
Costs Decision

Site visit made on 23 September 2019

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2019

Costs application in relation to Appeal Ref: APP/Y0435/W/19/3233875 Land off Caldecote Street, Newport Pagnell, Milton Keynes MK16 0BX

- 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 Manor Farm Developments Ltd. for a partial award of costs against Milton Keynes Council.
 - The appeal was against the refusal of planning permission for the erection of two semi-detached dwellings, associated parking, landscaping and works to public realm.
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Decision

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

Reasons

2. Planning Policy 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 expense in the appeal process.
3. At the time that the planning application that was refused in February 2019¹, the Plan:MK 2019 had yet to be adopted. It was adopted at the time the subsequent planning application was refused, which is the subject of this appeal.
4. In its reasons for refusal for planning application 18/03018/FUL the Council cited Plan:MK 2019 policies. In particular, the first reason for refusal solely relied on Policy L3 of the Plan:MK 2019. Regardless of how much weight the Council attributed to the policies of the emerging Plan:MK 2019 at the time, it was clearly sufficient enough to rely solely on a single emerging policy for one of the reasons for refusal.
5. Therefore, it is not clear as to why the adoption of the Plan:MK 2019, and the subsequent full weight attributed to its policies, justified the introduction of two additional reasons for refusal for the appeal proposal when the Council clearly considered that the emerging Plan:MK 2019 policies had enough weight to justify other reasons for refusal. Based on the evidence before me, there is nothing to suggest that the 18/03018/FUL scheme and the appeal scheme differ to such an extent that the sustainability of their construction or broadband connectivity would be materially different. Therefore, the unexpected introduction of reasons for refusal 2 and 3 amount to unreasonable behaviour.

¹ LPA Ref: 18/03018/FUL

6. Furthermore, the PPG states that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead. The applicant makes a compelling case that the Council's requirements pertaining to reasons for refusal 2 and 3 could be dealt with by condition. I note the Council's contention that connectivity and sustainable construction details are not matters which can be dealt with by condition and should be dealt with during the course of an application. However, the Council have not provided any justification for this approach and based on the evidence before me, I find no reason why such matters cannot be conditioned. I also note the applicant's assertion that a number of planning applications have been permitted by the Council without any reference to sustainable construction and connectivity. I consider that the failure of the Council to consider the use of planning conditions to amount to unreasonable behaviour.
7. As a result of the Council's unreasonable behaviour regarding reasons for refusal 2 and 3, the applicant has gone to unnecessary expense in appealing these reasons.

Conclusion

8. I conclude therefore that unreasonable behaviour resulting in unnecessary or wasted expense has been demonstrated and that a partial award of costs is justified.

Costs Order

9. 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 Milton Keynes Council shall pay to Manor Farm Developments Ltd., the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in addressing the second and third reason for refusal of decision 19/00672/FUL.
10. The applicant is now invited to submit to Milton Keynes 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.

Alexander Walker

INSPECTOR