
Costs Decision

Hearing Held on 5 July 2017

Site visit made on the 25 April and the 5 July 2017

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 15 August 2017

Costs application in relation to Appeal Ref: APP/F1610/W/17/3167827 Land at Berkeley Close, South Cerney, Glos., GL7 5UN.

- 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 Gladman Developments Ltd. for a full award of costs against Cotswold District Council.
 - The hearing was in connection with an appeal against the refusal of an outline application for residential development comprising the construction of up to 92 dwellings (with up to 50% affordable housing).
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Decision

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

The submissions for the appellant

2. The appellant's claim was made in writing before the Hearing. In essence, the refusal of planning permission was made by the Council contrary to the recommendation for approval given by the planning officer. The appellant claims that the Council acted unreasonably in refusing an application that could reasonably have been permitted. Further, the Council has provided no evidence to substantiate the two reasons for refusal and the claims over the harm are generalised assertions unsupported by proper objective analysis of clear harm related to a policy in the Development plan or national guidance.
3. These factors constitute unreasonable behaviour, contrary to the specific guidance in the Planning Practice Guidelines (PPG) and have resulted in the appellants having to incur the unnecessary costs of the appeal.

The response by Cotswold District Council

4. The Council's response was made in writing before the Hearing. In summary, the Council submit that it was not clear cut that planning permission should be granted. The proposal was advertised as a departure from the development plan as being contrary to adopted planning policy. The report to elected members set out the benefits of development and the adverse effects including the detailed concern expressed by local people and the Parish Council about the effect on the risk of flooding where there was a clear local flooding problem. There were considered to be omissions and flaws in the appellant's Flood Risk Assessment. The Council also judged that the scale of the proposal would result in a form and density of development that would not be consistent with and would be harmful to the rural edge of the village.

5. The Council had exercised a planning judgement and had balanced the benefits of the development with the conflict with the development plan and the conclusion reached was that planning permission should not be granted.
6. At the appeal stage the Council has provided written and oral evidence to support and substantiate the two reasons for refusal in accordance with the requirements of the PPG. These demonstrate that the Council did not act unreasonably in refusing the application.

Reasons

7. The application involved a complex assessment of the development plan where there is currently a period of uncertainty between the saved policies in the adopted local plan being partly out of date and those in the emerging local plan not being of an advanced state where its policies can only be given limited weight. Further, it is clear that the Council's ability to demonstrate a five year supply of deliverable housing land has varied in recent times. Although a 7 year supply is claimed at the moment, the policy of restraint on development outside of settlement boundaries in part conflicts with the intentions of the more recent National Planning Policy Framework to significantly increase the supply of housing. Therefore in the planning balance on this case, the decision maker has to make various judgements on the weight to be applied to the development plan, national policy and other material considerations.
8. As the Council's decision makers, the elected members on the planning committee are not bound to follow the advice of their professional officers but the Council must be able to demonstrate on clear planning grounds why a proposal is unacceptable, and could not be approved with conditions if necessary. In this case there was considerable evidence put forward by the Parish Council and local people on the past local flooding problems and how these were likely to be made worse, which the Council had to take into consideration. Further, although this is an outline application to consider the main principles of development, a judgement had to be made on the effect of the scale of development put forward on the character and appearance of the area.
9. Although I reached a different conclusion on the planning balance after assessing the benefits and adverse effects of the development in the context of the complex policy position, I am satisfied that the Council's case put forward in writing and orally at the Hearing, and in respect of both of the reasons for refusal, was not an unreasonable one in that the objections expressed had, on balance, sufficient substance and justification. It was therefore not an unreasonable judgement not to grant planning permission on the particular circumstances of the case.
10. The costs incurred by the appellant were therefore not unnecessary or wasted costs but were the normal costs arising when an appeal is made.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

David Murray

INSPECTOR