



Costs Decision

Site visit made on 9 November 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 February 2021

Costs application in relation to Appeal Ref: APP/C2708/W/20/3255975 Land adjacent to 35 Green Lane, Glusburn, Keighley BD20 8RR

- 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 & Mrs G & A Woon for a full award of costs against Craven District Council.
 - The appeal was against the refusal of planning permission for new detached dwelling and change of use of land to garden area.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. The National Planning Practice Guidance (the Guidance) advises that, irrespective of the outcome of the appeal, 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 process¹.
3. The Guidance confirms that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal².
4. The applicants submit that the Local Planning Authority (LPA) acted unreasonably during the determination of the application in relation to the following substantive matters: preventing or delaying development which should clearly be permitted, having regard to its accordance with the Development Plan, National Policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis; and, refusing planning permission on a planning ground capable of being dealt with by conditions, where it is concluded that suitable conditions would enable the proposed development to go ahead.
5. In its officer report the LPA did not provide a detailed explanation or objective analysis as to why it concluded that the appeal site 'lies outside but adjoins the main built up area' of Glusburn. Nevertheless, the LPA emphasised the appeal site's open nature to the west and its current use as agricultural land, leading it

¹ National Planning Practice Guidance, Paragraph: 030 Reference ID: 16-030-20140306.

² National Planning Practice Guidance, Paragraph: 049 Reference ID: 16-049-20140306.

to assert in its appeal statement that the land is excluded under part 3 of the definition. This exclusion meant that there was no requirement for the LPA to consider or analyse in detail the site's location against the main part of the definition. It also dictated that the proposal was required to be assessed against Part I of Policy SP4 of the Craven Local Plan 2012-2032 adopted November 2019 (CLP), for which the LPA adequately explained the conflict and thus substantiated the reason for refusal.

6. The wording of both the definition of the 'main built up area' and exclusions parts 1-4 are open to interpretation. In determining whether or not a site is located within the main built up area of a settlement and/or excluded from the definition, the LPA is required and entitled to apply a degree of planning judgement. Therefore, although I reached a different conclusion to that of the LPA on this matter in my Appeal Decision, I am not persuaded that it acted wholly unreasonably in this regard.
7. In relation to the second reason for refusal, the applicants contend that the LPA has tried to apply a policy approach that is not supported by the policies themselves. As outlined in my Appeal Decision, having regard to the submitted evidence, the wording of Policy SP3 of the CLP and the associated supporting text is not explicitly clear in confirming whether or not the LPA's requirements for housing density and mix are applicable to both allocated and non-allocated sites.
8. Nevertheless, mindful of the general provisions within the CLP and the National Planning Policy Framework relating to the efficient use of land, it is not completely unjustified that the LPA would seek to secure the most effective and efficient use of the appeal site. Notwithstanding my conclusions on this matter in my Appeal Decision, given the LPAs interpretation of the policy and that the proposal would fall significantly short of the considered required yield, I am not convinced that the LPA's concerns on this matter were so without foundation as to represent unreasonable behaviour.
9. The applicants declare that the third reason for refusal related to a planning ground which was capable of being dealt with by conditions. Given that the applicants failed to demonstrate that the proposal would provide a net gain in biodiversity, the LPA was right to give weight to this lack of information. However, as explained in my Appeal Decision, I find it hard to understand why this matter could not have been dealt with by the imposition of an appropriately worded condition. In this respect, I consider that the LPA acted unreasonably.
10. In finding unreasonable behaviour by the LPA in relation to the third reason for refusal, the matter of unnecessary or wasted expense in the appeal process needs to be considered. I acknowledge that the applicants appointed a planning consultant to prepare their appeal case, which included a rebuttal of the third reason for refusal and the preparation of a Landscape Planting Schedule.
11. However, to my mind, the work related to this part of the appeal was limited. Furthermore, even if the LPA had conditioned this element of the proposal, given the additional reasons for refusal, it would not have changed the outcome of the application or avoided an appeal with the need to prepare supporting documentation.

12. I am aware of the email correspondence between the LPA and the applicants confirming that the development was to be recommended for approval, and I note the contradictions within the LPA's officer report. Nonetheless, the fact that the LPA altered its opinion on the proposal prior to the determination of the application is not, in itself, a reason to grant an award of costs.
13. Therefore, although I find that unreasonable behaviour by the LPA has, in part, been demonstrated, this has not resulted in unnecessary or wasted expense, as described in the Guidance. Thus, an award of costs is not justified.

F Cullen

INSPECTOR