

Costs Decision

Site visit made on 8 December 2020

by Stephen Wilkinson BA BPI DIP LA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08th February 2021

Costs application in relation to Appeal Ref: APP/X0415/W/20/3260159 Hohturli, Village Road, Whelpley Hill, Buckinghamshire, HP5 3RL

- 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 Laurie Michel for a full award of costs against Buckinghamshire Council.
 - The appeal was against the refusal of Buckinghamshire Council to grant planning permission for the demolition of existing dwelling, erection of 2 dwellings, additional vehicular access and associated works.
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Decision

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

The submissions by Mr Laurie Michel

2. The applicant has made the application on both procedural and substantive grounds. In summary, these are that the Council:
 - Attributed too much weight to the development plan although it wasn't up to date.
 - Misinterpreted the Government's definition of 'limited infilling'
 - Provided no evidence to substantiate its second reason for refusal
 - Did not highlight its concerns to the applicant prior to its determination
 - Did not fully consider the development plan as a whole.
3. Furthermore, the Council has behaved unreasonably resulting in the applicant incurring additional unnecessary expense.

The response by the Council

4. The Council's response can be summarised as follows:
 - recent appeals and case law allow the decision maker discretion
 - the Council has an in principle objection to the scheme
 - the second reason for refusal relates primarily to sense of enclosure.
5. The Council has not behaved unreasonably.

Reasons

6. Planning Practice Guidance (the Guidance) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused the party from applying for costs to incur unnecessary or wasted expenditure in the process. Although there is some overlap between the grounds of claim I address each strand of the applicant's case in turn below.

Ground 1

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that the determination of applications for planning permission must be in accordance with the development plan, unless material considerations indicate otherwise. This was the starting point for the Council in its determination of the application for planning permission.
8. An appeal decision which the appellant brought to the Council's attention is referred to at paragraph 4 of the officer's report and accordingly this identifies the appeal scheme as 'infill'.
9. Although the appellant drew the attention of the Council to inconsistencies in its adopted Policy GB4 with the Framework and included reference to a decision of an Inspector colleague, this appeal decision is not binding on the Council. Although it would have been good practice to include a reference to the appeal decision in the officer report, I do not regard this as a fundamental procedural error as alleged by the applicant. The Council has not behaved unreasonably.

Ground 2

10. The Glossary to the Framework does not include a definition of infilling and no other definition for this has been put before me. It is left to the planning judgement of a decision maker to interpret what this actually means with regard to the specific issues raised by each case. The Council's reference in its appeal statement to the Northumberland Case¹ is instructive in this regard.
11. In consideration of the application for planning permission the Council's starting point was the development plan. The officers report considers the appeal decision² referred to by the appellant in respect of 'infilling'. It is evident from the officer's report that this was used to inform its decision. The Council has not behaved unreasonably in respect of this ground.

Ground 3

12. The second reason for refusal in respect of 'enclosure and dominance' was substantiated by the Council. However, this reason also refers to the 'possibility of a loss of light'. I regard this as unhelpful and its inclusion was unreasonable. However, this has not led to wasted expense because it was a matter on which evidence should have been sought as this was a determinative issue. Accordingly, I do not consider that unnecessary expense has been incurred by the applicant.

¹ R(Tate) v. Northumberland County Council [2018] EWCA Civ 2019

² APP/T2350/W/16/3164118

Ground 4

13. The fact that the Council had an objection in principle to the proposed scheme but continued to secure amendments is a moot point. The Council cannot be expected to negotiate exhaustively when there is an objection in principle. The Council did within limits negotiate aspects of the scheme which potentially reduced the extent of its objections.
14. The protection of the Green Belt has for many years been an important aspect of national planning policy. Accordingly, I find it hard to understand how the applicant would not have understood the potential difficulties involved in securing planning permission for residential development in this location.
15. The Council did not behave unreasonably in respect of this matter.

Ground 5

16. The application was not refused because it is not infill, but rather the scheme failed to meet specific criteria included in Policy GB4. Underpinning this Policy is the principle of whether housing is acceptable in the Green Belt. Furthermore, the application was refused in respect of how it failed Policy GC3.
17. When taken overall, the application was contrary to the development plan and given my findings in the main decision letter, contrary to the policies in respect of the Framework as a whole. The Council has not behaved unreasonably in respect of this ground.

Conclusions

18. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in Planning Practice Guidance, has not been demonstrated.

Stephen Wilkinson

INSPECTOR