



Costs Decision

Site visit made on 18 June 2019

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th July 2019

Costs application in relation to Appeal Ref: APP/A2470/W/18/3219503 Brooke Road Allotments, Brooke Road, Oakham, Rutland

- 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 The Burley Estate Farm Partnership for a full award of costs against Rutland Council.
 - The appeal was against the refusal of outline planning permission for the erection of up to 40 dwellings with associated open space, landscaping and infrastructure (access for detailed consideration with all other matters reserved for future consideration).
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Decision

1. The application for a full award of costs is allowed in part 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. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations. It is also at risk if it fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. The Applicant submits that the Council has acted unreasonably as they have not substantiated their reasons for refusal with technical evidence and have failed to provide any proper and meaningful assessment of the material considerations put forward by the appellant at the application and appeal stages including reference to their own technical advice including statutory consultation responses which indicated support for the scheme.
5. Whilst the Applicant acknowledges that the Planning Committee were entitled to reach a different conclusion to the professional advice of their officers, any refusal on technical issues must reasonably be substantiated through the provision of technical evidence.
6. It is also submitted that any outstanding matters could have been dealt with by way of planning conditions. It therefore follows that the reasons for refusal

- cited are unreasonable as they are unfounded and has resulted in unnecessary delays and wasted expense by the Applicant.
7. The Council have responded that the Applicant has not provided additional technical evidence as part of the appeal process and have indicated that there has been no additional cost (as there has not been an Inquiry or a Hearing) other than the preparation of the appeal statement and bundling together the evidence.
 8. The Council also outline that the Members of the planning committee were aware that there was serious local concern about the highway aspects of this proposal, evidenced by the large number of responses from local residents setting out this specific issue, fuelled by the existing difficulties in using Brooke Road due to crossing closures. It was not therefore unreasonable for lay members to express concern at this situation by resolving to refuse permission on that ground. As part of the Councils appeal statement background evidence in the form of traffic surveys and assessments were provided.
 9. It is also submitted that the Planning Committee were aware that the railway line is at a raised level in relation to the appeal site and again it was not unreasonable for them to have concerns about the living conditions of future residents. They also considered that the site to the south had a different relationship to the railway line in respect of land levels.
 10. It is clear to me that both parties acknowledge that a Planning Committee decision which goes against officer advice is not a reason to give an award of costs as the Committee were entitled to come to their own conclusions on the merits of the proposal. However, the key issue is whether the Council have provided sufficient evidence to substantiate their reasons for refusal at appeal.
 11. In respect of the highway issue, the main evidence which the Council have put forward to support the reason for refusal related to traffic surveys and the length of time that the level crossing barriers were lowered. This also included concerns over increased levels of rail traffic.
 12. Given that the appeal site is located on the town centre side of the railway line, and that the Transport Assessment indicated that a greater proportion of the additional traffic would head towards the town centre, very little evidence has been provided which indicates that there would be a marked increase in traffic wishing to cross the railway line. Furthermore, very little evidence has been provided which would indicate that there would be a significant highway safety issue.
 13. Whilst I acknowledge that the Council have agreed that the re-alignment of Brooke Road would remove the current difficulties on this section of the road as a result of vehicles parked in the parking bays, very little evidence has been provided to demonstrate that this benefit to traffic flows has been fully considered or weighed up in the overall consideration of the highway safety issue.
 14. To that end, I find that the Council have failed to substantiate the highway related reason for refusal which has resulted in unnecessary expense from the Applicant in preparing the appeal documentation and highway related statements.

15. Turning to the issue of noise, I acknowledge that the Council have not produced any technical evidence to support their concerns. However, in my decision, I found that the noise evidence produced by the Applicant was flawed in that it made assumptions that an acoustic fence would provide a degree of noise mitigation for the future occupants of the dwellings, which was assumed to be 10dB. Such an assumption did not take into account the specific land level differences on the site in relation to the railway line and whether it would completely hide the noise source of passing trains. This is a serious flaw in the technical evidence provided by the Applicant to the extent that I could not safely conclude that the future occupiers of the development would be provided with suitable living conditions which would not be adversely affected by excessive noise.
16. Whilst the Council did not expressly outline the flaw in the noise assessment, it did raise concerns over the respective land levels and whether the acoustic fence would provide an appropriate level of noise mitigation without such a fence being unreasonably high.
17. In my decision I also considered whether a suitably worded planning condition could provide enough certainty on whether sufficient noise mitigation measures would enable suitable living conditions to be provided. However, given the evidence before me, I was not able to come to such a conclusion.
18. Therefore, notwithstanding the lack of technical evidence from the Council, to my mind, sufficient justification for the noise reason for refusal has been provided and as such no unreasonable behaviour has occurred in this respect.

Conclusion

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to dealing with the highway reason for refusal and therefore a partial award of costs is justified.

Costs Order

20. 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 Rutland Council shall pay to The Burley Estate Farm Partnership, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the highway reason for refusal.
21. The applicant is now invited to submit to the 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.