
Costs Decision

Site visit made on 18 September 2018

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 12th October 2018

Costs application in relation to Appeal Ref: APP/P0240/W/18/3197148 Land west of Jacques Lane, Clophill, MK45 4BS

- 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 D Catlin (Anthony Catlin Will Trust) for a full or partial award of costs against Central Bedfordshire Council.
 - The appeal was against the refusal of planning permission for the erection of 8 dwellings and formation of vehicular and pedestrian access with associated landscaping.
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Decision

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

Reasons

1. Planning Practice Guidance (PPG) advises 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 expense in the appeal process.
2. The applicant contends that the Council has acted unreasonably in that Council Officers recommended that planning permission be granted, but that Council Members took a different course of action. It is held that the development should clearly be permitted, the Council have failed to be consistent in approving other sites outside of settlement envelopes and that the Council's decision was based upon vague, generalised or inaccurate assertions, particularly in light of evidence and lack of objection by internal consultees.
3. The Officer Report clearly summarises the representations received, and it was clear that there was substantial local concern regarding the proposals on a number of grounds. I have noted the recommendations of the Council's Officers, however the decision is one which is a matter of judgement. The Council Members in this case were entitled not to take the professional advice of Officers so long as a substantial case could be made for the contrary view.
4. The reasons for refusal were comprehensive and set out in sufficient detail the reasons for the harm they identified in respect of the conflict with the development plan, character and appearance and protected species.
5. Dealing with each in turn, it is clear to me that the issue of settlement envelopes and Policy DM4 has generated much debate. The Council clearly conceded that Policy DM4 attracted reduced weight, but as adopted development plan policy, still considered that the development was in conflict

with this. In exercising their planning judgement, it is clear to me that Members gave due account to national planning policy and the Council's own adopted policy in respect of the harm they identified and I find no unreasonable behaviour in this regard.

6. Moreover, based upon the information before me, other cited examples of developments approved outside of settlement envelopes are clearly based upon development plan policies, taking into account material considerations as required. I am also mindful that circumstances have changed in respect of housing land supply so those examples are not all directly comparable as to demonstrate that the Council has acted in an inconsistent manner.
7. Detailed ecological appraisals were submitted as part of the application and I note the lack of objection by the Council's ecologist but Members took a different view. While the minutes give no indication as to the way in which Members considered the evidence from the survey work, I am mindful of the statutory duties in respect of protected species and the site does have potential for habitats to be affected. To my mind, while I found no harm, Members clearly adopted a precautionary approach, as enshrined by the Habitat Regulations and given the duties upon them, I find no unreasonable behaviour in this regard.
8. In respect of character and appearance, the Officer Report did find that there would be some visual and landscape harm but in the overall balance this would be outweighed by the benefits. Issues of the undeveloped nature of the site were well articulated within the Officer report and again Members were entitled to give this matter more weight in the decision making process. It is clear that in considering the effects Members acknowledged that the decision was finely balanced. I do not therefore accept that this judgement was based upon vague or generalised assertions but a realistic concern regarding landscape effects.
9. I do not also accept the applicants claim in respect of a partial aware of costs relating to the need to provide additional evidence in the appeal proceedings on such matters. I agree that this issue was finely balanced and it was the applicant's choice to produce further evidence to assist the appeal proceedings, on the basis of which I was able to form my own views in this regard.

Conclusion

10. I therefore conclude that, while the appeal has succeeded, for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated.

C Searson

INSPECTOR