
Costs Decision

Site visit made on 9 December 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2020

Costs application in relation to Appeal Ref: APP/U2805/W/19/3237471 Land to the North of Stamford Road, Weldon, Northamptonshire

- 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 A Stevenson for a full award of costs against Corby Borough Council.
 - The appeal was against the refusal of planning permission for the erection of 4 dwellinghouses including associated infrastructure and landscaping.
-

Decision

1. The application for a partial award of costs is allowed.

Reasons

2. The Planning Practice Guidance (the Guidance) 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. The Guidance is clear that a Council could be vulnerable to an award of costs against it if it prevents or delays development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Furthermore, a Council could be vulnerable if it fails to produce evidence to substantiate each reason for refusal.
3. The Council has not provided a Statement of Case or costs rebuttal and consequently relies on the original officer report to substantiate its concerns with the proposal.
4. The costs application alleges:
 - the Council's first and fourth Reasons for Refusal cannot and have not been substantiated,
 - the matters raised in the second and third reasons for refusal have not been substantiated and could have and would have been negotiated at the planning application stage if the other reasons for refusal had not been incorrectly applied,
 - the Council has not acknowledged the clear factual errors in its case or the subsequently positive discussions with the Environmental Health Officer, and

- the Local Planning Authority and the Local Highway Authority have failed to engage in ongoing discussions post decision and have failed to engage in the appeal process.

Reasons one and four being unsubstantiated

5. The first reason for refusal relates to the village boundary and establishes the policy approach to a development which was deemed by the Council, at the time, to be outside the village limits. However, the insert plan submitted in evidence shows this to be clearly incorrect. As I have found in my main decision, policy 13 of the North Northamptonshire Joint Core Strategy 2016 (JCS) is not engaged. Furthermore, the appellant has provided an email¹ received from the Council after the decision had been made. This acknowledged that the reason for refusal incorrectly identified that the site was outside the village boundary. However, the Council stated that in any event it would have not considered the site to be an infill development. I therefore concur with the appellant that the Council misapplied policy in this regard and failed to later correct this error.
6. The fourth reason for refusal relates to harm to the living conditions of the neighbour. Evidence was provided showing the vertical sky component measurements and the internal configuration of the dwelling. The officer report appears to have mixed considerations of daylight and sunlight without clear conclusions on either. The evidence and my own site observations enabled me to conclude that the neighbours living conditions would not be substantially harmed. However, the Council did not behave unreasonably in raising this concern.

The second and third reasons for refusal

7. The second reason relates to highway safety and the performance of the access. The County highway engineer was fully engaged during the application consideration process. This illustrated that at the time of determination, the proposal was not supported by sufficiently robust investigation and analysis to enable the proposal to be approved. Since determination further survey work and analysis has been undertaken by the appellant. I have found this further information has addressed the issues raised with robust and compelling evidence.
8. Similarly, the third reason in regard to contamination, raised potential contaminants in initial survey work. The Council's Environmental Health Officer (EHO) identified that further analysis was required. Further work undertaken in preparation of the appeal has since satisfied the EHO that the additional contamination investigation results did not identify significant risk to human health. As such, the EHO recommended that a remediation condition would be acceptable.
9. In both cases, the proposal was appraised by specialist officers and found to raise technical objections. Therefore, at the time of making its decision the Council had reasonable objections to the proposal.

¹ Email from Corby Council – 11 June 2019

Factual errors

10. The Council has failed to recognise or acknowledge its error in the application of the wrong policy in regard to reason one. However, the Council has acknowledged to the appellant that the site is in fact within the village boundary.
11. Also, the officer report failed to identify that the corner bedroom has a primary rear looking window. The officer report would have benefited from this addition to illustrate that the impact was given proper weight. However, this omission is not in itself evidence of a factual error. It is therefore inconclusive whether this omission, if corrected, would have altered the Council's position.

Failure to engage in the appeal process

12. The Council's email of June identified that the application timeframe had been extended to allow more time to secure highway and contamination information. The email refers to the information being requested in March and April and the proposal was refused in June. It seems that the Council provided sufficient time for the information to be submitted and the appellant make good effort to engaged and resolve the outstanding issues. However, the email refers to an agreed determination date which suggests that a back-stop was agreed when the Council intended to take stock and make a final decision. Both parties made some effort to provide time for this information to be submitted. However, it appeared to be delayed and the agreed timeframe was exhausted. Councils are expected to make expeditious decisions to achieve the Government's performance expectations. It is therefore reasonable that the Council determined the application despite there being potential solutions to the identified issues.
13. Although the Council has not provided a Statement of Case or rebuttal to the costs application, I am satisfied that it has met its requirements in regard to the appeal. It has chosen to not provide any further evidence and has relied on the initial officer report. It is not obliged to provide further evidence unless it considers the refusal reasons must be substantiated. Furthermore, further technical evidence was required from the appellant to address reasons 2 and 3.

Conclusion

14. Overall, I am satisfied that the Council made a robust decision. I am also satisfied that the Council provided a reasonable opportunity for the appellant to reflect on initial concerns raised and attempt to address them. I am therefore also satisfied that at the time of making a decision the Council could not support the scheme.
15. Nevertheless, the Council incorrectly applied policies 11 and 13 and failed to identify that the site was within the village limits of Weldon. It compounded this error by not correcting its position or clarify its new stance for the appeal. Consequently, unreasonable behaviour in regard to the first reason has been found. I have therefore adjusted the application, from full costs to a partial award of costs against the Council, with regard to arguments advanced in connection with spatial housing policy. This part of the applicant's appeal has resulted in unnecessary and wasted expense as described in the Planning Practice Guidance.

Costs Order

16. In the 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 Corby Borough Council shall pay to Mr A Stevenson, the partial cost of the appeal proceedings described in the heading of this decision, relating to the first reason for refusal; such costs to be assessed in the Senior Courts Costs Office if not agreed.
17. The applicant is now invited to submit to Corby 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.

Ben Plenty

INSPECTOR