
Costs Decision

Hearing Held on 27 July 2017

Site visit made on 27 July 2017

by Mike Fox BA (Hons) DipTP MRTPI

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

Decision date: 24th August 2017.

Costs application in relation to Appeal Ref: APP/Y3940/W/17/3173509 Land North of Hilltop Way, Salisbury, Wiltshire, SP1 3QX

- 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 D Pearce for a full award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for the erection of 10 semi-detached bungalows, new footpath link and creation of public open space, incorporating 20 off-street parking spaces and 5x laybys to Hilltop Way.
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Decision

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

The submission for Mr D Pearce

2. The submission makes reference to paragraph 16 in the Government's Planning Practice Guidance (PPG), which refers to the need to rely on reasons for refusal which stand up to scrutiny on the planning merits of the case rather than adding to development costs through avoidable delay. The Appellant's grounds are 'substantive' as opposed to 'procedural', as explained in paragraph 31 of the PPG.
3. The Council's stance in relation to the appeal site has been, over a protracted period, is that it has continually accepted the 'in principle' acceptability of residential development of the site. A list of documents, dating back to 2008, show that the local planning authority has been aware of the suitability of the appeal site for residential development for some time. This all indicates that the local planning authority was fundamentally wrong to refuse permission for the appeal site.
4. The Appellant's main grounds for substantive costs is that the stance adopted by the local planning authority - as exemplified in the Council's withdrawal of its reasons for refusal at such a late stage - is disingenuous; it has known for a long period of time that the appeal site is suitable for residential development, as the list of documents referred to above shows, and that all the adverse effects can be satisfactorily mitigated.
5. A second area of contention relates to the costs incurred in using the Hearing method rather than the less expensive, and faster, written representations route. The appeal mechanism, by way of a Hearing, was agreed by the local

planning authority, and there was sufficient public interest to justify going for a Hearing.

The response by Wiltshire Council

6. The Appellant omits to refer to the fact that the Council is required by law to determine planning applications in accordance with the policies of the development plan, unless material considerations indicate otherwise. The appeal application was determined in November 2016 in accordance with the provisions of the development plan, the adopted Wiltshire Core Strategy. The two reasons for refusal – that the proposal was outside the settlement limits as referred to in Core Policies CP1 and CP2, and on landscape impact, based on a recent Inspector's decision – were also reasonable.
7. The list of documents put forward by the Appellant include the appeal site as just one of a large number of sites contained in the Strategic Housing Land Availability Assessment (SHLAA), which is not a site allocations document, but a collection of possible housing sites submitted to the Council by third parties. An early draft proposal for revising the settlement boundary cannot be relied upon as conclusive. Several other sites were considered at this and subsequent stages, and many of these sites have not made it through to the current draft Sites Allocation Plan. The process of site selection is evolutionary and officers and members do not have the gift of second sight to be able to anticipate in November 2016 the results of the sustainability appraisal, Topic Paper and Draft Housing Sites Allocation Document published nine months later and only one month before the Hearing.
8. The Council's decision to withdraw the reasons for refusal was reasonable in response to the change in circumstances. The Council, in view of this, suggested changing the appeal from the Hearing process to written representations, but it was the Appellant who insisted on pursuing the more expensive Hearing route and using expensive legal advocacy, when the PINS guidance is that such advocacy is not needed at Hearings.

Reasons

9. Paragraph 30 of the PPG advises that costs may be awarded against a party who has behaved unreasonably, thereby causing the party applying for the costs to incur unnecessary or wasted expense in the appeal process.
10. The primary ground for costs is whether the Council's decision to withdraw its reasons for refusal were genuine, based on the changing planning landscape over the period from November 2016 when the appeal application was refused, to the decision to withdraw in June 2017, as stated by the Council, or whether the Council's actions have been disingenuous, having known the site was suitable for residential development all along, as the Appellant alleges.
11. Although the Appellant rightly states that the appeal site has been included in a number of documents going back several years, I consider that this is standard practice as part of the continuous monitoring and review that forward looking local planning authorities follow in an open and transparent manner. As the Council states, not all the sites which are included in these documents have been selected for inclusion in a development plan and there is a danger of giving these documents too much weight when it is clear that throughout the

period from 2008, to its decision to refuse permission in November 2016, the Council has never formally endorsed the appeal site for development.

12. I consider that, in view of the changed circumstances since November 2016, the Council has acted with integrity in withdrawing its reasons for refusal, which potentially achieved significant time – and hence costs – savings. I therefore reject the notion that the Council's actions over recent months and years have been disingenuous.
13. Regarding the secondary issue of whether the appeal should have been proceeded with via the Hearing or written representations route, I took the decision, following the receipt of comments from both parties, to go for the Hearing route, partly, at the request of the Appellant, to enable third party representations to be heard, and partly because there were still two issues of disagreement in the Statement of Common Ground that I wished to understand in the context of a discussion at a Hearing. I do not regard either party to have been at fault in the decision to opt for a Hearing.
14. Taking all of the above considerations into account, I conclude that neither the Appellant's principal ground nor the secondary ground should be afforded anything other than little weight, and consequently I find no grounds for costs in relation to either argument. I therefore find that unreasonable behaviour or wasted expense, as described in the PPG, has not been established. On this basis, I conclude that an award of costs is not justified.

Mike Fox

INSPECTOR