



Costs Decision

Site visit made on 26 November 2019

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2019

Costs application in relation to Appeal Ref: APP/B3030/W/19/3236332 Land to rear of Holly House Farm, 8 Main Street, Sutton On Trent, Newark NG23 6PF

- 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 & Mrs Beeby for a full award of costs against Newark & Sherwood District Council.
 - The appeal was against the refusal of planning permission for the erection of 4(No.) dwellings and associated garages.
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Decision

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

Reasons

2. The application is for a full award of costs and was made within the prescribed period. The Planning Practice Guidance (PPG) 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.
3. This application raises concerns over substantive unreasonable behaviour by the Council in terms of preventing or delaying development which clearly should have been permitted; by asserting vague, generalised or inaccurate assertions about a proposal's impact; by not determining similar cases in a consistent manner and by making a decision contrary to pre-application advice. Concern is also raised in respect of procedural unreasonable behaviour in terms of introducing fresh and substantial evidence at a late stage and the Council's processes for the determination of planning applications.
4. Notwithstanding the content of the planning committee report and the subsequent planning committee meeting minutes, the Council's refusal reason is complete, specific and relevant to the proposed development. It clearly states the development plan policies on which it would rely and the reasons why the Council found the development contrary to the policies. As I have also found the appeal proposal to be contrary to development plan policies, I do not agree that the Council failed to provide clarity on its reasons, nor did it prevent development which should have been permitted.
5. The Council is not duty bound to follow the advice of its professional officers, although in those circumstances it has to clearly justify its reasons for doing so and provide clear evidence to substantiate that reasoning. The issue as to how to define an appropriate sequential test area of search is a matter of

judgement. The Council's appeal statement clearly sets out why the approach undertaken by the appellants was considered to be too restrictive.

6. The evidence before me does not substantiate the claim that the Council ignored other planning decisions in its assessment of the appeal proposal. Each application has to be considered on its own merits. As set out in my appeal decision, the other proposals referred to in support of the appeal are not so similar to set a precedent. As such, the Council has not been inconsistent in its assessment of the appeal development compared to other decisions.
7. As different policies apply, it is not inconsistent or unreasonable for the Council to attach more weight to local housing needs surveys when considering housing mix compared to situations where it is assessing a proposal against the flood risk sequential test. The Council is required to assess proposals against current development planning policies, even if this means attaching less weight to housing needs information than would be appropriate under previous policies.
8. Whilst the Council's decision may appear at odds with the previous Inspector's conclusions in respect of an earlier proposal, both the Council and the appellant took different approaches such that it was inevitable that this would need to be resolved through an appeal. This does not however demonstrate unreasonable behaviour by the Council.
9. Informal pre-application advice is given without prejudice and cannot pre-determine the outcome of a subsequent application. This costs application refers to planning officer advice provided on another development elsewhere in the District. As it relates to a different site, it is not directly relevant to the appeal development.
10. The Council's appeal statement and evidence was submitted in accordance with the deadlines set out on the appeal start date letter. As such, the material provided by the Council has not been submitted late and the appellants have had sufficient opportunity to respond in accordance with Procedural Guide Planning appeals – England. It was not unreasonable of the Council to provide information in support of its case at the appeal stage that was not part of the planning committee report, particularly given the difference between the recommendation and the Council's decision.
11. I note the concerns raised in respect of the length of the Council's committee agendas, speaking rights at planning committee meetings and publication of late information. However, there is nothing before me that demonstrates that these issues have led to unreasonable behaviour by the Council in respect of their assessment of the appeal development nor in the appeal process.

Conclusion

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and the application for costs fails.

Jonathan Edwards

INSPECTOR