
Costs Decision

Site visit made on 20 April 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 26 July 2017

Costs application in relation to Appeal Ref: APP/W0530/W/16/3165562 Land including and at the rear of 130 Middle Watch, Swavesey, Cambridge CB24 4RP

- 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 Swavesey Ventures Ltd for a full award of costs against South Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for the development of up to 70 dwellings comprising 42 market and 28 affordable units, public open space, children's play area, associated landscaping and new access.
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Decision

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

Reasons

2. The cases for the parties are set out in writing. The submissions of the applicant make reference to Planning Practice Guidance, to which I have had regard.
3. The applicant submits that in respect of the reasons for refusal detailed by the Council, namely impact on highway capacity and safety, impact on education in the locality, impact on healthcare in the locality and impact on foul drainage in the locality, the Council has disregarded the advice of its officers who were themselves guided by the advice of the relevant consultees with responsibility in those areas of concern. Instead of following evidence-based professional advice, it has substituted its perception of the impacts of the proposal without credible evidence to substantiate its alternative view. This has resulted in unreasonable refusal, thereby delaying the development and causing the applicant unnecessary and wasted expense in the appeal process.
4. It is of course the case that elected local planning authorities are entitled to determine applications contrary to the advice of their officers. However, it is well established that they must have good planning reasons for doing so and the potential consequences of unreasonable behaviour leading to unnecessary appeal and consequential expense are clearly articulated in the Planning Practice Guidance.
5. The former principle is especially relevant where a decision turns on matters of aesthetic judgement or a balance of considerations where decision makers may legitimately accord varying weight to different factors. However, in this case it does seem to me that such circumstances are not in play but rather the Council has indeed substituted its own perceptions on a range of technical matters

where the advice of the relevant consultees (and its own officers as a consequence) was clear that problems of development impact are perfectly capable of mitigation through standard planning instruments in the form of financial provision through formal obligation or the imposition of appropriate conditions. There are no exceptions to this across the areas of concern cited by the Council and the Statement of Common Ground signed by the Council is further evidence of the lack of justification evident in the Council's position. Nothing in the documentation leads me to an alternative conclusion.

6. Leaving aside the subsequent difficulties with the planning obligation once completed (themselves caused initially by the County Council but acceded to by the Local Planning Authority); it seems to me that on the basis of the planning officer's analysis, fully explained to the committee in the relevant report and recommendation and including, on the basis of consultee responses, the clear advice that the impact of the development, including cumulative impact, could, or was statutorily required to be, adequately mitigated and that it represented sustainable development for the purposes of both the National Planning Policy Framework insofar as potential environmental and landscape disbenefits were not considered by to represent significant and demonstrable harm sufficient to outweigh the social and economic benefits, this is plainly a development which merited the grant of planning permission without delay. However, the Council's reasons for refusal were less a matter of planning judgement that greater weight should be placed on such environmental and landscape factors than mere assertion of a perception of impacts that were clearly and demonstrably capable of mitigation and there is little in the Council's subsequent representations beyond mere assertion to the effect that would not be so.
7. There is an onus of responsibility on Council's to substantiate evidentially reasons for refusal which has not been adequately discharged in this instance and for the above reasons I am driven to the conclusion that, as the applicant claims, the Council has refused the application unreasonably and as a consequence the applicant has incurred unnecessary and wasted expense in the appeal process; an outcome, moreover, which encompasses the cost of preparing as a contingency the First Deed of Variation primarily in respect of the Secondary Education Contribution, the latter for reasons that are detailed in paragraphs 20 and 21 of my appeal decision, but which also involve, in effect, unreasonable behaviour. I therefore propose to award costs accordingly.

Costs Order

8. 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 South Cambridgeshire District Council shall pay to Swavesey Ventures Ltd the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to South Cambridgeshire 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.

Keith Manning

Inspector