
Costs Decision

Site visit made on 25 August 2020

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th February 2021

Costs application in relation to Appeal Ref: APP/W0530/W/20/3253436 Land to east of Cody Road and north of Bannold Road, Waterbeach, Cambridgeshire

- 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 Matthew Homes Ltd for a full award of costs against South Cambridgeshire District Council.
 - The appeal was against the refusal to grant residential development for 21 dwellings including affordable houses with associated access, landscaping, open space, garages and one self-build/custom build plot.
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Decision

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

Reasons

2. The 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 or wasted expense in the appeal process.
3. The PPG also makes it clear that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate each reason for refusal on appeal and/or makes vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis.
4. In summary, the applicant's claim is that the Council failed to adequately substantiate their reasons for refusal. In doing so, it is put to me that the Council's planning committee failed to give proper regard to the advice of their professional officers and did not consider the prevailing character and appearance of the surroundings in coming to their determination.
5. The Council is not duty bound to follow the advice of its professional officers, but if a different decision is reached, the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning.
6. As detailed in my S78 decision, I agreed with the Council that the proposal would be contrary to the spatial strategy of the district because it would introduce housing into an area identified as countryside in the development plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission should be determined in

accordance with the development plan unless material considerations indicate otherwise. This establishes the primacy of the development plan, and places a duty on the decision maker to carry out a balancing exercise in which any development plan conflict is weighed against the potential benefits and any other material considerations that might weigh either in favour or against a proposal.

7. Even though my overall conclusions on the acceptability of the scheme differed from the Council's, and the Council did not give the same weight as I did to the suburban character and appearance of the area, I accept that the development plan consideration is entitled to some weight in decision making, as the starting point for decision making is plan-led. Therefore, the Council's action in this regard was not unreasonable.
8. The Council's second reason for refusal alleged that the design of the scheme, including the location of the affordable housing units, was fundamentally flawed and made inaccurate assertions. In this regard, the Council failed to consider the layout and appearance of the recent housing nearby and failed to have regard to the scheme's overall appearance in this context. The Council did not give due weight to professional advice, despite no overall objections from the Council's planning officer, affordable housing officer, and urban design officer. Whilst it is open to Members of a planning committee to exercise their own planning judgment, any such case must be fully justified in the face of opposing evidence. The proposal was clearly a reflection and continuation of a previous housing scheme which was recently approved by the Council, and as such, the Council's decision to refuse on design grounds was unreasonable.
9. It follows therefore, that the applicant expended time and effort in preparing a significant part of the appeal case in order to defend a reason for refusal which was unreasonably imposed. I therefore conclude that a partial award of costs is appropriate with regard to the second reason for refusal only.

Conclusion

10. A full award of costs is not justified. However, for the reasons given above, it is concluded that a partial award of costs against the applicant, on grounds of unreasonable behaviour resulting in wasted expense, is justified in the particular circumstances.

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 South Cambridgeshire District Council shall pay to Matthew Homes Ltd the partial costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in the time spent on defending the Council's second reason for refusal in respect of South Cambridgeshire District Council planning application Ref S/4744/18/FL, dated 4 December 2018, which was refused by notice dated 23 March 2020.
12. The applicant is now invited to submit to South Cambridgeshire District 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, such costs to be assessed in the Senior Courts Costs Office if not agreed.

Matthew Woodward

INSPECTOR