

Costs Decision

Hearing held on 5 April 2017

Site visit made on 4 and 5 April 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 14 June 2017

Costs application in relation to Appeal Ref: APP/B3438/W/16/3159689 Bee Cottage, 17 Saltersford Lane, Alton, Staffordshire ST10 4AU

- 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 RS/M Jackson/Geal for a partial award of costs against Staffordshire Moorlands District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for residential development of 23 residential dwellings.
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Decision

1. The application for a partial award of costs is allowed in the terms set out below.

The submissions

2. The appellant's case was made in writing before the hearing. The Council's case was made in writing after the hearing.

Reasons

3. Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and has thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 4. Paragraph 49 of the PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of this, set out in paragraph 49 of the PPG and of relevance to the points raised by the appellant in the application for an award of costs include:
 - 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 each reason for refusal on appeal;
 - Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis;
 - Acting contrary to, or not following, well-established case law;
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- Refusing planning permission on a ground capable of being dealt with by conditions risks an award of costs where it is concluded that suitable conditions would enable the proposed development to go ahead.
5. The crux of the applicant's case is that the Council has not substantiated three of the four reasons for refusal which amounts to unreasonable behaviour. I shall deal with each of the reasons for refusal in turn.

Prematurity, development plan and housing supply

6. The applicant considers that the Council acted unreasonably in refusing the application on the grounds of prematurity as their judgment fundamentally conflicts with the guidance set out within the Planning Practice Guidance (PPG). The PPG is clear that arguments that an application is premature is unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Furthermore, refusal of planning permission will seldom be justified where a draft local plan has yet to be submitted for examination.
7. The Council consider that an increase of 22 dwellings, together with the preferred housing site of Capri would result in a population increase in the village of more than 10% and that this increase would be 'substantial' in the context of Alton and its infrastructure capacity. However, the emerging plan has yet to be submitted for examination and the proposed development for 22 dwellings within an overall allocation of 6000 houses for the District cannot be regarded as so substantial as to prejudice the plan making process.
8. Although the Council contend that the scale of development would prejudice the plan making process, no cogent evidence was put forward to suggest that the proposed development of 22 dwellings would be the maximum which the infrastructure capacity, services and facilities of the village would support or that this would somehow represent a tipping point. Taking these factors in combination, I consider that the Council has acted unreasonably with regards to the issue of prematurity.
9. The Council concluded that the proposal was contrary to the development plan and indeed I have done the same. The Council also clearly acknowledged the shortfall in housing and considered the proposal against the paragraph 14 of the Framework and the Council has not acted unreasonably in this regard.

Highway Safety

10. The applicant points to the fact that the Council has ignored the professional advice and recommendation of the Local Highway Authority. However, members do not have to accept their officer's advice and this in itself does not constitute justification for an award of costs so long as the reasons for refusal are precise and the justification for the refusal is clear.
11. The Council's reason for refusal is complete, precise and relevant to the proposed development. Whilst the reason for refusal focused on the restricted access width, topography and resultant vehicular conflict with road users the Council's highway consultant's statement largely relates to the effect of traffic flows arising from the development on the road network.

12. Nevertheless, the Council's case was expanded upon at the hearing and the site visit. The Council raised concerns regarding the narrow access outside Orchard View and the ability to accommodate service and emergency vehicles and also the safety of cars emerging from the access of Orchard View. Whilst I have found the access to be acceptable, the Council raised legitimate concerns in an adequate manner. I, therefore, consider that this reason for refusal is substantiated. Accordingly, it did not act unreasonably in relation to these issues.

Surface Water Drainage

13. The applicant considers that the Council acted unreasonably by refusing the application on grounds relating to surface water drainage, rather than dealing with the matter by way of a Grampian Condition. However, the Lead Local Flood Authority had raised concerns regarding the use of such a condition to deal with the issue of surface water drainage. The Council's reason for refusal is complete, precise and relevant to the proposed development and evidence provided to support their position. Whilst I consider that a Grampian condition would be acceptable, the matter is finely balanced. I consider that the Council raised legitimate concerns in an adequate manner. I, therefore, consider that this reason for refusal is substantiated. Accordingly, it did not act unreasonably in relation to these issues.

Conclusion

14. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to the issue of prematurity, but not in relation to other aspects of the decision. Accordingly, a partial award of costs, limited to the matter of prematurity is justified.

Costs Order

15. 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 Staffordshire Moorlands District Council shall pay to Mr RS/M Jackson/Geal the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to the issue of prematurity.
16. The applicant is now invited to submit to Staffordshire Moorlands 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 copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Caroline Mulloy

Inspector