The Planning Inspectorate

Costs Decision

Site visit made on 4 December 2018

by Jonathan Price BA(Hons) DMS DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th February 2019

Costs application in relation to Appeal Ref: APP/K2610/W/18/3205832
Land at Dawson's Lane, Blofield, Norwich NR13 4SB

- 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 PPAP Investments Limited for a full award of costs against Broadland District Council.
- The appeal was against the refusal of planning permission for outline planning for residential development of 8 No. dwellinghouses (all matters reserved).

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The national Planning Practice Guidance (PPG) states that parties in planning appeals normally meet their own expenses, but that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour in this context may be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. The application refers to the manner in which the Council's decision was made and to delays and expense incurred in preparing the Section 106 obligation.

3. Dealing with the latter aspect first, shortly after the appeal was made Government published the revised National Planning Policy Framework (the Framework) on 24 July 2018. This changed the definition of, and trigger for, requiring affordable housing which, in turn, appears to have resulted in delays in agreeing the contents of an amended Section 106 obligation with the Council. Whilst the revised definition may have added to the costs of preparing the obligation, the delays appear to relate to the Council working out the appropriate policy position in the light of the new Framework, rather than simply being tardy. I am content that its behaviour in this regard was not unreasonable.

4. With regard to the way in which the Council made its eventual decision, the proposal was initially the subject of a Committee resolution to approve. Officers had delegated powers to issue a permission subject to a completed Section 106 obligation securing a commuted payment in lieu of on-site open space provision. Although a resolution to approve is not an actual planning permission, it is reasonable to conclude that this would have been issued quite promptly had it not been for the time required to prepare the obligation. In the

event, the application was reported back to Committee some two months after the original resolution to approve. Although the Council was entitled on the second occasion not to follow an officer recommendation and also to reverse the original resolution to one of refusal, this would need to have been reasonable in a substantive sense.

5. In the Council's original resolution to approve on 31 January 2018, it is referenced in the minutes that the Committee had accepted that the character and appearance of the site would undoubtedly change but the site was currently featureless and therefore did not make a significant contribution to the character of the wider area. The Committee report advised that there was a 4.7-year housing land supply within the Norwich Policy Area based on the Joint Core Strategy (JCS). This meant the development plan was not up-to-date in respect of a five-year housing land supply and that the 'tilted balance' required by what was then paragraph 14 of the Framework applied. The tilted balance means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole. This was applied, as the minutes record that the Committee considered that the development would not result in any adverse impacts which would significantly and demonstrably outweigh the benefits.

6. As the Section 106 obligation remained uncompleted the proposal was brought back to the Council's Committee on 28 March 2018. This was for reconsideration in the light of the 14 March 2018 publication of the JCS annual monitoring report. This referred to the Central Norfolk Strategic Housing Market Assessment (SHMA) of June 2017 which indicated an 8.08-year housing supply against its Objectively Assessed Need (OAN). The officer report made it clear this did not alter the status of the JCS as being out-of-date (in that this still provided for less than a five-year supply of housing), and the need to apply the tilted balance. However, the officer report advised that the SHMA was new evidence that pointed to an abundant housing land supply which diminished the weight given to the benefits to delivery of the eight dwellings currently proposed.

7. Despite the diminished weight to the housing supply benefits, the officer recommendation remained one of approval. This was based on the relatively sustainable location, and the lack of harm to residential amenity, character and appearance or highway safety, not amounting to adverse impacts which would significantly and demonstrably outweigh the residual benefits of the scheme.

8. I have considered paragraph 050 of the PPG which advises that where a local planning authority has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs. In this case, however, national policy remained an important material consideration, as the SHMA evidence did not alter the status of the JCS as being not up-to-date. The tilted balance should be made on the basis of the Framework policies taken as a whole, which include the aim to boost significantly the supply of housing.

9. The SHMA provided more recent evidence over an OAN for housing in the District. However, it ought not to have altered the consideration of eight

dwellings as providing a benefit in helping to boost housing supply or had any bearing over the weight given to any adverse impacts arising from the scheme.

10. Although the Council were able to bring the application back to Committee, as the notice remained unissued, I find it somewhat unreasonable to have done so after a resolution to approve had been made and, as a consequence, a Section 106 obligation was being prepared. Nevertheless, the Council were able to do this, and had the democratic prerogative to refuse planning permission contrary to officer recommendation. Whilst it might have been reasonable to consider the SHMA evidence as a material consideration, this nonetheless continued to require the application of the Framework's tilted balance. This would therefore require a refusal to be justified only where the adverse impacts of development significantly and demonstrably outweighed the benefits, rather than the other way around.

11. The Committee on 31 January 2018 had not found material harm to character and appearance such as this would significantly and demonstrably outweigh the benefits of eight dwellings. The SHMA evidence should not have altered this. However, on 28 March 2018 the Committee's view was, in summary, that the proposal would harm the rural landscape and extend the pattern of development in an uncharacteristic manner. Whilst it might have been reasonable to find the SHMA evidence diminished the benefits to housing supply, I consider it was unreasonable to revise the previously limited weight given to the adverse impacts and, two months later, to find these to significantly and demonstrably outweigh the benefits of the development.

12. Paragraph 49 of the PPG gives examples of the types of behaviour that might give rise to a substantive award against a local planning authority. These include preventing development which should clearly be 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 and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

13. Although the SHMA findings provided new housing supply evidence, I consider there were not the substantive grounds for reversing an earlier decision on a subsequent tilted balance based on a revised and inadequately substantiated finding of adverse impact. Based on Paragraph 49 of the PPG there are grounds for me to find that the Council had behaved unreasonably in a substantive sense through reversing a resolution to approve planning permission without good reason for so doing. As a consequence, the appellant was put to the unnecessary expense of an appeal.

Conclusion

14. For the reasons set out, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

15. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that

Broadland District Council shall pay to PPAP Investments Limited, the costs of the appeal proceedings described in the heading of this decision.

16. The applicant is now invited to submit to Broadland District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Jonathan Price

INSPECTOR