



Costs Decision

Site visit made on 10 July 2019

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2019

Costs application in relation to Appeal Ref: APP/W0530/W/18/3212846 Pettetts Barn, High Street, Hinxton, Saffron Walden, CB10 1RF

- 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 and Mrs Fagg for a full award of costs against South Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for a single storey detached dwelling with basement, detached garage and parking.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises 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.
3. The PPG clarifies that unreasonable behaviour may either be procedural or substantive. Although an application for costs may relate to events before the appeal, the PPG states that costs unrelated to the appeal are not eligible for an award.
4. The application for costs by the appellant is based on both procedural and substantive grounds in that it alleges:
 - the determination process was flawed insofar as Planning Committee based its decision on an inappropriate application of policy, and not the merits of the case, and that it also justified the decision on the basis of not wishing to establish a precedent of allowing development outside a village framework;
 - the Council gave inconsistent advice at the pre-application and application stage, with particular regard to the weight to be given to the important countryside frontage designation and whether this was out of date;
 - the case officer gave inaccurate answers to Planning Committee, with particular regard to the boundary of the conservation area and listed buildings;
 - that the Council gave insufficient weight to local support for the scheme.

The determination process

5. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that the determination of applications should be made in accordance with the development plan unless material considerations indicate otherwise. The starting point of decision-making is therefore plan-led.
6. The PPG states that where a local planning authority has exercised their duty to determine planning applications in a reasonable manner, it should not be liable for an award of costs. It also states that where a planning application has been refused for a proposal that is not in accordance with 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 against the local planning authority for unreasonable refusal of an application.
7. It will be seen from the appeal decision that I consider the adopted development plan policy relating to the important countryside designation, the village development framework and conservation area to be up-to-date and that any future revisions to these designations and boundaries are not a matter for a section 78 appeal. I also consider these designations and boundaries to be material to the scheme before me, irrespective of whether the Council had expressed to Parish Councils separately an intention to review them, and can find no land-use planning reason why they should be set aside or given less than substantial weight in my assessment as part of an up-to-date and recently adopted Local Plan. I am as consequence satisfied that the decision, and in particular the application of policy relating to the important countryside frontage, was entirely reasonable and made on sound planning grounds. Furthermore, whilst I recognise that the appellant made revisions to the scheme following the pre-application advice to address the concerns of the conservation officer, I am not of the view that this was sufficient to overcome the harm identified in the appeal decision.
8. Although the appellant asserts that Planning Committee justified the decision on the basis of not wishing to establish a precedent of allowing development outside a village framework, this is not referred to in the reasons for refusal and there is no evidence before me that its final decision was influenced by this consideration.
9. I note the appellant's concerns that the final decision did not reflect some of the positive comments given by Members or their assertions that many development boundaries in the district were inappropriate and outdated. However, Members are generally not professional planners and neither are they obliged to follow the recommendations of officers. I do not therefore find it surprising that a wide variety of statements may have been made by Members during the course of their deliberations that may have challenged or conflicted with the committee report and this is one of the reasons why officers are on hand to give professional advice. In any event, despite what may have been said by individual Councillors, the final decision was reached collectively by all Planning Committee Members.

Pre-application advice

10. The PPG states that pre-application advice can be a material consideration and given weight in the planning application process and that a prospective

applicant should expect a clear, timely, and authoritative view on the merits of a proposed development at the pre-application stage. However, it also clarifies that pre-application advice provided by the local planning authority cannot pre-empt the democratic decision making process or a particular outcome, in the event that a formal planning application is made.

11. Although I sympathise with the appellant's frustration over the Council's subsequent change in position at the formal application stage on the status of the important countryside frontage policy, I do not consider this to have been unreasonable given that its pre-application advice was given at a time when it did not have a 5 year housing land supply, which led to the Officer's conclusion that the relevant development plan policy was out of date and/or outweighed by other material considerations. I also note that the committee update report provided an explanation as to why the Officer's position subsequently changed in respect of the important countryside frontage and that the initial advice provided was informal only. As a consequence, I am satisfied that the Council was not legally obliged to follow the advice it had given at pre-application stage.
12. Furthermore, despite the Council's change in position at the formal application stage and the subsequent adoption of a new Local Plan, the appellant still nonetheless chose to appeal and assert through their evidence that the important countryside frontage designation was out of date. As a consequence, it is my view that even if the Council had advised them at the pre-application stage that it considered this policy up-to-date, they would have continued to submit an application. I am not therefore of the view that the initial advice has put them to unnecessary or wasted expense.
13. In any event, the PPG advises that if an applicant is unhappy with the level of service provided at the pre-application stage, they may wish to raise the matter directly with the local planning authority through its formal complaints procedure. In my view, this constitutes the proper course of action if an applicant is unsatisfied with the quality of service and advice provided at pre-application stage and offers appropriate scope for the complainant to seek redress and compensation.

Case officer advice to Planning Committee

14. Although the appellant recognises that the committee report clarified that only part of the site was in a conservation area, they assert that this was not what was stated in the case officer's visual presentation and neither was the correct advice given in terms of listed buildings. There is however no evidence before me in the form of a detailed committee minute of what was said by the case officer and neither are there any legal declarations by third parties corroborating this allegation.
15. In any event, Members are obliged when making a decision to have regard to the evidence before them and the primary source of professional advice relating to this is contained in the committee report. On the basis of the evidence before me, I have no reason to conclude that Members did not read the committee report or based their decision on inaccurate professional advice.
16. I have noted the appellant's concerns in respect of the listed building advice, but this matter did not form part of the reasons for refusal and there is no

evidence before me that the Committee's final decision was influenced by this consideration.

Local support for the scheme

17. The PPG states that a material planning consideration is one which is relevant to making the planning decision in question and that the scope of what can constitute one is very wide. However, in general, the Courts have held that they should relate to land use matters in the public interest.
18. The PPG further states that local authority members are involved in planning matters to represent the interests of the whole community and must make decisions on planning applications in accordance with the development plan unless material considerations indicate otherwise. It further clarifies that Members can only take into account material considerations where they relate to relevant planning matters and that local support for a proposal is not in itself a ground for granting planning permission, unless it is founded upon valid material planning reasons.
19. It will be seen from the decision that I did not consider the support given by interested parties demonstrated a lack of harm or diminished the significance of adopted development plan policy. I am as a consequence satisfied that the scheme was properly determined in accordance with the development plan and that material considerations, which included local support, did not indicate otherwise.

Wasted expense

20. Given my conclusions on the allegation of unreasonable behaviour, the matter of unnecessary or wasted expense does not need to be considered.

Conclusion

21. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Robert Fallon

INSPECTOR