



Costs Decision

Site visit made on 5 February 2020

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd April 2020

Costs application in relation to Appeal Ref: APP/L1765/W/19/3239617 North Winchester Farm, Stoke Charity Road, Kings Worthy SO21 2RP

- 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 The Humphrey Partnership for a partial award of costs against Winchester City Council.
 - The appeal was against the refusal of planning permission for the demolition of a former agricultural building and erection of 3 no. detached dwellings, access, parking, landscaping, and associated works.
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Decision

1. The application for a partial award of costs is refused.

Reasons

2. The Planning Practice Guidance (the 'PPG') advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The applicant submits that the Council has acted unreasonably by imposing the second reason for refusal and an application for a partial award of costs has been made on the basis that the Council have acted in an inconsistent manner by misinterpreting the meaning of 'major development' contained within paragraph 63 of the National Planning Policy Framework (the 'Framework').
4. In determining the application, the Council concluded that the proposal was a 'major development' because the appeal site has an area in excess of 0.5 hectares. Having regard to paragraph 63 of the Framework, the Council determined that affordable housing should be sought as part of the proposed development. As the proposal does not provide affordable housing, this formed the basis for the second reason for refusal.
5. The appellant argues by virtue of Part 1, Article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (the 'DMPO'), the proposal would not be a 'major development' because whilst the site area exceeds 0.5 hectares, the number of proposed dwellings is known and it's below 10. Therefore, he argues that the proposal is not required to provide affordable housing because it is not a 'major development'.
6. As part of the appeal, the Council agree that the proposal would not be 'major development', as defined by the DMPO, and, on that basis, they have chosen not to defend the second reason for refusal.

7. The definition of 'major development' set out within Annexe 2: Glossary of the Framework separates development into two categories: 'housing' and 'non-residential development'. For housing, 'major development' means *'where 10 or more homes will be provided, or the site has an area of 0.5 hectares or more'*. Significantly, the definition of 'major development' for housing makes no reference to the DMPO. Whereas, the DMPO is explicitly referenced within Annexe 2: Glossary of the Framework in respect of non-residential 'major development'.
8. Similarly, the PPG¹ also differentiates between the two types of development and there is no explicit reference to the DMPO in respect of 'residential development'. As per Annexe 2: Glossary of the Framework, the DMPO is only referred to within the PPG in relation to 'non residential development'.
9. As set out within the Appeal Decision, had the draftsman intended for the DMPO definition of major development to apply to housing, I consider that the definition of 'major development' set out within Annexe 2: Glossary of the Framework, and the associated guidance contained within the PPG, would have been framed differently, to make clear to the reader that the reference to the DMPO was all encompassing, as opposed to explicitly referring only to non-residential development.
10. In this instance, the proposal is for a housing development on a site with an area in excess of 0.5 hectares. Therefore, it is a 'major development' as defined by Annexe 2: Glossary of the Framework. Notwithstanding the Council's current position, for the reasons set out above, the Council's initial assessment of the proposal against paragraph 63 of the Framework, in particular the meaning of 'major development' contained within Annexe 2: Glossary of the Framework, was not flawed.
11. The applicant argues that in determining the application the Council did not afford sufficient weight to national planning policy in respect of the provision of affordable housing on small sites. However, I am not persuaded that this was the case. The Council's Officer Report has a specific section titled 'affordable housing', which objectively assessed the proposal against the development plan and the Framework. In determining the appeal, I have agreed with the Council's initial interpretation of paragraph 63 of the Framework and concluded that the proposal should provide affordable housing. Therefore, I cannot agree that the Council failed to afford sufficient weight to national planning policy, particularly paragraph 63 of the Framework, in the determination of the appeal.
12. The appellant also contends that the Council made no reference to the need to make provision for affordable housing until the Officer's Report was made available in draft, which was shortly before the Decision Notice was issued. Whilst this may be the case, the Council expressed fundamental concerns about the proposal and concluded the proposed development would conflict with several development plan policies. Therefore, I find that it was not necessary at that time for the Council to go into detail about the requirement for a planning obligation in relation to affordable housing, the submission of which would have not altered the outcome of the planning application had it been determined by the Council.

¹ Planning Practice Guidance: Paragraph: 023 – Reference ID: 23b-023-20190901 (Revision date: 01.09.2019)

Conclusion

13. For the collective reasons outlined above, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Therefore, the application for an award of costs is refused.

Christopher Miell

INSPECTOR