recent Secretary of State decision in the District¹ with similar main issues, it should have been apparent to the Council that the development should be considered acceptable unless a robust case could be made that any adverse impacts would significantly and demonstrably outweigh the benefits. Such a case would reasonably necessitate a strong rebuttal of and / or evidence contrary to the LVIA, which the Council's statement of case and accompanying appendices failed to address in a substantive manner. In that respect, provision of historic mapping relating to the settlement edge does not constitute an assessment of its landscape value. The Council, therefore, was unreasonable in persisting in its objection to the scheme based on vague, generalised and inaccurate assertions about the proposal's impact despite the submission of contrary appeal evidence that included an LVIA.
11. I turn, then to the matter of wasted expense. The Council did not behave unreasonably in refusing the application because subjective judgements were made in the original decision, which were not informed by the LVIA that accompanied the appeal. The provision of additional evidence as part of the appeal submission, including the LVIA, was an influential factor upon the appeal outcome and its preparation was not unnecessary or wasted expense. However, to my mind, the Council should have withdrawn its opposition to the proposal following the submission of the appeal evidence if they were unable to provide contrary evidence, rather than providing a limited response that failed to address the LVIA analysis in any meaningful way. The applicant's response to the Council statement required extra work and provision of further information as part of final comments, and the costs application, which constitutes wasted expense in the appeal process.

Conclusion

12. I have found that the Council behaved unreasonably in pursuing a reason for refusal beyond the point where the appeal could be supported by objective analysis. I, therefore, conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the appeal after the submission of the Council's statement of case, is justified.

Costs Order

13. 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 Poplar Developments Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred by the applicant in contesting the appeal after the submission of the Council's statement of case and LVIA; such costs are to be assessed in the Senior Courts Costs Office if not agreed.
14. The applicant is now invited to submit to the Council, to which a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Gareth Wildgoose

INSPECTOR

¹ APP/R1038/W/15/3133527 - Land at the junction of Narrowleys Lane and Moor Road, Ashover - Allowed with conditions - 19 December 2016