



Costs Decision

Site visit made on 23 September 2020

by William Cooper BA (Hons) MA CMLI

As he appointed by the Secretary of State

Decision date: 19th November 2020

Costs application in relation to Appeal Ref: APP/R1038/W/19/3240407 Land to the west of Derby Road (A61), Wingerworth, New Tupton S42 6DR

- The application is made under the Town and Country Planning Act 1990 as amended, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Land Allocation Ltd for a full award of costs against North East Derbyshire District Council.
 - The appeal was against the refusal of planning permission for outline planning application for residential development including means of access with all other matters reserved.
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Decision

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

Reasons

2. Planning Practice Guidance (PPG) 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 essentially relies on the fact the Council's Planning Officer recommended that planning permission be granted for the proposal, but that Members took a different course of action. The application centres on the applicant's claim that the Council: (a) made vague, generalised and inaccurate assertions about the proposal's impact, which were not supported by objective analysis and evidence; and (b) refused planning permission on planning grounds capable of being dealt with by conditions.
4. PPG indicates that local planning authorities will be at risk of an award being made against them if they make vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by objective analysis, or refuse planning permission on planning grounds capable of being dealt with by conditions.
5. Despite the application being recommended for approval by the Council's Planning Officer, Members took a different view and the application was refused. Council Members are not however duty bound to follow the advice of the Council's Planning Officers and are entitled to come to a decision against the officer's recommendation, as long as the decision stands up to objective scrutiny. In addition, the planning decision is a matter of judgement.
6. In the first reason for refusal (RFR1), the Council cited overriding environmental harm arising from development of the greenfield site, and

- referred to open countryside and separation of settlements. I see evidence in the minutes of the Planning Committee Meeting (PCM) of 3 September 2019 that the Committee raised concerns about the effect of building in the countryside in an area which separates two communities. Nevertheless, the Council did not specify in RFR1 the nature and extent of the environmental harm that it considered would arise from the proposed development.
7. Various technical consultees did not object to the proposal in respect of RFR1. However, this does not automatically mean that the proposal would be acceptable. Council Members are not duty bound to follow consultees' advice and were entitled to reach a different view, given evident local concern about the impact of development in the countryside.
 8. In respect of the second highway and transport-related reason for refusal (RFR2) the response of the Highway Authority (HA) to the proposal was no objection, subject to planning conditions. Nevertheless, this does not automatically mean that the proposal would be acceptable. Council Members were entitled to reach a different view from the HA, given evident local concern about traffic volume and highway safety in the vicinity of the proposed site, including with regard to cumulative impacts of housing growth in the area.
 9. I see evidence in the minutes of the PCM that the Committee raised specific concerns about the impact of the proposed development on road safety and how they considered it would add to traffic growth and congestion on the A61. Furthermore, the Council's technical concerns are set out in its Highways Issues Hearing Statement.
 10. To conclude, I find as follows. The lack of identification in RFR1 of the nature and extent of the environmental harm which the Council considered would result, was unreasonably vague. In respect of RFR1 and RFR2, the Council's formation of views that were different to consultees was not unreasonable. Furthermore, the Council gave clear reasons for refusal of planning permission in RFR2, which appears to be a product of planning judgement, not technical deficiency.
 11. It will be clear from my decision that I find the proposal is not capable of being rendered acceptable by planning conditions in respect of spatial strategy, character and appearance of the area and highway safety.
 12. As a result it follows that I cannot agree the Council has acted unreasonably in respect of RFR2. I find that the Council has acted unreasonably partially in respect of RFR1 through insufficiently detailed articulation of specific harm in the reason for refusal. Nevertheless, when all evidence is considered and for the reasons given in my decision, I found that legitimate concerns were raised. As such, RFR1 was not flawed in substance and consequently the appellant has not been put to unreasonable expense in having to submit an appeal and adduce a case in respect of spatial strategy and character and appearance.

Conclusion

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. Accordingly, the application for costs fails.

William Cooper INSPECTOR