



Costs Decision

Hearing Held on 16 January 2020

Site visit made on 16 January 2020

by Graeme Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 March 2020

Costs application in relation to Appeal Ref: APP/G2815/W/19/3230419 Land south of Northampton Road, Rushden NN10 6AN

- 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 T Button and Mrs L Button and Davidsons Developments Ltd for a full award of costs against East Northants District Council.
 - The hearing was in connection with an appeal against the refusal of planning permission for 80 dwellings, highways layout, open space and all other associated infrastructure.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The application for a full award of costs is made on substantive grounds. It is stated that the Council failed to substantiate its reasons for refusal at the hearing and that it continued to rely on vague, generalised and inaccurate assertions about the scheme's impact. Reference is also made to the positive recommendations made to the Council's Planning Management Committee in respect of each of the constituent parts of the Council's subsequent reason for refusal and also to positive pre-application engagement. Post-decision, the appellant states that attempts to have meaningful engagement have consistently been frustrated.
3. Planning Practice Guidance (the Guidance) gives examples of substantive grounds for an award of costs against Local Planning Authorities. Relying on vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis and not reviewing a case promptly following the lodging of an appeal are cited as examples of substantive grounds in the Framework, and are reflected in the appellant's application for an award of costs.
4. The appellant has broken down the costs application into the four main elements of the reason for refusal; scale of development, public amenity space, private amenity space and car parking. This is an approach I have adopted in my decision on the planning merits and reasonably sets out what I understand to be the main issues.
5. In respect of each of these, I am satisfied that the reason for refusal sets out the Council's main concerns in complete and precise, if somewhat brief, terms. The relevant development plan policies are also referred to in the reason for refusal.

6. The Council's appeal case is set out in section 3 of the Council's Statement of Case (SofC). Like the reason for refusal, the Council's case is set out in brief and concise terms. It also contains a number of concessions which provide support to the appellant's arguments rather than supporting the reason for refusal. In each of the four main instances I disagree with the Council's position for the reasons set out in my decision. From discussions and questioning during the hearing it became clear to me that, whilst these matters were set out clearly and concisely in the reason for refusal and the SofC, they were not underpinned by specific development plan policy or supplementary guidance support.
7. I was not presented with any substantive evidence to counter the in-principle support offered to a 'minimum of 80 dwelling' development on the appeal site by the RNP. Thus, with regard to the inter-relationship of scale, density and layout in the context of a proposal in alignment with the Rushden Neighbourhood Plan's (RNP) housing allocation for the appeal site, the Council's case was largely reliant upon vague and generalised assertions regarding these matters.
8. With regard to public and private amenity space and car parking, the Council's case was somewhat muddled with regard to the quality and quantity of the former, and lacked consultee or policy support in the case of the latter. Despite recent (at the time of the Council's determination of the application) appeal decisions regarding the appropriateness of the Council's approach to tandem parking, I heard at the hearing that the Council maintained their approach to tandem parking as that is the approach taken to such matters.
9. There is no technical objection to the proposal in terms of the amount of car parking provided within the curtilage of each property, or across the development as a whole. Nor is there any development plan policy or supplementary planning document to prohibit or prevent the use of tandem parking. The Council have not demonstrated the harm, other than suggesting inconvenience to occupiers of having to shuffle cars, which would arise or sought to substantiate claims that tandem parking would encourage inconsiderate on-street parking.
10. With regard to public amenity space, both parties agree that the proposal would provide at least the minimum amount of such space as required by the Council's 'Open Space' Supplementary Planning Document. It is suggested, albeit without reference to compelling evidence, that what is provided would not be sufficiently usable, whilst concerns regarding the amount of private amenity space on a small number of plots is not supported by development plan policy, thresholds or standards.
11. While the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this instance, the proposal follows the quantum parameter set out in the RNP which is, importantly, framed in terms of a 'minimum of 80 dwellings'. The proposed development is therefore at the bottom end of the RNP's allocation and no clear evidence was provided to substantiate the reasons for departing from the RNP policy support for a minimum of 80 dwellings within the appeal site. So too, was such evidence

lacking in respect of public and private amenity space and parking arrangements.

12. Whilst it does not automatically follow that the dismissal of an appeal should result in an award of costs against a local planning authority, in this instance and for the reasons I have set out, the Council's behaviour amounts to unreasonable behaviour. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the development proposed should reasonably have been permitted and the reason for refusal has not subsequently been supported by clear objective analysis or evidence. The unreasonable behaviour which has been demonstrated by the Council has left the appellant faced with the unnecessary expense of lodging the appeal. On these grounds, an award of costs is justified.

Costs Order

13. 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 that East Northants District Council shall pay to Mr T Button and Mrs L Button and Davidsons Developments Ltd the costs of the appeal proceedings described in the heading of this decision.
14. The applicant is now invited to submit to East Northants District 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

Graeme Robbie

INSPECTOR