



Costs Decision

Site visit made on 17 February 2020

by S A Schinaia MSc EngD FGS

an Inspector appointed by the Secretary of State

Decision date: 7th July 2020

Costs application in relation to Appeal Ref: APP/V2635/W/19/3240927 Land to the south of Prince Henry Place, Downham Market

- 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 Bob Fidock for a full award of costs against King's Lynn and West Norfolk Borough Council.
 - The appeal was against the refusal of planning permission for a development proposal described as "Proposed development of 19No. 2 and 3 bedroom dwellings (including 4No. affordable units) with associated garages/parking, access road, landscaping and open space".
-

Decision

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

Reasons

2. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The application relies on the fact that the King's Lynn and West Norfolk Borough Council has provided a reason for refusal that the appellant deems as not clear, without a logical planning judgement and not reasonable.
4. The appellant maintains that a reasonable planning condition has been suggested to resolve and manage disturbance during construction. The appellant contends that there is no clarity regarding the vulnerable conditions of local residents, where those residents are in relation to the development, or how many residents are vulnerable, and that no case has been presented to clarify the nature of the mental and physical harm brought about by the proposal. The appellant also contends that there is no evidence or expert opinion that the site should be retained for wildlife purposes and that the site is needed for people with early stages of dementia. The appellant therefore maintains that the Council's behaviour is unreasonable and that there is a procedural and substantive failure.
5. The Planning Practice Guidance indicates that local planning authorities will be at risk of an award being made against them if: they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; they provide vague, generalised or inaccurate assertions about

- a proposal's impact, which are unsupported by any objective analysis; they persist in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
6. In my decision I have concluded that the proposal would cause harm to the living conditions of the residents at PHP. I accept that the previous Inspector concluded differently. However, the Council's concerns are supported by neighbours' representations submitted to object to the proposal. Several residents of the sheltered housing scheme, including those living in properties adjacent to the sole access to the proposed development, have submitted representations in which they state their disabilities and medical conditions. Therefore, there is no doubt that the residents of the 27 dwellings of the sheltered housing scheme are vulnerable, not only in terms of old age, but also for medical conditions, and that several of them live in close proximity to the proposed development. In this case, it has also been made clear that the front gardens of several properties are the main gardens of those residents.
 7. Given that the single access to the proposed development would be through what is currently an estate in a cul-de-sac road, the proposal for 19 dwellings would necessarily result in a certain degree of additional traffic. The appellant has not provided evidence of no harm. The Council has acted reasonably according to a precautionary approach towards vulnerable residents and refused planning permission on the basis that the additional traffic would have an adverse impact on the quality of life and mental and physical health of those residents. The Council decision is clear and conforms with local plan policies and the policies of the National Planning Policy Framework.
 8. As a result, I do not agree that the Council has acted unreasonably in the case of noise and disturbance from subsequent occupation of the proposed development. As such there can be no question that the applicant has incurred unnecessary expenses in this regard.
 9. However, I consider that in the second part of their reason for refusal the Council has acted unreasonably by asserting that the loss of an existing green space with associated wildlife would be a contributing factor to the adverse impact of the proposal on the quality of life and mental and physical health of the residents of PHP. Although as a green space the appeal site contributes positively to the quality of life of the local residents, the residents of PHP would still be able to access and benefit from their local communal garden. Furthermore, the proposal would not lead to a significant erosion of green space in the surrounding area, due to the presence of the large grounds of the Downham Market Academy to the west of the PHP scheme and the appeal site. As such, I consider that in this respect the applicant incurred extra costs in the appeal process.

Conclusion

10. I therefore conclude that a partial award of costs, to cover the expense incurred by the applicant in contesting the second part of the Council's reason for refusal, is justified.

Costs Order

11. 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 King's Lynn and West Norfolk Borough Council shall pay to Mr Bob Fidock the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in contesting the second part of the Council's reason for refusal, which asserts that the loss of existing green space with associated wildlife would have an adverse impact on the quality of life of the vulnerable residents in the adjacent estate.

12. The applicant is now invited to submit to the 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.

S A Schinaia

INSPECTOR