



Costs Decision

Site visit made on 4 August 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2020

Costs application in relation to Appeal Ref: APP/P3420/W/20/3252100 Balterley Garden Centre, Balterley Green Road, Balterley, Newcastle Under Lyme, CW2 5QF

- 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 Peter Bower and David Wilson for a full award of costs against Newcastle-Under-Lyme Borough Council.
 - The appeal was against the refusal of planning permission for demolition of existing structures on site and re-development for four residential units and associated works.
-

Decision

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

Reasons

2. Planning Practice Guidance 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. The appellant submits that the Council has acted unreasonably in that it failed to have regard to a recent appeal decision relating to its 5 year supply position, that it failed to provide all relevant information to Natural England, and did not act promptly to withdraw its second reason for refusal when new information was presented. Moreover, it is asserted that had the Council acted differently, then the appeal could have been avoided altogether.
4. Appeal Decision Ref APP/P3420/W/19/3225154 was issued on 2 August 2019 and concluded that the Council was unable to demonstrate a 5 year supply of deliverable housing sites. Despite this, the Council has maintained that it is able to demonstrate a 5 year supply in its submissions. However, in doing so it has provided reasons why the situation had changed since the previous decision, including with reference to the results of the Housing Delivery Test 2018. Moreover, it is common ground that the policies which are most important for determining this appeal are out of date, and so Paragraph 11 d) of the Framework is engaged in any case. It is therefore unclear that an inability to demonstrate a 5 year supply would have significantly altered the planning balance in this case.
5. The Council states that it provided consultees with a link to the full list of application documents on the Council's website which are all clearly labelled. Accordingly, Natural England had access to the appellant's submissions when they commented on the application. Whilst relevant material may initially have

been overlooked, that does not appear to be the result of any action taken by the Council. In any case, from the email exchanges that have been submitted, it is clear that further work would have been required in any event (and was subsequently undertaken). Whilst the Council could have allowed additional time for this matter to be resolved prior to its determination, there would have been little point in doing so if it had already concluded that the scheme was unacceptable on other grounds, as was the case here. Accordingly, I do not consider that the Council acted unreasonably in this regard.

6. The Council did not respond to an email dated 6 April 2020 that advised of an imminent appeal and included further correspondence with Natural England. However, the Officer who dealt with the application had left the Council by that point and so this email was not picked up. Once the Council became aware of this, it entered into discussions that ultimately led to the second reason for refusal being withdrawn. In my view the Council did not act unreasonably in relation to this matter.
7. In light of the above, even if the Council had agreed that it could not demonstrate a 5 year supply, and had not included the second reason for refusal, it is not clear that an appeal would have been avoided. In this regard, I note that it continued to defend its first reason for refusal even after it had withdrawn its objections in relation to ecology.
8. For the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Thomas Hatfield

INSPECTOR