



Costs Decision

Site visit made on 7 January 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 March 2020

Costs application in relation to Appeal Ref: APP/G0908/W/19/3238822 Low Wood, Belle Vue, Papcastle, Cockermouth CA13 0NT

- 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 Allerdale Borough Council for a full award of costs against Mrs J Bannard.
 - The appeal was against the refusal of permission in principle for residential development.
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Decision

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

Procedural Matter

2. The site address is stated in the application form as Low Wood, Bell View, Papcastle, Cockermouth CA13 0NT. However, it is stated in the delegated decision, appeal form and evidence submitted as part of the appeal as Low Wood, Belle Vue, Papcastle, Cockermouth CA13 0NT. I have therefore proceeded on the basis that the latter is the correct address and used it in the banner heading above.

Reasons

3. Irrespective of the outcome of an appeal, Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
4. The applicant contends that the appellant has unreasonably sought to pursue an application and appeal for permission in principle for residential development in a location which is not supported by relevant policies within the adopted local plan, and where previous appeal decisions¹ for sites nearby have acknowledged this and have been dismissed.
5. The PPG states that the right of appeal should be exercised in a reasonable manner. An appellant is at risk of an award of costs being made against them if the appeal or ground of appeal has no reasonable prospect of succeeding. The PPG goes on to advise that this may occur when the proposed development is clearly not in accordance with the development plan, and no other material considerations such as national planning policy are advanced that indicate the

¹ Appeal Refs: APP/G0908/W/16/3150074 and APP/G0908/W/16/3148769.

- decision should have been made otherwise; or where other material considerations are advanced, there is inadequate supporting evidence; or when the appeal follows a recent appeal decision in respect of the same, or a very similar, development on the same, or substantially the same site where the Secretary of State or an Inspector decided that the proposal was unacceptable and circumstances have not materially changed in the intervening period.
6. The appellant is of the view that the policies which are relevant to determine the appeal are out of date and that the applicant is unable to provide a reliable housing land supply. Furthermore, it is contended that the appeal scheme is for a different form of development and within a different context to the previous proposals that were dismissed at appeal. On this basis, the appellant asserts that she has not acted unreasonably in submitting an appeal.
 7. As stated in my Decision, although it is agreed between the parties that some of the policies relevant to determine the appeal are out of date, I consider that they are generally consistent with the provisions of the National Planning Policy Framework (Framework), and so can be afforded moderate weight. Also, the other policies relevant to determine the appeal are up to date and can be given significant weight. Furthermore, due to the advanced stage of its preparation, the emerging Allerdale Local Plan Part 2 Site Allocations (emerging ALP2) can be afforded significant weight. The applicant has also provided evidence of possessing in excess of a five year housing land supply, which I have no reason to question.
 8. In the planning balance I concurred with the applicant and concluded that the identified adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Furthermore, that there would be conflict with the identified development plan policies. Consequently, the proposal would not represent a sustainable form of development.
 9. Nevertheless, it is apparent that the policy context of the proposed development in relation to the emerging ALP2 has materially changed during the course of the appeal. Therefore, given the policy context at the time which the appeal was made, I do not consider that it was wholly unreasonable of the appellant to pursue an appeal.
 10. As outlined in my Decision, I have agreed with the conclusions of previous appeal decisions that there is a clear spatial and visual delineation between Papcastle and Belle Vue. As such, the development of the appeal site could not be considered to be 'rounding off' Papcastle.
 11. Notwithstanding this, it is apparent that there are differences between the previous appeal proposals and the appeal proposal before me. The previous proposals were for larger schemes (of two and three dwellings) and, although near to the appeal site, neither were sited within the residential curtilage of an existing house. Therefore, from the evidence before me, this amounts to a different form of development and a materially different area of land that has not previously been tested at appeal.
 12. Consequently, while some elements of this appeal proposal may be similar to the previous proposals that were dismissed at appeal, I consider that there are subtle but sufficient differences to conclude that it relates to a different type of development.

13. Taking all of the above into account, I cannot agree that the appellant has acted unreasonably in this case. As such, there can be no question that the applicant incurred unnecessary or wasted expense.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated, and thus an award of costs is not justified.

F Cullen

INSPECTOR