The Planning Inspectorate

Costs Decision

Hearing Held on 8 January 2020

Site visit made on 8 January 2020

by Graham Chamberlain, BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2020

Costs application in relation to Appeal Ref: APP/G2815/W/19/3232099
Land rear of 7 - 12 The Willows, Thrapston, Northamptonshire, NN14 4LY

- 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 East Northants District Council for a full award of costs against Lourett Developments Ltd.
- The hearing was in connection with an appeal against the refusal of planning permission for a residential development to erect four homes.

Decision

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

Reasons

2. Irrespective of the outcome of the appeal, the Planning Practice Guidance (PPG) states that an award of costs may only be made against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.

3. The appellant submitted the planning application despite the unfavourable opinion given at the pre application stage by Council Officers on the acceptability of the proposal. Nevertheless, pre application advice is not binding on the Council. As such, the appellant had every right to submit their planning application in order to seek from the Council a formal determination on the acceptability of the proposal.

4. Policy 11 of the North Northamptonshire Joint Core Strategy 2011 – 2031 (JCS) is written in a way that requires the decision maker to determine whether a site is in an urban or rural area. The policy does not define these areas with reference to a settlement boundary, although the presence of a settlement boundary for the purposes of the Rural North, Oundle and Thrapston Plan 2011 (RNOTP) is material. Therefore, a judgment is required as to whether a site is in an urban or rural area. On this point, I share the view of the Council that the site is not in an urban area but the appellant's evidence that it is was cogent. As such, the proposal is not clearly contrary to the development plan.

5. The appellant's case was twofold, arguing that the proposal was consistent with Policy 11 of the JCS but if that is not the case, there are material considerations that indicate the proposal should be approved. This includes the absence of a five-year housing land supply. The appellant suggested that this should limit the weight attached to any conflict with Policy 11 and increase the

weight attached to the benefits to housing supply such that the adverse impacts would not significantly and demonstrably outweigh the benefits.

6. To support this case, the appellant provided and presented detailed evidence on five-year housing land supply, which in turn was supported by case law in the form of other decisions made by Inspectors. As such, the appellant's case in respect of material considerations outweighing the development plan conflict was supported by adequate evidence. Thus, the case was not substantively flawed. In fact, it was well considered and therefore the appeal was not one without any realistic prospect of success.

7. The appeal has been 'twin tracked' with a resubmitted planning application but this is not unusual and is not an indication from the appellant that the scheme subject to the appeal is unacceptable. It's simply a pragmatic and time saving measure in case the appeal was unsuccessful. Both applications fall to be considered on their own merits.

8. The appellant's appeal statement originally argued that the tilted balance in Paragraph 11 of the National Planning Policy Framework should be applied because the Council is relying on out of date settlement boundaries. The lack of a five-year housing land supply was not part of the original case and the Council's 2018 Annual Monitoring Report was not challenged. The appellant referred to a 3.37-year supply in their Statement of Case, but this was in reference to the housing supply if sites outside settlement boundaries were discounted. It was a point made to expand upon the argument that the Council is relying on sites outside the settlement boundary to maintain a five-year supply, thus rendering the settlement boundaries out of date.

9. The appellant began to develop a five-year housing land supply argument after submitting their statement of case and subsequent to the Council submitting its, which confirmed a five-year housing supply. Understandably the Council did not supply detailed evidence to this effect as it did not appear to be a point in dispute. The appellant's challenge of the Council's 2018 monitoring report, published in October 2018, was therefore submitted unreasonably late as there was no apparent reason for it not being submitted with their statement of case. The Council were put to a disadvantage as they were unable to challenge, through its statement of case, the appellant's position.

10. However, matters got overtaken by events. The Planning Policy Committee agreed a new housing land supply position on the 17 December 2019. This was forwarded on to the appellant and represented the Council's response to the five-year housing land supply challenge. As such, dealing with the late evidence did not put the Council to unnecessary additional expense. The appellant was entitled to deal with the 2019 five-year housing land supply position because it was a significant material consideration that could not have been addressed by the appellant at the time of submitting their statement.

Conclusion

11. For the reasons given, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not occurred.

Graham Chamberlain,
INSPECTOR