



Costs Decision

Site visit made on 6 June 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 13 July 2017

Costs application in relation to Appeal Ref: APP/P1615/W/17/3170312 Chapel Cottage, Playley Green, Redmarley, Gloucestershire GL19 2NB

- 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 Clayton Williams for a full award of costs against Forest of Dean District Council.
 - The appeal was against the refusal of planning permission for an outline application for proposed residential development.
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Decision

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

Reasons

2. Paragraph 30 of the Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. Awards may be procedural or substantive.
3. It is accepted by the Council that it does not have a five-year supply of deliverable housing sites. Consequently paragraph 14 of the National Planning Policy Framework (the Framework) is invoked and planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This does not mean an automatic approval for residential development and avoidance of an appeal, since adverse impacts of the proposal, can still lead to a refusal.
4. In this regard, I appreciate that the outcome of the application will have been a disappointment to the appellant. However, the Council was not unreasonable in coming to its decision. Indeed, it will be seen from my own decision, following careful consideration of the tilted planning balance in paragraph 14 of the Framework, that I agree with the Council that the adverse impacts of the scheme significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
5. It follows therefore that I am satisfied that the Council has shown that it was able to substantiate its reasons for refusal and that is not a situation envisaged by the PPG whereby development has been prevented or delayed which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

6. It is clear from the Council's officer report that it did consider the opportunities presented for landscaping as well as the comments it received from its Landscape Officer. However, it is also clear that these matters did not overcome the Council's concerns relating to the adverse effects of the scheme on the character and appearance of the open countryside, which I share. I do not therefore agree that the Council's second reason for refusal amounts to a planning ground capable of being dealt with by way of condition.
7. The Council has admitted that it incorrectly described the site as falling within the Bromsberrow Heath landscape character area. However, to check this would in reality involve so little extra work that it could be regarded as 'de minimis'.
8. I have agreed that the Council's third reason for refusal could be satisfactorily addressed by way of condition. However, the plans which demonstrate this were submitted at appeal stage. Therefore the appeal and the costs associated with this aspect would not have been avoided. Even if I were to conclude that the Council had acted unreasonably by not subsequently agreeing to this, it seems to me that any additional work at this stage could also be regarded as 'de minimis'. Although I have found that Forest of Dean Core Strategy Policy CSP.1 has limited relevance to the Council's third reason for refusal, this is a matter of planning judgement and does not amount to unreasonable behaviour.
9. Moreover, although the Council's adopted Residential Design Guide (RDG) Supplementary Planning Guidance is not referred to in its third reason for refusal, it is referenced in the officer report. The Council's explains that its concern relates to the separation distances between properties and the potential for overlooking. These are legitimate concerns and the appellant would have been aware of their relevance. I do not therefore agree that reference to this document in support of its third reason for refusal or stating that adopted Supplementary Planning Guidance should be afforded significant weight amounts to unreasonable behaviour. Moreover, the Council confirmed that the RDG (red cover) should not have been referred to.
10. I acknowledge that the Council's appeal statement makes reference to designated areas, ecology and heritage as relevant policy context. However, this is not drawn out further and I do not agree that this amounts to introducing new issues requiring additional time and expense by the appellant.
11. It will also be seen from my decision that I have found material differences between the appeal proposal and those decisions referred to by the appellant. I do not therefore find that the Council not reviewing its decision has amounted to unreasonable behaviour that has caused the appellant unnecessary or wasted expense in the appeal process.
12. I acknowledge that the appellant provided the Council with opportunity to clarify and agree matters but the evidence shows that the Council responded to the matters raised.

Conclusion

13. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal

process has not been demonstrated. For this reason, and having regard to all other matters raised, an award of costs is not justified.

Richard S Jones

INSPECTOR