



Costs Decision

Site visit made on 3 December 2019

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: Wednesday, 08 January 2020

Costs application in relation to Appeal Ref: APP/K0235/W/19/3237824 Land Rear of Nos 25-39 Howard Close, Wilstead, Bedfordshire MK45 3JW

- 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 Clarence Country Homes for a full award of costs against Bedford Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 30 dwellings (including affordable, self-build and build for rent) with all matters reserved except access.
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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, 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 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. The Applicant submits that the Council has acted unreasonably as the officers' report recommended that planning permission be granted and that the Council's planning committee rejected the officers' recommendation and refused permission. This ignored advice from senior planning officers, statutory consultees and also the findings of a previous planning Inspector.
5. It is further submitted that the first reason for refusal related to prematurity on the basis that the proposed development would undermine the plan making process and that no evidence has been provided to substantiate this reason for refusal. It is also noted that the Neighbourhood Plan (NP) has not progressed beyond the designation of the 'plan area' and it is not clear what approach to development the NP will take. It is therefore not at an advanced stage and no explanation has been made as to how development in this location would prejudice the NP process. It is also submitted that the highway reason for

refusal was despite no objections from the Councils highway officer and importantly the previous appeal decision¹.

6. The Council have responded that the applicants first ground is that the Council have prevented or delayed development which should have been permitted. However, it is stated that this is a matter which is being considered at appeal. It is also suggested that whilst the tilted balance now applies, the Planning Committee were entitled to come to the view that the adverse impacts of the development would significantly and demonstrably outweigh the benefits.
7. It is suggested that this is particularly the case as the emerging Local Plan is at an advanced stage and once adopted it would restore the Councils ability to demonstrate a deliverable five-year supply of housing. Another factor is that the adoption of the plan has been delayed by the Purdah period relating to the General Election. The Council are of the view that the development, if approved, would result in development in an area of open countryside, outside of the defined Settlement Policy Area – which is contrary to the adopted plan and the emerging plan – and will pre-empt decisions which the emerging local plan seeks to afford to Neighbourhood Plan groups – which in this case is the Parish Council.
8. The Council also consider that the highway ground was not considered by the previous Inspector. It is indicated that a potential highway impact is a material planning consideration which has weight in the determination process. The weight attached to this is a matter for the decision-maker and should not be considered unreasonable unless no reasonable decision-maker could have come to that view. In this case the planning committee gave greater weight to local traffic considerations in the vicinity of the site based on local knowledge.
9. Whilst I accept the fact that the Planning Committee went against their own Officers advice, this 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. However, a key issue is whether the Council have provided sufficient evidence to substantiate their stance on the proposal at appeal.
10. Whilst I have some sympathy in respect regarding any delays in the Local Plan process as a result of the General Election, this was not a factor when the Council determined the application. Furthermore, an application or appeal must be determined against the Development Plan at the time of the decision unless any other material considerations indicate an alternative decision. This includes the National Planning Policy Framework (the Framework) and the emerging Plan.
11. As pointed out by the applicant, the Framework is clear that arguments that an application is premature is unlikely to justify a refusal of planning permission other than in limited circumstances. The Framework, at paragraph 50, sets out that where planning permission has been refused on the grounds of prematurity the local planning authority will need to indicate clearly how granting planning permission would prejudice the outcome of the plan-making process.
12. The Council have provided little evidence to indicate how the granting of planning permission would prejudice the outcome of the plan-making process

¹ Reference APP/K0235/W/16/3152962

and appear to have been fixated on the indication that once the emerging plan has been adopted a deliverable five-year supply of housing could be demonstrated. It is also significant that the NP for the area has not progressed to a point where it could be said to attract a level of weight which might provide a reason why permission should not be granted.

13. Furthermore, in my decision I also noted that the emerging policy does not explicitly prevent further development in Wilstead. This is also a significant point especially as the key policy drawn to my attention sets out a minimum number of dwellings to be provided in key service centres. It follows that as this is a minimum number, additional dwellings beyond this would not necessarily be in conflict with this policy.
14. In respect of the previous inspectors view that the (previous) development of the appeal site would be contrary to the adopted development plan, I noted that the Council did not refer to that harm in their reason for refusal and have only sought to include this within their appeal statement. That said, unlike the Council in their consideration of the application and my consideration of the current appeal, the previous Inspector did not have to consider the tilted balance owing to a deliverable five year supply of housing at the time of that decision.
15. Whilst I considered that the benefits of the development were such that they were not clearly and demonstrably outweighed by the limited harm which had been identified, this is clearly a matter of planning judgement. However, to my mind, the Council clearly gave far too much weight on the housing land supply position when the emerging plan is adopted.
16. Taking all of the above into account, I find that the Council have not provided sufficient justification for their decision that the proposal would be premature. The planning committee, in coming to the decision that they did, has resulted in an avoidable delay in granting planning permission. Furthermore, at appeal, the Council have failed to provide a convincing justification for such a decision. As a result, I consider that the Councils behaviour has been unreasonable which has forced the applicant to incur the costs of submitting an appeal.
17. Turning to the second reason for refusal, it is significant that in determining the previous application for the development of a greater number of dwellings at the appeal site, the Council did not have any highway objections to the development. Given that the access to the site is essentially the same between the previous and current schemes, I find the Councils current position in this respect untenable. This is particularly the case as there have not been any significant material changes in circumstances in the intervening period which would indicate that permission should be withheld on this ground.
18. Furthermore, at appeal, the Council has provided very little evidence to back up the assertion that a highway safety issue would result. I consider that this is a clear and unequivocal example of unreasonable behaviour which has resulted in unnecessary expense for the applicant.

Conclusion

19. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated in relation to

the refusal of the appeal application and therefore a full award of costs is justified in this respect.

Costs Order

20. 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 Bedford Borough Council shall pay to Clarence Country Homes, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
21. The applicant is now invited to submit to the Bedford Borough 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.

Chris Forrett

INSPECTOR