The Planning Inspectorate

Costs Decision

Hearing Held on 22 October 2019
Site visit made on 22 October 2019

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2020

Costs application in relation to Appeal Ref: APP/C1570/W/19/3229420
The Joyce Frankland Academy, Cambridge Road, Newport CB11 3TR

- 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 Hill Residential Limited for a full award of costs against Uttlesford District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the erection of 24 dwellings with associated access, car and cycle parking and landscaping, drainage and acoustic fencing, construction of a new multi-use games area (MUGA) and floodlights, replacement floodlighting to existing artificial turf pitch, construction of new fenced tarmacadam courts for tennis and netball, first floor and side extension to the Wawn sports pavilion, new brick electrical cupboard and reconfigured car parking.

Decision

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

Reasons

2. The Planning Practice Guidance (PPG) 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. Examples of unreasonable behaviour include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and other material considerations, a failure to produce evidence to substantiate each reason for refusal on appeal and refusing planning permission on a planning ground where it is concluded that suitable conditions would enable the development to go ahead.

3. The applicant has argued that the Council's three reasons for refusal are not reasonable and are unsubstantiated. With regard to the first reason, they consider that it is unreasonable for the Council to have concluded the development would be harmful to the character and appearance of the area, including the effect on the setting of the adjacent Conservation Area. Moreover, in the context of the lack of a five year supply of deliverable housing land, they consider it unreasonable to conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits. They also argue that the Council did not provide any professional landscape or heritage evidence to support its conclusions.

4. With regard to the second reason for refusal, they argue that all issues could have been resolved through a S106 Agreement and/or conditions. With regard to the third reason for refusal, they consider that the development complies with the relevant local and national policies. Moreover, they contend that the Council did not put forward any arguments in its appeal statement, or at the hearing, to substantiate the reason for refusal.

5. The Council's overall position is that the public benefits associated with the development do not outweigh the 'less than substantial harm' to the Conservation Area or the failure to provide affordable housing. It also considers that relying on the written contributions of their Conservation and Landscape Officers was sufficient and it was unnecessary for additional witnesses to be present.

6. With regard to the first reason for refusal, whether or not the Council considered there to be harm to the character or appearance of the area and/or the setting of the Conservation Area is a matter of planning judgement. Advice was supplied by professional officers of the Council raising concerns about these matters and thus it was legitimate for these comments to be considered. The Council are entitled to come to a different conclusion to the applicant based on the evidence before them and I see nothing inherently unreasonable in the approach taken. Furthermore, the evidence provided for the hearing was sufficient for me to understand the position of all parties and come to my own conclusions. That there were no 'expert' witnesses at the hearing for the Council does not alter my view on this. I am therefore satisfied that the Council sought to substantiate this reason for refusal and did not act unreasonably in this regard.

7. The second reason for refusal raises concerns over the lack of any mechanism to secure the delivery of improved sports facilities, a new pedestrian link or the delivery of 10 affordable homes. As the Council were of the view that the adverse impacts of the development would outweigh the benefits, conditions or a S106 Agreement would not have resulted in the planning permission being granted. Moreover, the second reason for refusal also highlights the Council's concerns over affordable housing. As it was never the intention for the applicant to provide such housing, then no agreement or condition could have realistically resolved this issue. I do not consider the Council acted unreasonably in this regard.

8. The Council has not addressed the applicant's comments on the third reason for refusal directly. This reason states that the development would result in the unjustified loss of playing field provision, contrary to policies LC1 and LC4 of the Uttlesford Local Plan. Policy LC1 allows for the loss, or replacement of playing fields, under certain circumstances. Policy LC4 is permissive of new sports facilities. There was no suggestion in either the reasons for refusal or the evidence submitted with the appeal that the sports facilities within the application were in any way unacceptable in their own right. Reference to Policy LC4 is therefore likely to be have been erroneous.

9. I note that by the time of the hearing, the Council had concluded that the only matters it wished to contend were in relation to the effects on character and appearance and the planning balance. No mention was made in the Council's statement about the loss of the playing fields. There was also no evidence before me to suggest that the proposals put forward for new and improved

sports facilities would not meet the requirements of Policy LC1 or the National Planning Policy Framework in principle. However, the Council's position is that even with this mitigation in place, and having regard to any other benefits, the development would still be unacceptable. On this basis, it seems likely that the application would still have been refused and the appeal would have gone ahead in any event.

10. The evidence relating to the open space element did not amount to a significant proportion of the appellant's overall case. Moreover, in considering the Council's concerns about the development, and the balance between the impacts and benefits, some discussion of the sports facilities would have still been necessary in their evidence and at the hearing. As such, even if I were to conclude that the Council were unreasonable in their reference to these policies, it did not lead to unnecessary or wasted expense as a result. This does not therefore warrant the granting of costs.

11. Whether or not the adverse impacts of development outweigh the benefits is also a matter of planning judgement. It is open to the Council to decide what weight it places on the harm caused by the development, both in terms of character and appearance and the lack of affordable housing. It is also open to them to decide on the weight to be given to any benefits. While the applicant may disagree with the outcome of the balancing exercise, it nevertheless comes down to a matter of judgement. In this regard, I cannot conclude that the Council's behaviour was unreasonable.

Conclusion

12. Having regard to all matters raised, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

S J Lee

INSPECTOR