

Costs Decision

Site visit made on 27 May 2020

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

Costs application in relation to Appeal Ref: APP/B2355/W/20/3246286 Piercy Works, Piercy Road, Waterfoot, Rossendale BB4 9JP

- 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 D Tattersall (Inxpress) for a full award of costs against Rossendale Borough Council.
 - The appeal was against the refusal of permission in principle for Up to 9 No Houses.
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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.
3. Under Section 38(6) of the Planning and Compulsory Purchase Act 2004 the determination of the planning application was required to have been made in accordance with the development plan, unless material considerations indicated otherwise. The Council considered that the proposal was contrary to Policy 10 of the Rossendale Core Strategy Development Plan Document 2011, and I too have reached the same conclusion. In this respect, it cannot be considered that the Council acted unreasonably.
4. However, the applicant considers that unreasonable behaviour occurred as, due to the Council not being able to demonstrate a 5 year housing land supply, it should have engaged Paragraph 11d)ii) of The National Planning Policy Framework and followed the balancing process it sets out. This would have required consideration of whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The Council did not explicitly undertake this balance in their delegated report or weigh it against the conflict with the development plan.
5. The Council therefore correctly gave primacy to the development plan, but they failed to make a clear assessment of Paragraph 11d)ii) as a potential material consideration which could offer favourable weight in the planning balance. This is unreasonable in that it risks a decision being made that does not take into account all of the relevant considerations that it should have. However, the Council's concern expressed in its first reason for refusal relates only to the

- principle of the loss of the employment site and I cannot be sure it would have reached a different decision if it had considered Paragraph 11d)ii) in full.
6. Therefore, on that basis and in light of the fact that I have undertaken the Paragraph 11d)ii) balance but found that the appeal should be dismissed, I cannot be sure that the appeal could have been avoided. Furthermore, the Council's refusal of planning permission has not prevented or delayed a development which should clearly have been permitted. Accordingly, whilst the Council has acted unreasonably in its assessment of the material considerations relating to the proposed development, it cannot be demonstrated that the applicant has been put to unnecessary or wasted expense as a result. An award of costs is therefore not justified on this ground.
 7. The second allegation of unreasonable behaviour relates to the Council's refusal on the grounds of it not being satisfied that the application site can satisfactorily accommodate 9 dwellings. The PPG sets out that the permission in principle consent route is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle for proposed development from the technical detail of the development. The applicant is required to provide confirmation of both the minimum and maximum number of dwellings that they seek consent for, and in this instance, they were specified on the application form as a minimum of 5 and a maximum of 9.
 8. The Council's specific concern was that, based upon the indicative plan submitted with the application, the maximum of 9 dwellings could not be achieved on the site due to a conflict with the river which lies adjacent to the site boundary and the extent of its defined flood zones. The applicant contends that 9 dwellings could be achieved in a way that would not be in conflict with the river or its flood zones. As I have found in my decision, there may be other configurations and dwelling types that could be used to allow 9 dwellings to be accommodated, and I have no conclusive evidence before me which demonstrates that this number of dwellings could not ultimately be achieved. In any event, there is no apparent dispute between the parties that the minimum of 5 dwellings could be achieved.
 9. As it could not be ruled out that the site could accommodate up to 9 dwellings, it would have been reasonable to defer consideration of this matter until technical details stage, where significantly more information would be available. The Council would have been safe in the knowledge that if 9 dwellings could not be achieved due to technical and other constraints, a lower number, to the minimum amount of 5, would still have been in accordance with the terms of the permission in principle. Conversely therefore, in not taking this approach, there is an element of unreasonableness on the Council's part and inevitably they could not provide any detailed evidence to back up their assertions.
 10. However, in my judgement, the Council's concerns about the quantum of development possible sit clearly secondary to its concern about the loss of the employment land. Therefore, even if the Council had not pursued its concerns about the amount of development that could be accommodated, the appeal would not have been avoided. Furthermore, the information that the applicant needed to submit to counter the Council's position is not onerous or detailed, amounting primarily to an observation that 9 dwellings cannot be definitively

ruled out but that, in any event, the site could accommodate the minimum of 5 dwellings that is proposed. This is a simple argument and one which, on the balance of the information before me, I have accepted. Therefore, I do not consider that the applicant has been put to unnecessary or wasted expense on this basis either.

Conclusion

11. I therefore find that whilst unreasonable behaviour as described in the PPG has occurred on the Council's part in some respects, it has not resulted in unnecessary or wasted expense. Accordingly, the application for costs fails.

Graham Wraight

INSPECTOR