



Costs Decision

Site visit made on 26 January 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 4 March 2021

Costs application in relation to Appeal Ref: APP/P1615/W/20/3261191 Sunray, Baptist Way, Ruardean Hill, Drybrook GL17 9AR

- 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 Paul Frowen for a full award of costs against Forest of Dean District Council.
 - The appeal was against the refusal of planning permission for erection of a chalet bungalow. Construction of a new vehicular access and associated works.
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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 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 process.
3. The appellant submits that the Council acted unreasonably and therefore caused the appellant to incur unnecessary expense. The reasons given are that the Council has not fully substantiated their reason for refusal, and misinterpreted policies and law. Concerns are also raised regarding the number of errors in the Council's statement.
4. I have carefully considered the arguments regarding the reason for refusal put to me by the Council. I acknowledge that matters of character and appearance are necessarily subjective and a matter of judgment, but for this reason I consider it imperative that a conclusion of harm relying on these grounds is fully explained.
5. For the reasons in my decision letter, it is inappropriate to definitively regard the side of Sunray as the front elevation and the house as 'traditionally' laid out, and this has a significant bearing on the strength of the Council's case. The Council also refers to the development as suburban sprawl and ribbon development. As the appeal site is at a road junction and mainly surrounded by housing, the proposal does not obviously meet either criteria. If new houses are to be built, then some open space must be lost, so a full explanation of why openness at this site makes a 'distinct' contribution to character and appearance is required, particularly in light of it not being a protected Important Open Area. Policy does not support the implication that change, however prominent, is inevitably harmful.

6. I therefore find that the reason for refusal was largely unsubstantiated and that this is tantamount to unreasonable behaviour. Had these errors not been made, I consider it is very likely the Council would have come to a different conclusion and an appeal avoided.
7. The local planning authority cannot demonstrate a 5-year supply of deliverable housing sites. However, the presumption in favour of sustainable development in paragraph 11d) of the National Planning Policy Framework (2019) (Framework) was not applied when the application was first determined in July 2020. The reason given for that is that the Council was unaware of the deficit until an appeal decision in October 2020.
8. A planning balance with reference to paragraph 11d) forms part of the Council's statement. However, this is approached as a 'normal' balance between adverse impacts and benefits. This is erroneous because it should refer to the impacts 'significantly and demonstrably' outweighing the benefits, and there is no evidence that this emphasis was accounted for. This language and approach are repeated throughout the statement. I conclude that the presumption has therefore not been applied correctly.
9. Even if I were to accept that it was reasonable that the Council did not know that it did not have a five year supply of deliverable housing sites when it made its decision, it is clear that this was a matter raised by the appellant at an early stage of the appeal submission. This included a copy of the appeal decision¹ dated October 2020 which the local planning authority would have been aware of previously.
10. At this stage, the Council could have re-considered its position and potentially withdrawn from the appeal, given that the minor adverse effects identified would have been unlikely to significantly and demonstrably outweigh the benefits. The Council's approach is akin to the unreasonable behaviour outlined in the PPG where it states, '*not reviewing their case promptly following the lodging of an appeal against refusal of planning permission... as part of sensible on-going case management*'.²
11. The Council reiterates that the development plan is the starting point for decision making. This is not in dispute. However, planning law requires that applications be determined in accordance with the development plan, unless material considerations indicate otherwise². The Framework is such a material consideration, and for the reasons above, I do not consider that it has been applied properly in reaching a balanced decision.
12. The Council also draws attention to another recent appeal decision in the area, which was dismissed despite the shortfall in 5-year housing land supply. However, in this case the presumption was not engaged because harm to a heritage asset provided a 'clear reason' for refusal as per the footnote to paragraph 11d) of the Framework. Consequently, this appeal decision is not analogous.
13. I note the difference in opinion between the parties regarding the definition of 'sustainable development' in law and policy. I do not find that the difference in

¹ APP/P1615/W/19/3236737 (9 October 2020)

² Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990.

interpretation has in itself had a significant bearing on the case or led to unnecessary expense.

14. There are also minor errors in the Council's report and statement. This is unfortunate, but I do not consider that this amounts to unreasonable behaviour that would have caused unnecessary expense. The local policies referred to in the Decision Notice are all relevant to the proposal and their inclusion justified by the Council, as are sections 12 and 15 of the Framework. Reference to Framework section 11 does not appear relevant, and may be a mistake, but I have no evidence before me that this has caused wasted expense.
15. My attention has also been drawn to the Council's introduction of new material at the appeal stage, including 'Living with Beauty' and the National Design Guide. These references are relevant and are used to further expand the Council's case, which I do not consider to be inappropriate.

Conclusion

16. For the above reasons, I find that the Council has behaved unreasonably by failing to substantiate its reason for refusal, and by not properly applying the requirements of paragraph 11d) of the Framework. I conclude that this has led to an unnecessary appeal.
17. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a full award of costs is justified.

Costs Order

18. 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 Forest of Dean District Council shall pay to Mr and Mrs Paul Frowen, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to Forest of Dean 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.

B Davies

INSPECTOR