
Costs Decision

Site visit made on 17 October 2017

by David Cliff BA Hons MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th January 2018

Costs application in relation to Appeal Ref: APP/C1435/W/17/3178137 Land to the west of Culpepper Close, Station Road, Isfield, East Sussex

- 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 M Tebbutt for a full award of costs against Wealden District Council.
 - The appeal was against the refusal of planning permission for residential development of 10 dwellings.
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Decision

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

Reasons

2. Planning Policy Guidance advises that irrespective of the outcome of an appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The appellant states that costs are sought due to the unreasonable actions of the Planning Committee and their lack of understanding, objectivity or reflection of the facts of the case. As the decision making authority in this case, it was for the Planning Committee to determine the planning application. Whilst the officer's recommendation was for planning permission to be granted, this does not fetter the right of the Committee to come to a different view if it considers that this is justified based on the relevant evidence, circumstances and policy considerations.
4. The appellant draws particular attention to the discussions at the committee. However, what resulted was a decision to refuse the planning application based on the reasons which are adequately set out in the planning decision notice and further elaborated upon in the Council's Statement of Case. No matter what the appellant's views are on the detailed discussion at the Committee, the outcome in the form of the Council's reasons for refusal appears to me to be reasonably clear.
5. The Council's decision notice and statement of case make clear that the decision has been made in the context of the lack of a five year supply of housing land and taking account of paragraphs 14, 47 and 49 of the National Planning Policy Framework. It states that the adverse impacts of allowing the development are considered to significantly and demonstrably outweigh the benefits.

6. The application of the tilted balance in paragraph 14 of the Framework clearly requires a judgement to be made. Whilst in my appeal decision, I arrive at a different conclusion to the Council, I do not consider that the Council behaved unreasonably in coming to its decision. It set out the harm that it found would result from the scheme and considered that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
7. This is not a clear cut case where the development complies with the relevant development plan policies, indeed I have found there to be some harm, although I have determined that this would not significantly and demonstrably outweigh the benefits. The lack of a five year housing supply, even a large one, does not automatically result in planning permission having to be granted for residential schemes, even those located at the edge of an existing village. Judgements and balances have to be applied and the Council appears to have made a reasoned determination in this case.
8. In respect to the first reason for refusal, I have found on the matter of accessibility that the scheme is not clearly compliant with policy. This is particularly given the rather limited services within the village itself, the lack of street lighting near the appeal site and the not unreasonable view that residents would be likely to undertake a considerable amount of journeys by car. The Council acknowledges in the decision notice that the location has access by public transport but has very limited facilities to support the needs of new householders. Consideration of such matters requires judgement which the Council appears to have applied.
9. Whilst other developments have been approved in the village, the Council draws attention to the different circumstances of approval. I do not consider that the Council has been unreasonable in its grounds for the first reason for refusal.
10. On the second reason for refusal, whilst I have come to a different conclusion, the Council has satisfactorily set out and justified its concerns. In respect of amenity, the Council's concerns are based on the particular proximity of the access road to the nearest neighbouring property to the access road and the increase in vehicle numbers. Whilst there is little evidence from either main party to quantify the resulting noise levels, the Council's has not behaved unreasonably in coming to its view. The matter of pedestrian access also requires judgement based on the particular circumstances of the case and relevant guidance. I cannot be certain that the inaccurate reporting of access road width or disparities on the predicted number of vehicle movements would fundamentally change the Planning Committee's view on these matters.
11. Whilst the Council has not subsequently responded to the amended access plan, this was not before the Committee when it determined the case. Amended plans seeking to resolve issues need to be provided as part of the application, rather than the appeal process¹. This is particularly so given issues of unfairness that may arise as interested parties have not had the opportunity to be formally consulted.

¹ Annexe M.2.1 of the Procedural Guide Planning Appeals – England states that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

12. In respect of the Council's third reason for refusal, I have concluded in my decision that some moderate harm would result upon the overall character and appearance of the area and setting of the village. Whilst the site has no particular landscape designation, this does not negate the need to consider a proposal on the basis of its impact on such matters as the rural setting of the village and the surrounding landscape. The Council has justified its reasons in this respect and I find there to be no unreasonable behaviour in its objections on this matter.
13. The appellant has also highlighted discrepancies between the Statement of Common Ground (SoCG) and its overall case against the development. Whilst not being helpful, it has been explained by the Council that these statements should not be confused with the arguments presented in the reasons for refusal. This does draw into question the helpfulness of the SoCG in this case, though it is not to such an extent that leads me to consider that the appeal could have been avoided, or that a particular reason for refusal should be seen as being unreasonable in the light of my findings above.
14. Having considered all relevant matters, I do not consider that this case falls into the category where development should clearly be permitted. The reasoning in the Council's decision notice and statement of case provides adequate objective assessment of the scheme. A balanced judgement is required, in accordance with the tilted balance set out within paragraph 14 of the Framework). From the information before me, it appears most likely that the Council has undertaken such a balance. Whilst I have come to a different conclusion to the Council on the planning merits, I find no clear evidence of unreasonable behaviour resulting in unnecessary expense being incurred by the appellant.

Conclusion

15. I conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. An award of costs is therefore not justified.

David Cliff

INSPECTOR