
Costs Decision

Site visit made on 26 January 2021

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2021

**Costs application in relation to Appeal Ref: APP/H1705/W/20/3261247
Land at Monk Sherborne Road and Sand Martin Close, Charter Alley,
Tadley, Hampshire RG26 5PS**

- 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 Pearson (Thornacre Land Limited) for a full award of costs against Basingstoke & Deane Borough Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for permission in principle for residential development of a minimum of 4no. and a maximum of 9no. dwellings.
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Decision

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

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 procedural, having regard to behaviour in relation to completing the appeal process, or substantive, relating to the planning merits of the appeal. The applicant is seeking a full award of costs on procedural and substantive grounds.
4. Having regard to the claim on procedural grounds, although costs cannot be claimed for the period during the determination of the planning application, the Guidance confirms that costs applications may relate to events before the appeal. It goes on to say that, although costs can only be awarded in relation to unnecessary or wasted expense at the appeal, behaviour and actions at the time of the planning application can be taken into account in the Inspector's consideration of whether or not costs should be awarded. The guidance also states that all parties are expected to behave reasonably throughout the planning process.
5. In respect of any appeal against non-determination, the Guidance advises that the local planning authority should explain their reasons for not reaching a decision within the relevant time limit. It goes on to say that if an appeal in

- such cases is allowed, the local planning authority may be at risk of an award of costs, if the Inspector concludes that there were no substantive reasons to justify delaying the determination and better communication with the applicant would have enabled the appeal to be avoided altogether.
6. The statutory period for determination of the application by the Council expired on 6 July 2020, and the applicant states that, in addressing background matters, the Council's statement of case provides no explanation as to why no formal decision was made prior to the appeal against non-determination being lodged, noting that an Ecological Assessment and Biodiversity Impact Assessment (EABIA) had been submitted to the Council on 21 August 2020.
 7. I have evidence before me of on-going email communication between the Council and the applicant that took place during the course of the planning application, culminating in the planning officer confirming, on 9 October 2020, that the application would be recommended for refusal and the reasons for this, and confirming that, as such, the application could be dealt with under delegated powers, and that a decision was anticipated to be issued in the week commencing 2 November 2020. On the 5 November 2020, the Council received notification of the appeal submission.
 8. Some considerable time had elapsed following the statutory determination date and the planning officer's final email. However, a number of matters are apparent from the information before me. These include: a request from the Council for additional information from the appellant during the course of the application, which involved factoring in time for the submission of the information and consultee comments before and after the submission of the EABIA; a requirement for the application to be determined by the planning committee should the recommendation be to approve; and a significant amount of weight given by the Council in formulating its recommendation on an appeal decision made on 11 September 2020.
 9. Throughout the application process the planning officer continued to respond to emails from the applicant, providing anticipated timescales for progress towards determination of the application. As such, and taking the above factors into account, together with the unprecedented impact on the work environment in general associated with Covid-19, I conclude that the Council did not act unreasonably in failing to determine the application prior to the applicant submitting the appeal.
 10. 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 vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
 11. Notwithstanding that I have allowed the appeal, I find that the Council's stated reasons for refusal had it determined the application, as set out in appeal statement, to be complete, precise, specific and relevant to the application and clearly set out which policies of the local plan and neighbourhood plan, against which the Council considers the proposal would

be in conflict. These reasons have been adequately substantiated by the Council in its statement of case, which includes reasons why the Council considers that there would be harm to the landscape character and visual amenity of the area, whilst also acknowledging that the landscape is not a designated landscape.

12. The appeal statement demonstrates that the Council has had regard to the material consideration of the lack of 5 year housing land supply and has applied the balance as required by paragraph 11 of the Framework, finding the identified harms to significantly and demonstrably outweigh the benefits of the development when considered against the policies within the Framework taken as a whole.
13. Whilst the Council's statement did not detail the extent of the housing shortfall nor detail changes that had occurred in this respect following the publishing of the Council's Annual Monitoring Report in December 2020, I do not find that this has constituted unreasonable behaviour. The Council has confirmed that the level of change would not have altered its recommendation for refusal, and the current extent of undersupply has subsequently been agreed by both parties following the appeal Inspector's request for additional comments following the publication of the 2020 Housing Delivery Results in January 2021.
14. The weight afforded by the Council to the Monk Sherborne appeal decision is a matter for the decision-maker and I do not find that the Council has acted unreasonably in this respect by affording more weight to it than the applicant.
15. Noting that local plan Policy CN9 was not before the Monk Sherborne Inspector, I do not find that the Council has acted unreasonably by omitting it from its appeal statement in the case of the current appeal, having regard to the nature of the permission in principle residential proposal. Notwithstanding that the supporting text to the policy acknowledges that the car is the only real option for travel, this reflects advice in paragraph 103 of the Framework, and the policy is primarily concerned with the provision of a safe, convenient and efficient transport network in the Borough and seeks to ensure that development minimises the need to travel, promote opportunities for sustainable transport modes, improve accessibility to service and support the transition to a low carbon future.
16. Accordingly, whilst I have not been persuaded by the Council's case, and I have allowed the appeal, I find that the Council was entitled to defend the appeal and has not acted unreasonably in so doing.

Conclusion

17. For the above reasons, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Guidance, has not been demonstrated.

S Leonard

INSPECTOR