



Costs Decision

Site visit made on 26 November 2019

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2019

Costs application in relation to Appeal Ref: APP/P1425/W/19/3231655 "Marchants", Lower Station Road, Newick, Lewes, BN8 4HT.

- 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 R Baradaran-Azimi for a full award of costs against Lewes District Council.
 - The appeal was against the refusal of an application for planning permission for the erection of a 3 bedroom dwelling and garage and associated landscaping.
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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 other party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The appellants' written application for costs is based on the premise that the Council did not deal with the application correctly in accordance with established case law. In the main, it is alleged that the Council did not consider the results of the Housing Delivery Test, the poor delivery of housing, and national guidance on maintaining housing supply.
4. In the background to the planning case it is clear that the assessment of housing need and supply locally has been complicated by the legal challenge resulting in the quashing of spatial policies in the Local Plan Part 1 in so far as they relate to the South Downs National Park. These are recognised as unique circumstances in the letter of 22 October 2019 from the Director of Planning at MHCLG to the Council. Moreover, this letter reassesses the Housing Delivery Test (HDT) outcome as 86% delivery rather than the 50% originally specified. The change is significant in that it indicates that a 5% buffer can be applied in the housing land supply assessment rather than 20%, and on this basis the Council has provided evidence that it can demonstrate a 5.59 years supply.
5. I appreciate that this recognition of the 'exceptional circumstances' in the formulation of the HDT is relatively recent but it puts in context the Council's stance that it could demonstrate an adequate supply of housing at the time when the application was considered. On this basis I would not expect to see a reference to housing supply in an officer report on a proposal for a single new dwelling.

6. I acknowledge that the delegated officer report incorrectly refers to the Newick Neighbourhood Plan but I do not see that this aspect was critical to the determination of the application. Policies in that neighbourhood plan were not referred to in the formal reasons for refusal. Further, reference to the correct plan would not have carried much weight as I understand that the Chailey Neighbourhood plan is only at a draft stage and it has not been made.
7. I also agree that the delegated report is light on a basic planning balance assessment which takes into account other considerations, including the positive benefits of development. Nevertheless, the planning issues central to the decision and the assessment with the development plan are present and given my similar conclusion on the planning merits of the case, I do not consider that the delegated report is materially unbalanced or devoid of critical aspects.
8. Overall, I find that the Council has not acted unreasonably in refusing the application and the reasons put forward reasonably accord with the development plan and the relevant government guidance. The Council was entitled to make this planning judgement and has been able to substantiate its case on appeal. The costs borne by the appellants in lodging the appeal are therefore the normal costs arising when the right of appeal is exercised.
9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

David Murray

INSPECTOR