

Costs Decision

Site visit made on 22 August 2019

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 26th September 2019

Costs application in relation to Appeal Ref: APP/W0530/W/19/3224708 Land off New Road, Melbourn SG8 6BY

- 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 Mrs Sharon Levell (Hopkins Homes Ltd) for a full award of costs against South Cambridgeshire District Council.
 - The appeal was against the refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The application Ref S/4241/18/DC, dated 1 November 2018, sought approval of details pursuant to condition No 9 of a planning permission Ref S/2791/14/OL, granted on 8 August 2016 (the planning permission).
 - The application was refused by notice dated 5 March 2018.
 - The development proposed is residential development of up to 199 dwellings plus a care home of up to 75 beds, new vehicular and pedestrian accesses from New Road, public open space and a landscape buffer.
 - The details for which approval is sought are: *Scheme for the improvement of foul sewage capacity.*
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Decision

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

Procedural Matter

2. A typographical error was made in the Council's decision notice, with the correct date of issue being 5 March 2019 and not 5 March 2018.

Reasons

3. 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.
4. The applicant alleges that the Council has behaved unreasonably by:
 - Delay;
 - Seeking further advice following advice from Anglian Water that the condition could be discharged;
 - Misinterpreting the wording of the condition, provision of a vague unsupported reason for refusal and without any planning policy justification;
 - Failing to provide evidence to respond to the appellant's statement;
 - Failing to approve an alternative application.

Delay

5. While I acknowledge that the consideration of the submitted details took longer than the statutory period, leading to the service of a deemed discharge notice by the applicant, there were no unreasonable delays throughout the period caused by inactivity by the Council or mismanagement of the determination process. The Council decided, in the interests of making a robust decision, to seek clarification and to conduct further enquiries and consultations. The Council explained the rationale for this to the applicant within a short time of the end of the statutory period, including the steps it was taking to resolve the matter. It was positively engaged and active towards making a decision, including seeking to address and consider differences in technical opinion between Anglian Water and its own drainage consultant, up to the date of determination.

Seeking further advice

6. At the Inquiry giving rise to planning permission, the statement of common ground referred to the need for off-site improvement works of the sewerage system. This was referenced in the Inspector's decision. The condition requiring approval of a scheme for the improvement of foul sewage capacity, to prevent pollution of the water environment, was therefore made within that context. It was therefore a reasonable response of the Council to seek clarification of Anglian Water and the appellant when it was initially submitted, without detailed explanation, that the condition could be discharged without off-site improvement works. Further, as off-site works were no longer put forward as necessary, it was reasonable given local representations and concerns about surcharge incidents in Melbourn for the Council to consult with the Parish Council and with its drainage consultant. The act of consulting an alternative source of drainage advice was particularly reasonable given that the Council was not able to substantiate Anglian Water's conclusions as to the suitability of the submitted scheme due to absence of modelling data for stated reasons of commercial confidentiality.

Misinterpretation, vague unsupported reason for refusal, no planning policy justification

7. The Council said in its decision notice that the proposal had not demonstrated any improvement to the existing foul water network, and may result in a material adverse impact to the existing network. Given that the condition was imposed in the agreed context that improvements to the off-site sewerage system were necessary, and that in any event the existing network would in all cases receive sewage from the development, the existing system and its ability to receive such effluent without detriment is central to the discharge of the condition. This was not misinterpretation of the condition and its relevance to the development, nor was the reason for refusing the proposal vague or unsupported. The refusal was supported by an objective analysis, as set out in the officer report, which considered amongst other information technical input from its drainage consultant and Anglian Water.
8. The objective of the condition and the reason for imposing it was determined by the Inspector granting planning permission. The Council was not required to justify its decision to refuse discharge of the condition with specific reference to planning policies.

Failure to provide evidence to respond to the appellant's statement

9. The Council has actively participated in the appeal and decided to submit its officer report as evidence towards countering the appellant's submissions. This was not unreasonable.

Failure to approve an alternative application

10. This matter is not relevant to the costs decision before me, which is concerned with the appeal against the application set out in the banner heading.

Conclusion

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

Andrew Walker

INSPECTOR