
Costs Decision

Site visit made on 4 December 2019

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2020

**Costs application in relation to Appeal Ref: APP/Y3940/W/19/3236701
Land opposite Nos 8 to 10 Vowley View, Royal Wootton Bassett, Wiltshire
SN4 8HT**

- 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 Cooper Estates Strategic Land Limited for a partial award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for the erection of a detached two bedroom bungalow.
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking a partial award of costs on substantive grounds.
4. The Guidance states that local planning authorities are at risk of a substantive award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples of unreasonable behaviour by local planning authorities include: refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead, and not determining similar cases in a consistent manner.
5. The applicant claims that the Council has acted unreasonably by including, and subsequently pursuing as part of the appeal, refusal reason no.2 in respect of the potential for localised flood risk arising from the development. The applicant considers that this matter is capable of being dealt with by means of a planning condition, and that the Council has not put forward a reasonable argument to demonstrate why such an approach is not feasible. Furthermore,

in adopting this approach, the applicant asserts that the Council has not determined similar cases in a consistent manner, having regard to a similar proposal for a dwelling on land adjacent to Kiln Close under application Ref 19/02051/FUL, and having regard to the determination of three previous planning applications¹ for a single dwelling on the appeal site, where this matter was not included as a refusal reason. The applicant asserts that this unreasonable behaviour has resulted in the unnecessary expense of preparing a Drainage Strategy to address refusal reason no.2.

6. Notwithstanding that a drainage related refusal reason was not included with respect to the three aforementioned planning applications, I do not find that the Council has acted unreasonably in respect of the second reason for refusal, having regard to paragraph 55 of the Framework which advises that conditions that are required to be discharged before development commences should be avoided, unless there is clear justification.
7. The same refusal reason was attached to decision Ref 18/06845/FUL, and an informative note on both that application, and the appeal application decision notice, confirmed the information required by the Council to address this refusal reason. This consistency meant that the appellant therefore had the opportunity to submit the required information with the appeal planning application, to address this issue sufficiently to avoid a drainage-related refusal reason.
8. Furthermore, I have found in determining the appeal, that the Council's response to the Drainage Strategy submitted during the course of the appeal, has confirmed that, in the absence of additional information in respect of site infiltration, and due to the uncertainty in respect of obtaining any necessary consent from third party land owners and/or the statutory undertaker, it has not been satisfactorily demonstrated that the appeal scheme can provide a viable drainage strategy that will not increase flood risk elsewhere. I was unable to conclude that the appeal scheme would accord with the Development Plan and the Framework in this respect, and this, in my view, reinforces the inappropriateness of dealing with the drainage element of the development by means of pre-commencement conditions.
9. The applicant's reference to the Council's approach to the drainage issue in respect of application Ref 19/02051/FUL does not persuade me to take a different view, since the current appeal must be determined on the basis of the appeal scheme and the specific circumstances of the appeal site, having regard to the adopted Development Plan and advice in the Framework.

Conclusion

10. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

¹ 14/12039/FUL, 16/10012/FUL, and 17/09072/FUL