The Planning Inspectorate

Costs Report to the Secretary of State for Housing, Communities and Local Government

by Helen B Hockenhull BA (Hons) B.Pl MRTPI

an Inspector appointed by the Secretary of State

Date: 4 April 2019

TOWN AND COUNTRY PLANNING ACT 1990

AMBER VALLEY BOROUGH COUNCIL

LAND FRONTING CRICH LANE, BETWEEN HOUSE NO.202 AND 204, BELPER, DERBYSHIRE, DE56 1EP

APPEAL BY MESSRS C & K BALL

Hearing Held on 6 February 2019. Site visit held on 7 February 2109

Land fronting Crich Lane, between house no. 202 and 204, Belper, Derbyshire, DE56 1EP

File Ref:APP/M1005/W/18/3204843

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- The application is made under the Town and Country Planning Act 1990, sections 78 and 322, and the Local Government Act 1972, section 250(5).
- The application is made by Amber Valley Borough council for a full award of costs against Messrs C & K Ball.
- The hearing was in connection with an appeal against the refusal of outline planning permission for the development of 185 houses together with associated works at land between Crich Lane and Far Laund, Crich, Belper.

Summary of Recommendation: That the application for an award of costs be refused.

Procedural Matters

1. The appeal to which the claim for costs was recovered for a decision by the Secretary of State for Housing, Communities and Local Government by a direction dated 3 January 2019. The reason given for this direction is that 'the appeal involved proposals which would have an adverse impact on the outstanding Universal value, integrity, authenticity and significance of a World Heritage site.'

2. The application and responses were made in writing with additional oral submission at the hearing. The Council's original written application was on the basis of both procedural and substantive grounds. However, at the hearing the Council advised that they no longer wished to pursue the procedural matters.

The Submission for the Council

3. The appellant acted unreasonably in submitting the appeal as it had no reasonable prospect of success.

4. The application site is washed over by the Green Belt. The appellant accepts that the proposed development is inappropriate development. No very special circumstances have been demonstrated to outweigh the harm to the Green Belt.

5. The proposal is harmful to the Outstanding Universal Value (OUV) of the Derwent Valley Mills World Heritage Site (DVMWHS) as the development would result in the erosion of the rural landscape of the arrested industrial development, and, public benefit in this instance does not outweigh the harm that would arise. The appellant has failed to supply a Heritage Impact Assessment and therefore neither Amber Valley Borough Council, or the Planning Inspector, is in a position to fully assess the application/appeal.

6. It has not been demonstrated that the site could be developed without significant ecological effects. The appellant failed to supply an appropriate ecological assessment. Therefore, neither the Council nor the Inspector has been provided with sufficient information to determine either the application or the appeal.

7. The Council submits that the appellant has failed to provide any prima facie case for an appeal. The Council has incurred unnecessary expense in preparation for, and attendance at a hearing, when the appeal had no reasonable chance of success.

The Response by Messrs C & K Ball

8. The Council has no effective up to date local plan in place. Its housing policies are out of date and the examination into the emerging plan has been suspended. In relation to the WHS, the Council has demonstrated by successive planning permissions on land to the west of Crich Lane, that it does not find this very important heritage asset to be compromised by new developments alongside Crich Lane. The situation is no different here.

9. The Council has failed to provide any acceptable guidance in respect of the provision of and location for much needed new housing development in Belper. The Council's Housing Officer accepts that the affordable housing proposed is extremely encouraging in satisfaction of the substantial local need.

10. The appellant's have engaged with the Council from the earliest opportunity and at no time were they meaningfully discouraged from pursuing an application.

11. The Council have failed to provide a convincing case why the appeal should not be allowed. The appellants were justified in seeking planning permission and in pursuing the appeal.

Reply by Amber Valley Borough Council

12. The Council chose not to comment further.

Inspectors Conclusions

13. 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.

14. The appellant accepted that the appeal proposal was inappropriate in the Green Belt and also that it would cause less than substantial harm to the OUV of the WHS. Other considerations and public benefits were put forward to give support to the proposal, including a housing shortfall and the lack of up to date housing policies in the development plan. The appellant justified his position, and provided evidence to support his case, however the submitted evidence was insufficient to demonstrate that the considerations in favour of the scheme would clearly outweigh the Green Belt harm and/or the heritage harm.

15. Whilst the appellant did not submit a Heritage Impact Assessment, he provided other evidence relating to the impact on the WHS.[1] The Preliminary Ecological Walkover Appraisal undertaken by the appellant pointed to the need for further survey work for reptiles and ground nesting birds. The appellant accepted that further surveys were necessary but considered that they could be undertaken before development commenced rather than at the planning application stage. In evidence he referred to guidance from the CIEEM to support that view. Whilst I have found against the appellant on this point, it was not unreasonable for such a case to be made.

16. The lack of up to date housing policies in a recently adopted local plan, whilst not directly indicating that the proposed development had a reasonable chance of

[1] Defining the Impact on the Cultural Landscape

success does serve as a material consideration in this appeal.

17. I also note that there have been other planning permissions granted by the Council for development in the WHS. This does not suggest that the appeal scheme would be acceptable as each proposal must be considered on its individual merits.

18. The success of the appeal turned on the weight to be given to the other considerations and public benefits. Whilst there are other appeal decisions relating to development in the Buffer Zone which were dismissed by the Secretary of State, eg Bullsmoor and Chacewater, I am aware that there have also been other proposals granted planning permission by the Council. There was therefore a slim chance of success. Whilst each case must be considered on its individual merits, it was not unjustified for the appellant to submit the appeal.

19. Accordingly, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Recommendation

20. Consequently, for the reasons given above, it is recommended that the application for an award of costs be refused.

Helen Hockenhull
INSPECTOR