
Costs Decision

Site visit made on 22 July 2019

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2019

Costs application in relation to Appeal Ref: APP/Z2830/W/19/3220528 Land at 35 Station Road, Cogenhoe, NN7 1LT

- 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 Danelaw Partners LLP for a full award of costs against South Northamptonshire District Council.
 - The appeal was against the refusal of planning permission for demolition of existing car workshop and erection of 10 residential dwellings.
-

Decision

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

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.

The Application

3. The Council's decision on the appeal application was unreasonable, failing to take account of its own policy and guidance. The application was recommended for approval by officers, including specific commentary on how the proposals were consistent with highway standards and that the Council's own adopted parking Supplementary Planning Document (SPD) encourages on-plot side parking spaces. The officer specifically stated that "it is not considered that this parking arrangement is a reason to warrant refusal, particularly noting similar arrangements exist elsewhere along Station Road".
4. The first reason for refusal is quite plainly inconsistent with the Council's own adopted policies on parking and layout. The Appellant followed this guidance in good faith. Consistency in decision making and not departing from adopted policy unless there are material reasons for doing so are important established planning principles that the Council have failed to follow in this case.
5. In this instance, the Council's comments explain that the committee's judgement was principally based on prevailing parking conditions and traffic flows on Station Road. The Committee should have adhered to its own adopted design guidance unless material considerations quite clearly outweighed these. The Committee carried out no formal site visit in respect of the application and therefore had no reason to deviate from the officer's report that concluded that layout/access were acceptable within the context of the site.

6. Furthermore, highway safety is a statutory responsibility that rests with the local highway authority that was a consultee on the application and did not object. It was unreasonable for the committee to deviate from the views of the highway authority in this regard, particularly having not conducted a formal site visit to satisfy themselves of the circumstances.
7. The second reason for refusal is also fundamentally flawed since the Council have also failed to follow the planning practice guidance that specifically states that tariff-style contributions should not be sought from developments of 10 dwellings or fewer. It is unreasonable that the Council should ignore the Planning Practice Guidance (PPG) in seeking financial obligations from the development.
8. There is fundamental disagreement with the Council's assertion that the contributions sought are not "tariff-style". Attention is drawn to the fact that the Officer's report provides only a "...such as..." example for where the offsite leisure and play contribution might be directed; whilst the kerbside recycling contribution was to be charged at £55 per dwelling, which is self-evidently a tariff.
9. The Council's Planning Committee is not obliged to reach the same conclusions as officers and may apply different weight to material considerations. However, this entitlement does not extend to unreasonable judgements that depart from policy and evidence. The Appellant had to engage a planning consultant to prepare its statement of case for this Appeal. The full costs of this are therefore sought.

The Rebuttal

10. In respect of parking provision it is accepted that the officer's report states that the parking provision is in accordance with highway standards, that the adopted parking SPD encourages on-plot side parking spaces, that the officer states that the parking arrangement is not considered a reason warranting refusal, and that similar arrangements exist elsewhere along Station Road. However, the committee members expressed a concern over the fact that the layout showed the provision of 3 parking spaces in a tandem form and that this would be inherently unsafe with vehicles reversing on or off the driveways. This arrangement is not shown in the Council's adopted parking standards.
11. Whilst not recommended as a reason for refusal, committee members noted that cars are often parked along one side of Station Road associated with the row of terrace dwellings, and considered the level of movement of vehicles on and off the site could result in significant traffic disruption. This was a particular concern for the committee, which is entitled to come to a different decision and attach different weight to the various issues when making judgements. The Council's SPD along with the officer's recommendations were material considerations which committee members were entitled to weigh appropriately. The committee determined that the level of parking in a tandem form was not acceptable due to the harm/disruption that would be caused by vehicle movements, contrary to adopted development plan policy as stated in the reason for refusal.
12. It is accepted that there was no objection raised to the principle of the development by the county highway authority; however in its response to the application reference was made to its standing advice in respect of access,

parking and turning. It is therefore a matter for the Council to determine whether the proposal is acceptable in these respects.

13. As to layout, this point is similar and to a degree linked to the issue on parking provision. The concern relates to the arrangement of the development on the site which results in the provision of parking driveways adjoining each other creating groups of 6 parking bays in two lines of three. This arrangement is not common in other dwellings within this part of Cogenhoe.
14. Turning to the need for a signed section 106 agreement, this is underpinned by the SPD. The suggested S106 agreement (as outlined in the officer's committee report) covered items that are directly related to the development and are considered necessary to make the development acceptable in planning terms.
15. The request for a contribution towards the bus shelter has a direct correlation with the issue over traffic movements on and off the site and therefore is considered necessary for the development. The offsite leisure facilities contribution relates to the constrained nature of the site and the lack of any associated open space on the development, in line with the requirements of the SPD. Finally the request for a contribution towards a public clock is a community facility that was sought to enhance the quality of the development and to promote community cohesion and integration, and was requested by the Parish Council. The requests made were clearly related to the development, necessary to it in terms of reducing the potential harm to the area and fairly related to it.
16. It is accepted that the advice in the PPG currently states that planning obligations for affordable housing and tariff-style contributions should not be sought from developments of 10 houses or less. However, the advice given on planning obligations in the PPG is dated 2016 but the recently revised Framework makes no reference to not requiring S106 agreements for developments of 10 units or less or any specified floor area. Rather, Section 5 of the Framework states that the provision of affordable housing should not be sought for residential developments that are not major development. This appears to conflict with the advice in the PPG but as the current Framework was published in 2018 the advice in the Framework is more up to date. Further clarification from Government would be helpful concerning how the threshold for seeking affordable and tariff style contributions should apply going forward.
17. For the above reasons it is considered that the Council has not behaved unreasonably and the award of costs should be refused.

Conclusions

18. The Council is the planning authority and there is no obligation on members to adopt the recommendations of its officers. Nevertheless, if coming to a decision that goes against the advice of officers, it is necessary for a reasoned decision, based on planning policy and guidance, to be given.
19. Similarly, a planning authority has its own obligation to consider safety and convenience of highway users, and is not obliged to accept the recommendation of the highway authority.
20. My decision on the appeal has been provided separately from this decision on the costs application. It will be seen that I have decided that there are reasons to refuse the appeal proposals on the basis of the safety and convenience of

highway users, of matters relating to the appearance of the development due to car parking forward of the houses and, to a certain extent, due to the requirement for a planning agreement.

21. In its appeal statements the Council accepted that guidance about tariff style contributions was that they should not be sought on housing development of 10 units or less, and only in relation to the costs application has argued that government policy has changed. At the time of the appeal it seems both parties were not aware of the way matters in this respect had moved on.
22. As to the criticism that committee members came to their decision without formally visiting the site, it seems to me that their judgement was largely made on the basis of evaluating the details on the application plans. But in any event, at least a number of members would likely have been familiar with this village.
23. Therefore the Council has sufficiently made its case in support of the committee's decision, and I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Terrence Kemmann-Lane

INSPECTOR