
Costs Decision

Site visit made on 30 January 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 March 2019

Costs application in relation to Appeal Ref: APP/K1128/W/18/3208541 Land to east of Lyte Lane, West Charleton, Kingsbridge TQ7 2BP

- 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 South Hams District Council for a full award of costs against Messrs Rogers and Mrs Pike.
 - The appeal was against the refusal of the Council to grant planning permission for an outline application with some matters reserved for construction of up to 24 dwellings (including affordable housing), village green, children's play area, parking area, and associated works including landscaping.
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Decision

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

Reasons

2. The Planning Practice Guidance 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. The Council claims that Messrs Rogers and Mrs Pike (the appellants) acted unreasonably in pursuing the appeal given that the development was clearly not in accordance with the development plan, no other material considerations such as national planning policy were advanced that indicate the decision should have been made otherwise, and where other material considerations were advanced, there was inadequate supporting evidence. This is insofar as it claims that there was:
 - clear conflict with the development plan on the basis of landscape harm, including to the South Devon Area of Outstanding Natural Beauty (the AONB);
 - clear conflict with the National Planning Policy Framework given that the proposal would constitute 'major development' in the AONB where exceptional circumstances were lacking;
 - reliance on the Council not being able to demonstrate a 5-year supply of deliverable housing sites despite updated evidence to the contrary.
4. It is obvious that the parties disagree over the merits of the original planning application. Though a clear right of appeal exists, the main issue in this case is whether this right was exercised by the appellants in a reasonable manner with regard to the points listed above.

5. The Council indicates that the scheme was clearly contrary to Policies CS9 of the South Hams Local Development Framework Core Strategy 2006 (the CS) which states that development will not be permitted where it would damage the natural beauty, character or special quality of the AONB, and Policy DP2 of the South Hams Local Development Framework Development Policies Development Plan Document 2010 (the DPD), which seeks to conserve landscape character, including by avoiding unsympathetic intrusion into the wider landscape.
6. However each of these policies require interpretation on a case by case basis. In this context the appellants presented a Landscape and Visual Impact Assessment both in support of their claim that the development would not be harmful, and in order to demonstrate that landscape impacts could be mitigated. Though landscaping was itself reserved for future consideration, detailed evidence was nonetheless supplied.
7. Paragraph 172 of the National Planning Policy Framework (the Framework) outlines the general recommendation that proposals for major development in the AONB should be refused other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. The Framework allows decision makers to exercise discretion in defining major development. In this context the appellants were able to draw upon examples of decisions both taken at appeal and by the Council where developments within the AONB involving well in excess of 10 dwellings were deemed to not constitute 'major development'. Notwithstanding the fact that I agree with the Council's conclusion that in this case the proposal would constitute major development, apparent ambiguity with regard to past cases provided reasonable scope for the appellants to argue that the proposed development would also not be major development.
8. Paragraph 172 of the Framework further outlines a range of considerations which include need for development. Most of the benefits claimed by the appellants would have been the products of required mitigation, and therefore not benefits at all. I also agree with the Council that the level of affordable housing provision within the development would not have been 'exceptional'. In this context however the appellants could again reasonably claim that the development would service a local need for affordable housing, and some support for this was indeed given by Council officers.
9. Publication of the Plymouth, South Hams & West Devon Local Planning Authorities' 2018, 5 Year Housing Land Supply Position Statement December 2018 (the PS) occurred during the course of the appeal, and confirmed that the Council has a 5-year supply of deliverable housing sites (5-year supply). Whilst the appellants' case placed weight upon the fact that at the time of determination of the planning application the Council could not demonstrate a 5-year supply, their case was not wholly reliant upon engagement of the 'tilted balance' set out in paragraph 11 of the Framework.
10. Indeed, given that paragraph 172 of the Framework falls within the scope of policies that protect areas or assets of particular importance referenced in part d(i) of paragraph 11 and listed in footnote 6, landscape impact was necessarily the primary consideration in this case. As such, and notwithstanding the fact that the appellants failed to provide any substantive basis to justify their

dismissal of the PS, an appeal could have been reasonably advanced whether or not there was a 5-year supply.

Conclusion

11. For the reasons set out above, I conclude that the appellants did not act unreasonably on the grounds claimed by the Council. As such no unnecessary or wasted expense was incurred by the Council in the appeal process. The application for costs is therefore dismissed.

Benjamin Webb

INSPECTOR