
Costs Decision

Site visit made on 14 August 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 21st August 2017

Costs application in relation to Appeal Ref: APP/F2605/W/17/3175949 Land off Main Road (Swaffham Road), Wendling, Norfolk NR19 2LZ

- 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 Malcolm Pates for a full award of costs against Breckland District Council.
 - The appeal was against the refusal of outline planning permission for 'the erection of 2 No. dwellings on a plot measuring approximately 0.26 hectares. The plot is currently unused. The dwellings would, on the most part, be of an appropriate scale and design to be in keeping with the existing locality. The dwellings would be positioned one behind the other to ensure the new dwellings would maintain the pattern of development seen in the area. Access to the properties would be gained by the existing track that is to the side of the site'.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that 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. Unreasonable behaviour described in the PPG can either be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.
3. The PPG advises that costs cannot be claimed for the period during the determination of the planning application but that parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviours and actions at the time of the planning application can be taken into account in the decision on a costs application.
4. The PPG states that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the local planning authority for unreasonable refusal of an application.
5. The material consideration at the centre of this costs application, that might have indicated that planning permission should have been granted, relates to whether the Council can demonstrate a five year supply of housing land.

The case for costs relates to the failure of the Council to negotiate with the appellant and give due consideration to evidence that challenged the availability of a five year housing supply. It is evident that the case made in this respect concerns other appeals the appellant's agents are engaged with in respect of this issue and whether the case over a lack of the five year housing supply should mean development being permitted outside of settlement boundaries.

6. The Council's position is that the five year housing land supply can be demonstrated and that even if the appellant's evidence to the contrary had been given any weight it would not have altered the decision in this case. This was because the proposal was clearly contrary to local and national planning policy through being housing proposed in open countryside and an unsustainable location.
7. My dismissal of the appeal supported the Council's decision. I am not persuaded the Council behaved unreasonably in the handling of this particular case. It appears quite clear to me that any further negotiation that might have explored in more detail the basis for the Council's five year housing supply position would have not altered the decision leading to the appeal.
8. Consequently, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. I therefore conclude that the award of costs be refused.

Jonathan Price

INSPECTOR