
Costs Decision

Site visit made on 17 December 2019

by M Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2020

**Costs application in relation to Appeal Ref: APP/G1630/W/19/3238070
Land to the west of the A48, Minsterworth village, Near Gloucester,
Gloucestershire**

- 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 Tony Markey for a full award of costs against Tewkesbury Borough Council.
 - The appeal was against the refusal of permission in principle for a residential development of up to 9 dwelling houses.
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Decision

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

Reasons

2. The Planning Practice 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.
3. The application for costs relies on substantive matters relating to the planning merits of the appeal and that the members of the Planning Committee were unreasonable in their consideration of the merits of the scheme.
4. The applicant cites that the members of the committee demonstrated a lack of understanding of the Permission in Principle (PiP) process and that this impacted on the determination of the application. I note from the minutes of the committee meeting that have been provided that there were some comments made in respect of the PiP process and the procedure that should be followed when considering such a proposal. However, there is also reference within the minutes to clarification being provided by professional officers that were present, throughout the discussion. Furthermore, the minutes also include details of Additional Representations that were provided to committee members, which included a briefing note specifically detailing the PiP process and its background.
5. In respect of the decision to refuse the application, the committee considered that despite a recommendation from officers to approve the application, that permission should be refused. Members were not bound to accept the recommendation, so long as reasonable grounds for doing so could be substantiated. The minutes of the meeting outline the concern expressed, by some, in regard to the location of the site outside of the settlement boundary as defined within the emerging development plan. There is also further concern

raised specifically in regard to the development encroaching into the countryside and having a detrimental impact in this regard. The minutes make it clear that the committee was advised that paragraph 11 of the National Planning Policy Framework (the Framework) was engaged and that this meant that the application should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits. Consequently, when making a decision on the application, Members would have had in mind this requirement.

6. Whilst officers were of the opinion that on balance the application should be approved, it is clear that Members considered that their concerns in respect of the location outside of the emerging settlement boundary, together with the encroachment in the countryside, cumulatively, would result in adverse effects that would outweigh the benefits. This was despite the conflict with the emerging development plan only attracting limited weight. Whilst I have found differently, I consider this to be a decision based on planning judgement which the committee was entitled to make.
7. I note that the applicant had engaged in discussions with Officers and made amendments during the course of the application, suggested by Officers. However, whilst Officers looked favourably on the scheme, Members were entitled to take a different view.
8. The applicant contends that it is telling that the terms 'adverse impacts', 'significant' and 'demonstrable' are not cited within the reason for refusal, which further demonstrates the failings in decision-making. However, in my view, the wording of the reason for refusal is clear in its allegations, that the scheme would be outside of the emerging settlement boundary and there would be encroachment into the countryside. As such, given the discussion evidenced in the minutes of the committee meeting, there is an implicit consideration of these terms.
9. The Council's appeal statement, albeit briefly, outlines its case in respect of the reasons why the planning application was refused. It is clear that it was considered that there would be encroachment into the countryside, as well as a location outside of the emerging settlement boundary, that would not be outweighed by the benefits of the proposal. I consider this adequately identifies the alleged harm and is not a vague, generalised or inaccurate assertion, but a concern that was reasonably held by members of the committee.
10. There is comment made in respect of consistency of decision making, in that it is contended that the committee granted permission for a residential development within the same village in April 2018. I note that the professional advice given to the members during the committee meeting was that it would be difficult to say there would be unacceptable harm in respect of the appeal scheme, when that previous permission was granted. The applicant states that this was at a time when paragraph 11 of the Framework was not engaged.
11. I have not been provided with any minutes of the discussion between members in respect of that previously considered application. In any event, that was at a different location and I am unable, on the basis of the information before me, to conclude that the two scheme are directly comparable, or that there would be any encroachment into the countryside such as that which it was considered would take place, by Members, in respect of the scheme before me. I note that officer advice was that it would be difficult to establish harm in the context of

- the decision made on the other application, however I have no reason to conclude that Members were unreasonable in finding differently.
12. The applicant has further commented that the Council's response to the costs claim seeks to recast and expand its reason for refusal, to include a 'landscape' reason. However, the reason for refusal is clear that it alleges that the scheme would result in an encroachment into the countryside. This, to my mind, is a landscape harm and as such the comments made by the Council do not seek to alter or expand the committee's decision.
 13. Comments are made in respect of the conduct of, and comments made by, members of the committee. However, other than as far as they relate to the specific reasons for refusing permission, these are not matters that I am able to take into account. Should the applicant have further concerns in these regards, there are separate mechanisms which can be pursued in order to address these. I have found no evidence that the comments made resulted in unreasonable behaviour that contributed to the refusal of permission. The Members and the Council have sufficiently articulated the reasons for refusing permission. Whilst I have not agreed, and have allowed the appeal, I do not find that the Council was unreasonable in refusing planning permission.
 14. I therefore conclude that for the reasons set out above, unreasonable behaviour resulting in unnecessary expense during the appeal process has not been demonstrated. For this reason, and having regard to all other matters raised, an award for costs is therefore not justified.

Martin Allen

INSPECTOR