
Costs Decision

Site visit made on 15 December 2020

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2021

Costs application in relation to Appeal Ref: APP/M1710/W/20/3258256 Land at The Spinney, Shalden Green Road, Shalden, Alton GU34 4DT

- 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 and Mrs O'Connell for an award of costs against East Hampshire District Council.
 - The appeal was against the refusal of planning permission for demolition of an existing agricultural building and a poultry shed, along with a further two poultry sheds, and erection of one 3-bedroom dwelling, together with hard and soft landscaping and associated works.
-

Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) advises that parties in planning appeals are normally expected to meet their own expenses. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby causes the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The Guidance advises that parties who pursue an appeal unreasonably without sound grounds for appeal, may have an award of costs made against them. It confirms that awards against local planning authorities may be either substantive, relating to the planning merits of the appeal, or procedural, having regard to behaviour in relation to completing the appeal process. The applicant is seeking an award of costs on substantive grounds.
4. The Guidance states that examples of unreasonable behaviour by local planning authorities which may give rise to a substantive award of costs include: 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; and acting contrary to, or not following, well-established case law.
5. The applicants' case is that, in refusing planning permission for the reason that the appeal scheme comprises inappropriate residential development in the countryside without a demonstrated need, the Council has not given appropriate weight to other material considerations, notably case law and previous appeal decisions.

6. In this instance, the applicants did not dispute that the proposed development would be contrary to the development plan. Their supporting case submitted with the planning application centred on the significance of other material considerations, notably established case law and recent appeal decisions, having regard to the 2 extant permissions¹ under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order (2015) (as amended) (the GPDO), which would allow the barn and one of the poultry sheds to be converted into dwellings. The applicants also asserted that the appeal scheme would result in a number of benefits compared with the extant permissions.
7. My decision, which accompanies this costs decision, explains why, in allowing the appeal and having regard to the Court of Appeal judgement² relating to fallback positions, I have found that the conflict with the development plan in respect of the location of the proposal is outweighed by the is outweighed by the reduction in the number of dwellings, and the potential biodiversity, landscaping, living conditions and sustainability benefits arising from the implementation of the proposal instead of the extant permissions.
8. The weight, if any, to be given to a particular consideration in the determination of planning applications is a matter for the decision maker's discretion, and I concur with the Council that it is not in itself unreasonable for the Council to take a different view from that of the appellants.
9. However, in this instance, the applicants submitted detailed information in respect of the relevant case law relating to the weight to be given to realistic fallback positions in decision-making, supported by a number of recent appeal decisions. Whilst acknowledging that the fallback position should be a material consideration, the Council has not provided an objective analysis of why it has concluded that the fallback position does not automatically justify a departure from planning policy.
10. The Council's sole reason for discounting the fallback position on the basis that, if the barns were to be demolished, as proposed, the extant permissions would be extinguished, was advanced by the Council, notwithstanding that it had not been supported by a recent appeal³ Inspector. Whilst, this appeal related to a different site and development proposal, the Council has not justified why it considers that the appeal Inspector's findings on the fallback position do not apply to the current appeal, given the similarities in respect of the fallback position.
11. Moreover, it is not evident from the Council's officer report, appeal statement, or reason for refusal, that the Council has assessed the appeal scheme against the relevant case law and appeal decisions cited by the applicants. Nor is it apparent that the Council has undertaken a balancing exercise of other material considerations, including case law, other appeal decisions and benefits arising from the development, against the failure of the scheme to accord with development plan policies in respect of the location of new housing, as required by Section 38 (6) of the Act, which sets out that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

¹ 38980/004 granted 17 April 2018 and 38980/005 granted 1 June 2020

² Michael Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314

³ Ref APP/M1710/W/193236873

12. I therefore find that, on the basis of the evidence before me, the Council has not followed well-established case law, and has not taken into account other material planning considerations when reaching its decision on the planning application. Nor has it satisfactorily justified this decision-making approach in defending this appeal. In the planning judgement, it appears to me that having regard to established case law and the provisions of the development plan, national planning policy and other relevant considerations, the development proposed should reasonably have been permitted. The refusal of planning permission, for the sole reason given, therefore constitutes unreasonable behaviour contrary to the basic guidance in the *National Planning Policy Framework 2019* and the Guidance, and the applicant has been faced with the unnecessary expense of lodging the appeal.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has been demonstrated and that an award of costs is justified.

Costs Order

14. 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 East Hampshire District Council shall pay to Mr and Mrs O'Connell, the costs of the appeal proceedings described in the heading of this decision.
15. The applicant is now invited to submit to East Hampshire 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. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

S Leonard

INSPECTOR