



Costs Decision

Site visit made on 8 October 2019

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2019

Costs application in relation to Appeal Ref: APP/C1570/W/19/3233513 Land south of Oxleys Close, Stortford Road, Clavering CB11 4PB

- 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 Mike Sugden of Cambridge and County Developments for a full award of costs against Uttlesford District Council.
 - The appeal was against the refusal of planning permission for erection of 13 dwellinghouses and associated development.
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Decision

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

Reasons

2. The National 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. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it prevents or delays development which should clearly have been permitted having regard to its accordance with the development plan, national policy and any other material planning considerations or fails to produce evidence to substantiate each reason for refusal at appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. Examples of unreasonable behaviour by local planning authorities in the PPG include (i) preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; (ii) persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable and (iii) failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances.
5. The applicant has advanced a case that all three of these circumstances apply to the appeal scheme, particularly when the planning history of the site is taken into account, including the previous planning application which was

- refused by the Council and subsequently allowed on appeal¹. It is also submitted that there has not been any substantial change in circumstances since that permission expired in February 2018 and the Council still cannot demonstrate a deliverable five year supply of housing.
6. The Council do not consider that they have behaved unreasonably and point out that the Planning Committee is entitled to come to an alternative view to the officers' recommendation. It is submitted that the Committee acted reasonably in weighing up the various aspects of the case.
 7. I accept that the Council have correctly identified that a Planning Committee decision which goes against officer advice is not a reason to give an award of costs in itself as the Committee were entitled to come to their own conclusions on the merits of the proposal.
 8. However, a key issue is whether the Council have provided sufficient evidence to substantiate their reason for refusal at appeal, particularly given the planning history to the site and the continued lack of a deliverable five year supply of housing.
 9. In my decision I found that the proposal would be contrary to Policy S7 of the Uttlesford Local Plan 2005. However, it is very significant that the same development plan policies were relevant when the previous application was considered at appeal. It is also significant that the appeal site has been allocated for residential development in the emerging Local Plan which indicates a clear direction of travel in that the principle of residential development on the site is acceptable.
 10. Whilst I have noted that other planning permissions have been granted in the village, and that these would have helped provide additional dwelling as part of an overall supply of housing, it is highly significant that that Council still has a large shortfall in supply.
 11. Taking all of these factors into account my initial view was that given that there has been a recently expired planning permission at the site, no changes to the adopted development plan, an emerging plan which allocates the site for residential development, and the continued lack of a deliverable five year supply of housing points to the fact that planning permission should have been granted for the development without the applicant having to resort to an appeal. The Council have not provided a convincing counter argument to these facts and as such I consider that the Council have not provided sufficient evidence to substantiate its reason for refusal. As a result, I consider that the Council has acted unreasonably, and this has resulted in the applicant incurring unnecessary expense.
 12. In my decision, when considering the highway issues which would arise from the development, I found significant harm in relation to whether the proposal would provide a safe and suitable access. Whilst this factor proved to be a determinative one, this does it alter my view that that the Council have failed to substantiate its actual reason for refusal.

¹ Reference UTT/13/0327/OP and appeal reference APP/C1570/A/13/2198770.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

14. 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 the Uttlesford District Council shall pay Cambridge and County Developments the costs of the appeal proceedings described in the heading of this decision.
15. The applicant is now invited to submit to the Uttlesford 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.

G. Pannell
INSPECTOR