
Costs Decision

Site visit made on 28 May 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Costs application in relation to Appeal Ref: APP/P1805/W/19/3224255 Land to front of Yew Tree Farm, St Kenelms Road, Romsley, B62 0NU

- 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 Kendrick Homes Limited for a full award of costs against Bromsgrove District Council.
 - The appeal was against the refusal of the Council to grant planning permission for residential development of 7 No. Dwellings and associated garaging.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Paragraph 30 of the Planning Practice Guidance (the Guidance) 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 applicant made a claim for a full award of costs on the basis of the substantive matters of the appeal.
4. The basis for the claim is that the Council should have granted planning permission for the development on the basis that the appeal proposal complied with national and planning guidance. Further, that the Council failed to attribute appropriate weight to compliance with relevant policies when reaching its decision. The applicant refers to vague, generalised and inaccurate assertions particularly with regard to highway safety.
5. Whilst the Council's recommendation to Committee was to approve the appeal proposal, the Council maintains that members are entitled to use their own judgement and knowledge to make a decision that does not accord with the officers recommendation.
6. I agree that the Council is not duty bound to follow the advice of its professional officers. However, 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.
7. The Council pursued a highway related reason in the light of the lack of objection from its own Highways Consultant and despite seeking a second opinion. The reason is oddly worded and appears to be based upon an

assumption that future driver behaviour would make the highway situation worse.

8. . Whilst, the reason refers to the presence of four new accesses encouraging drivers to mount the kerb at greater speed, it is not clear in the Council's statement of case or the minutes of the Committee hearing why the presence of four accesses would encourage drivers to mount the kerb and drive at greater speed. Any assumption about future driver behaviour is unsubstantiated.
9. On the second reason for refusal regarding housing mix and density, the Council says that Members' position is clear in respect of the mix of development and use of land and quotes paragraph 123 of the Framework and Policy BD7 of the District Plan. However, the relevant policy clearly refers to a focus on providing 2 to 3 bedroom homes and that does not therefore exclude other sizes of dwelling being provided. Similarly, the issue of density is not addressed in any detail by the Council. There is no comparison with surrounding development or any indication of why the density is unacceptable other than a general reference to an absence of a five year supply of housing.
10. I do find that the reasons for refusal were vague and generalised and not substantiated. I have allowed the appeal having given regard to the development plan, national planning policy and other material considerations. I therefore agree that the development proposed should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour in the Planning Practice Guidance and the appellant has been faced with the unnecessary expense of lodging 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 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 Bromsgrove District Council shall pay to Kendrick Homes Limited the costs of the appeal proceedings described in the heading of this decision.
13. The applicant is now invited to submit to Bromsgrove District 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.

E Griffin

INSPECTOR