



Costs Decision

Site visit made on 16 October 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 6th November 2017

Costs application in relation to Appeal Ref: APP/Z1510/W/17/3180150 112 Colchester Road, White Colne, Essex CO6 2PP

- 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 & Mrs M. Adlem for a full award of costs against Braintree District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for planning permission for the erection of a 4 bedroom detached dwelling complete with garage/office and related infrastructure, including an altered vehicular access.
-

Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the National Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. The PPG also states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, if it delays development that should clearly have been permitted or fails to provide evidence to substantiate each reason for refusal.
3. The applicants suggest that the Council's assessment as to the acceptability of the proposed development's location relative to services and facilities was both unreasonable and unsubstantiated. The Council concluded that the appeal site has poor access to facilities and is therefore isolated. In forming this judgment it had reference to the settlement boundary and the distance to services and facilities, mainly those in Earls Colne.
4. The Council is currently unable to demonstrate a five year housing land supply. In this context the Council afforded the settlement boundary of White Colne limited weight. Nevertheless, the settlement boundary, which is underpinned by local planning policies, should not be disregarded and can form a useful starting point in considering the appropriateness of a housing scheme. As such, it was reasonable for the Council to consider the site's position relative to the settlement boundary and it would have been aware of its close proximity to the appeal site. The site's location outside the settlement boundary was not determinative to the Council's assessment. The application was refused

- following the application of a tilted balance, which considered a number of factors. As such, the Council made no substantive error in affording the settlement boundary limited weight but then considering the appeal scheme's position to it.
5. A small housing development has been approved around 50 meters to the west of the appeal site. Planning applications should be determined consistently. The Council referred to this decision and explained that it had been approved following a planning balance of the adverse impacts and benefits. A planning balance will be specific to each case and the two schemes are not wholly similar. The scheme to the west was larger and included public benefits including the repositioning of a bus stop. In respect of the appeal scheme, the Council was entitled to balance the material considerations in the way it did. Whilst I do not share the Council's conclusion on the appeal scheme, I do not consider it acted in an unreasonably inconsistent manner.
 6. The Council concluded that future occupants of the appeal scheme would be reliant upon travel by private car. I do not share this view as the future occupants would have travel options including walking, cycling and travel by bus. However, many of the facilities would be in Earls Colne, which would be a long walk from the appeal site. Consequently, the acceptability of the appeal scheme was not 'clear cut'. In light of this I do not consider the Council acted unreasonably in coming to the conclusion it did.
 7. The Council failed to properly consider cycling or rail travel as alternatives to private motorised transport. However, these modes of transport are unlikely to be determinative as cycling is unlikely to be suitable for all and the train station is some distance from the appeal site. As these are not determinative matters, the Council's failure to consider them is not a substantive failure amounting to unreasonable behavior.
 8. Costs were awarded against the Council following a recent appeal decision¹. However, the unreasonable behavior in that instance related to the Council maintaining a reason for refusal, when an Inspector had already made an alternative determination on that point, and nothing had change in the intervening period. This is not the case with the appeal scheme and therefore this is a matter of limited relevance. The two appeal schemes are not entirely similar as the development at Gestingthorpe was closer to the available facilities in the village than the appeal scheme would be to those in White Colne and Earls Colne.
 9. Overall, the Council's assessment of the appeal site's accessibility to services and its degree of isolation was unconvincing and this is why I have allowed the appeal. However, it was not so lacking in detail and substance as to have been unreasonable.
 10. In considering the impact on openness and the approach to White Colne, it is reasonable to conclude the proposed dwelling would have a materially different visual impact to the existing barn and therefore I find no fault in the Council's reasoning on this point.
 11. The Council took a different view to that given at a pre application stage, which is unfortunate. Nevertheless, a decision maker is not bound by the informal

¹ APP/Z1510/W/16/3159441

advice an officer may give at a pre application stage or the advice of a consultee, such as the Landscape Officer, during the course of assessing a planning application. The Council had sound planning reasons for taking a different view to the advice given, including the intensification in development on the approach to the village. I found this an unconvincing argument for the reasons given in my formal decision but it was not unreasonable, especially as local policies seek to protect the village edge from encroachment and prevent harmful ribbon development.

12. Taking the above points together I do not consider the appeal scheme should clearly have been approved. In fact it would be contrary to the settlement policies in the development plan. In this instance the acceptability of the proposal turned on the weight given to other material considerations and how this should be balanced. Weight and balance are matters that rest with the decision maker. The Council undertook the tilted balance and concluded the adverse impacts of the proposal outweighed its benefits. I do not agree, but the Council was entitled to reach the conclusion it did.
13. The delay in reporting the revised application to planning committee is noted but I understand that the Council's Officers have recommended refusal and therefore it has not acted inconsistently.

Conclusion

14. My overall conclusion is that the Council did not act unreasonably in its assessment of the planning application or in seeking to contest the appeal. As such, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred.

Graham Chamberlain,
INSPECTOR