
Costs Decision

Site visit made on 28 February 2018

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th April 2018

Costs application in relation to Appeal Ref: APP/B3030/W/17/3181015 Land to the rear of Lowfield Cottages, Bowbridge Lane, Balderton, Nottinghamshire NG24 3BY

- 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 Patrick McDonagh for a full award of costs against Newark & Sherwood District Council.
 - The appeal was against the refusal of planning permission for development of brownfield site to construct road and 35 new houses.
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Decision

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

Reasons

2. The 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.
3. Examples of unreasonable behaviour in the PPG include, preventing or delaying development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material considerations, failure to produce evidence to substantiate each reason for refusal on appeal or relying on vague generalised assertions about impact which are unsupported by objective analysis or refusing planning permission on grounds capable of being dealt with by conditions.
4. The applicant in this case argues that in refusing the application against officer recommendation, the Council exercised unsound planning judgement. Moreover, he notes that there were few objections to the proposal and that the decision made was contrary to the evidence before the Council at the time the decision was made.
5. While Members are not required to accept the advice of its professional officers, if a different conclusion is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence substantiating that reasoning. It is open to Members to exercise their own planning judgement, but any such case must be fully justified in the face of opposing evidence.
6. The proposal is on land that is acknowledged as being outside the Newark Urban Area and that it would not have met the criteria for development in the

open countryside. While the Council accepted the evidence that the development was unviable, it is nevertheless a matter of fact that the contributions that were offered by the Unilateral Undertaking would not have provided the full level of mitigation required for a development of the scale proposed. As such, the proposal clearly conflicts with the development plan in a number of ways.

7. At the time the decision was made, the Council concluded that they had a five year supply of deliverable housing sites. The officer report nevertheless suggested that until the objectively assessed housing need had been confirmed through the emerging Amended Core Strategy, that a pragmatic approach to housing development would be taken. Irrespective of this approach, if the Council considered there to be a five year supply in place, and that all other relevant development plan policies were consistent with the National Planning Policy Framework (the Framework), it was under no obligation to consider the application under the 'tilted balance' set out in paragraph 14 of the Framework. I also note that updated housing figures produced at the time of the decision also appeared to confirm a strong position in terms of housing supply.
8. The Committee Report provided a full and detailed explanation of the conflict with policy, the perceived benefits of the proposal and the issues relating to viability and infrastructure provision. However, it also stated that this was a finely balanced case. As there is a clear conflict with policy, the decision before Members was whether or not the material considerations of the case justified a decision other than in accordance with the development plan. In this case, Members disagreed with the officer's own balancing exercise. However, I consider this to be a matter of planning judgement that Members were entitled to make. In the context of the housing land supply and the underlying strategy in the development plan, it is not unreasonable for the Council to have concluded that the harm to the strategy would not outweigh the benefits of additional housing.
9. In terms of infrastructure, I see no particular signs in the Council's approach to suggest they did not take a flexible or pragmatic approach to the issue. Again, whether or not a development would provide sufficient mitigation to address its impact is a matter of judgement. There was a considerable difference between what would normally be required and what would be provided. In a context where the Council are confident in terms of housing land supply, allowing development which would not provide the necessary infrastructure would not provide a significant benefit to be weighed in the balance. Taking all relevant matters into account, I see no evidence of unreasonable behaviour in terms of development being delayed that should clearly have been permitted.
10. Although I accept that the Council's reason for refusal could perhaps have been drafted more elegantly, the evidence provided to the appeal seeks to fully substantiate the reasons given. A detailed account of the housing supply position, the implications for the housing strategy, justification for their concerns relating to precedent and issues relating to infrastructure were all addressed sufficiently to enable a decision to be made. It must be remembered that the starting point for decisions is the development plan and conflict with this represents a significant material consideration. As such, I see no evidence of unreasonable behaviour in terms of making vague or generalised assertions about the impact of the development or failing to substantiate the reasons for refusal.

11. The applicant has highlighted the risk of costs associated with refusing applications that could have been dealt with by condition. It is not clear from their statement which reason for refusal they consider could have been addressed in this way. However, in considering that the reasons for refusal stem primarily from conflict with strategy and the principle of development, it is hard to see how any conditions would have been able to resolve the Council's concerns. Again, I see no signs of unreasonable behaviour in this regard.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

S J Lee

INSPECTOR