
Costs Decision

Site visit made on 4 December 2018

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2019

Costs application in relation to Appeal Ref: APP/W1850/W/18/3207671 Land East of Newcastle Farm, Orcop Hill, Herefordshire HR2 8SF

- 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 H Beavan and G West for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for residential development of 3 dwellings.
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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) 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 or wasted expense in the appeal process.
3. PPG also provides examples of unreasonable behaviour by local planning authorities which include the failure to produce evidence to substantiate reasons for refusal, failing to accept officers' or statutory consultees' advice without good planning reasons and preventing or delaying development that should have been permitted.
4. The appellant has cited inconsistency between the pre-application advice from the Council and the decision to refuse the application. Advice before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all material factors. In this case the Council raised no objection to the principle of the development and highlighted the importance of design and access in the pre-application advice. However, the refusal of the application related to concerns over the foul drainage system which was amended following the submission of the application. Although a request for advice was made to the Council before planning permission was applied for, I consider advice given was not so misleading as to amount to unreasonable behaviour on the part of the Council.
5. The appellants consider that the foul drainage information they provided followed the drainage hierarchy in line with national and local planning policy and demonstrated that the method was acceptable in regard to Building Regulations. They also highlight that with no objections were raised by the technical consultees to the proposal. Nevertheless, the Council went against

- the recommendation of the officer and the appellant considers no technical evidence has been provided to support the Council's refusal reasons. They consider the reasons have not been substantiated and that the Council assumed that the pollution control regimes outside of the planning system would not operate effectively.
6. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable, and provide clear evidence to substantiate that reasoning. In this case, there was no objection from Land Drainage in relation to the operation of the foul drainage system and Building Control confirmed it met Building Regulations. Moreover, measures have been suggested to reduce any risks associated with the foul drainage system. Other than the potential for human error, there is little evidence put forward by the Council to demonstrate why they considered the means of dealing with the foul waste was not appropriate.
 7. The number of potential tanker movements has increased as part of the details included in the appeal. However, no objection from the Highways Authority has been put to me in relation to the traffic generation, including as a result of tanker movements. There is also limited evidence presented by the Council as to why the level of traffic movements from the proposal would give rise to significant concerns or how this compares to the level of overall traffic in the area overall. Environmental Health raised no concerns to the proposal including in regard to the foul drainage system in terms of noise and odour and the Council have provided limited evidence to indicate any harm.
 8. As there is no definition of certain terms such as "exception circumstances" in regard to Policy SD4 a judgement is required to be made. Nevertheless, technical consultees were satisfied that any further information could be dealt with via planning conditions. While the Council consider insufficient information has been provided to support the use of cesspools, they have not been explicit in indicating what further information is needed. They have also failed to sufficiently explain what they would consider exceptional circumstances and why this development is not example of these.
 9. The level of public opposition to the development is noted and input from local residents can provide a valuable insight. Notwithstanding this, and while planning grounds have been cited in the refusal reasons, the Council have failed to provide substantive evidence to support their decisions, or to show that they had good reasons go against the advice of officers and consultees.
 10. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted. The refusal of the application has led a development which should have been permitted being delayed. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the Framework and the PPG. As a result the appellants have incurred costs relating to the preparation and submission of the appeal.
 11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

12. 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 Herefordshire Council shall pay to H Beavan and G West, the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Herefordshire 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.

Stuart Willis

INSPECTOR