
Costs Decision

Site visit made on 22 November 2017

by J Gilbert MA (Hons) MTP MRTPI

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

Decision date: 9th January 2018

Costs application in relation to Appeal Ref: APP/J1915/W/17/3181236 Land at Winters Lane, Winters Lane, Walkern SG2 7NZ.

- 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 Cadena Land Limited for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of planning permission for erection of 4 No. 4 bed dwellings comprising 2 detached and 2 semi-detached together with garaging, curtilage parking, communal bin store and landscaping plus the provision of 2 vehicular passing places along Winters Lane.
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Decision

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

Procedural Matter

2. The description of development on the application form and the decision notice refers to parking places on Winters Lane, while the description of development on the appeal form and plan 1080-066D refer to passing places. I have used the description of development on the appeal form as it more accurately represents the proposed development.

Reasons

3. The national Planning Practice Guidance (PPG) advises at paragraphs 29 and 30 that, irrespective of the outcome of the appeal, costs may only 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.
4. According to paragraph 31 of the PPG, unreasonable behaviour in the context of an application for an award of costs may be either procedural in relation to the process; or substantive in relation to the issues arising from the merits of the appeal.
5. The applicant submits that the Council has acted unreasonably with regard to paragraph 49 of the PPG and the substance of the matter under appeal on 4 main grounds. Firstly, that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Secondly, that the Council failed to produce evidence to substantiate each reason for refusal on appeal. Thirdly, that the Council made vague, generalised

or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. Finally, that the Council acted contrary to, or not following, well-established case law.

6. With regard to the first ground for costs, the Council referred in their officer report to the pre-submission East Herts District Plan having been submitted for examination and a pre-submission Walkern Neighbourhood Plan having been subject to consultation with the aim of submitting it for examination in January 2018. Paragraph 216 of the National Planning Policy Framework (the Framework) allows decision-takers to give weight to relevant policies in emerging plans according to a number of criteria including the stage of preparation. I afforded the emerging Local and Neighbourhood Plans very limited weight in my decision on the appeal.
7. It was evident from the officer's report that the Council considered paragraphs 49 and 14 of the Framework in respect of the level of housing land supply within the district and the requirement to grant permission except where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The officer's report also confirmed that the Council considered the proposed development would result in significant harm to the character of the area and that the benefits of the proposed development in terms of the provision of 4 houses and 2 passing places on Winters Lane did not outweigh the harm caused. While the balancing exercise could have been addressed more clearly and I consider that the emerging planning policies were insufficient to weigh against the appeal proposal overall, the Council was entitled to come to the decision that it did.
8. Furthermore, while the applicant contends that the Council did not take into account the benefit of the loss of much of the land covered by a lawful development certificate for the storage of building materials, the officer report confirmed that consideration was given to this matter under the heading "The revocation of the lawful use of the site." Although I have allowed the appeal, I recognise that this is a matter of judgement. As such, the Council reached a different decision based on their consideration of the effect of residential use of the appeal site, rather than for the storage of building materials.
9. In terms of substantiating the reason for refusal and the use of vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, the Council did not provide an appeal statement. However, the Council's officer report is relatively detailed with a reasonable level of analysis of the relevant issues. I therefore consider that the Council was not obliged to submit an appeal statement to defend their reason for refusal, and their reliance on the original officer's report does not automatically diminish their case on the merits of the scheme or strengthen the applicant's grounds for costs.
10. Although the Council's response to the applicant's costs claim confirms that the conservation officer did not comment on the planning application, the case officer included the conservation officer's comments made with regard to a previous withdrawn application in the officer report. As such, the applicant has highlighted the apparent difference of opinion between officers of the Council. While I acknowledge that the Council's case officer did not reach the same findings as the Council's conservation officer, the decision is one which is a matter of judgement. The case officer in this instance did not accept the

professional advice of their fellow officer and made a case for the contrary view. As such, even though I have allowed the appeal, I consider that the Council provided a reasonable basis for their position.

11. Additionally, the applicant has not provided any detailed information on how the Council's deficiencies in producing evidence to substantiate the reason for refusal resulted in them incurring unnecessary costs. No details of actual expenditure are required but the kind of expense or time should be identified in broad terms to assist the parties in settling the amount. As stated above, the Council did not prevent or delay development that should have clearly been permitted. Therefore, the applicant would have had to deal with an appeal regardless of the Council's substantiation of evidence and would have had to incur necessary costs.
12. In respect of acting contrary to, or not following, well-established case law, the applicant asserts that the first reason for refusal refers to policies which are clearly out of date and that the reason for refusal improperly fails to focus on paragraph 14 of the Framework. The applicant refers to 2 allowed appeals¹ for residential development at Froghall Lane and Beecroft Lane in Walkern to substantiate their concerns. While the appeal decisions provided by the applicant are capable of being material considerations in the decision-making process, they are not case law as they are not court judgments. No case law has been provided by the applicant.
13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is an important material consideration. Therefore, I do not find that the Council acted unreasonably in terms of how they applied local policies or used the Framework as a material consideration to determine the planning application.
14. For the reasons set out above, I cannot agree that the Council has acted unreasonably in this case. As such, the applicant has not incurred unnecessary costs or wasted expense in the appeal process.

Conclusion

15. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, no award of costs is made.

J Gilbert

INSPECTOR

¹ APP/J1915/W/15/3127807, decision issued 22 February 2016, and APP/J1915/W/15/3138282, decision issued 18 April 2016.