
Costs Decision

Site visit made on 20 March 2018

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: Friday 13th April 2018.

**Costs application in relation to Appeal Ref: APP/G1630/W/17/3180263
Land adjoining The Timberyard, Two Mile Lane, Highnam, Gloucester
GL2 8DW**

- 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 D Kent for a partial award of costs against Tewkesbury Borough Council.
 - The appeal was against the refusal of outline planning permission for the erection of a single dwelling and associated access.
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Decision

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

Reasons

2. 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. The PPG states that local planning authorities are at risk of an award of costs if they delay in providing information and fail to adhere to deadlines; introduce fresh and substantial evidence at a late stage necessitating extra expense for preparatory work that would otherwise not have arisen; prolong proceedings by introducing a new reason for the refusal of planning permission.
3. The PPG makes it clear that a local planning authority is at risk of an award of costs if it prevents development which should clearly be permitted having regard to its accordance with the development plan, national policy and any other material considerations or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The basis of the appellant's claim for costs is that the Council attempted to introduce a new reason for the refusal of planning permission which related to Policy HOU4 of the former Tewkesbury Borough Local Plan (Local Plan) which relates to residential development that is not within an existing settlement. In particular, the appellant suggests that this policy is out of date as the Council has relied upon a 5% buffer in calculating the 5 year housing supply as oppose to a 20% buffer.
5. However, since the submission of both the appeal and this costs application, there has been a significant change to the planning policy framework relevant to the consideration of the appeal to which both main parties have had to

provide additional statements. In particular, the Cheltenham, Gloucester and Tewkesbury Joint Core Strategy (JCS) was adopted on 11 December 2017 and became part of the development plan. The JCS supersedes the majority of the policies contained in the Local Plan, including Policy HOU4 which has been superseded by policies SP2 and SD10 of the JCS.

6. Both main parties have agreed a Statement of Common Ground (SOCG) which sets out the current relevant development plan policies as contained within the JCS and includes policies SP2 and SD10. In addition, the SOCG clearly states in section 7.0 that the appellants do not seek to challenge the Council's 5-year housing supply position in this case.
7. I have determined the appeal on the basis of the policies contained within the current development plan to which both main parties have provided further detailed evidence. Therefore, Policy HOU4 and the extent to which a 5% or 20% buffer should be applied no longer remain relevant in the consideration of the appeal. As such, the basis for the partial award of costs no longer remains relevant to the policies that are now applicable to the determination of the appeal as both parties have relied upon the policies contained within the JCS.
8. Policy HOU4 of the Local Plan was reasonably related to the supply of housing. Both parties have referred to appeal decisions where the policy was found to be both out of date and up to date. Insofar as it sought to promote sustainable patterns of development, this matter was relevant to my consideration of the main issues in this appeal. Had the policy remained extant, I consider that the Council acted reasonably in referring to it in its appeal statement.
9. In any event, following the change in planning circumstances, Policy HOU4 was not relevant to the material considerations in either of the main parties' arguments. This change in planning circumstances could not have been foreseen with any degree of certainty when the appeal was submitted.
10. Taking all of these matters into account, I find that Policy HOU4 was no longer relevant to the consideration of the main issues in the appeal following the adoption of the JCS. Even if the change in the policy framework had not occurred I do not find that the Council necessarily acted unreasonable by referring to the provisions of Policy HOU4 in the appeal statement as it related to the consideration of the issue of sustainable development which was relevant the Council's first reason for the refusal of planning permission.
11. I have found that the Council had reasonable concerns that the proposal would not constitute a sustainable form of development and would cause harm to the character and appearance of the surrounding area. These justifiable concerns led to the decision to refuse the application. Accordingly, I do not find that the Council failed to properly consider the merits of the scheme or unacceptably introduced new evidence to substantiate the reasons for refusal to the extent that would constitute unreasonable behaviour sufficient to justify a partial award of costs. For these reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and having regard to all other matters raised, an award of costs is not justified.

Stephen Normington

INSPECTOR