



Costs Decision

Site visit made on 13 April 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Costs application in relation to Appeal Ref: APP/Y3940/W/20/3259635 Dudgemoor Farm, Hayes Knoll, Purton Stoke, Swindon SN5 4JJ

- 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 Brooks for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for a replacement dwelling and associated works.
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. The applicant considers that the Council acted unreasonably on substantive grounds based on its reliance upon saved policy H4 of the North Wiltshire Local Plan 2011 (LP) given its age and restrictive drafting. He contends that no credible reasons have been provided by the Council for attributing considerable weight to policy H4 of the LP in refusing planning permission. Furthermore, the Council failed to give adequate consideration to the legal opinion and addendum provided by the applicant and the content of the Local Plan Review Consultation Paper, November 2017 that policy H4 should be deleted from the future development plan. Had they done so and applied the tilted balance in paragraph 11(d) (ii) of the National Planning Policy Framework (the Framework), then the proposal would have been permitted thereby avoiding an unnecessary appeal.
4. The PPG gives examples of unreasonable behaviour where local planning authorities are at risk of an award of costs. This includes 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.
5. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The applicant accepts that saved policy H4 of the LP comprises part of the development plan and is relevant. Therefore, it follows that the proposal should have been assessed against it. Moreover, the Council

have reasonably explained in the case officer's report why they considered the proposal failed to meet criterion (ii)(b) of policy H4 regarding replacement dwellings. In doing so they referred to an earlier building survey of the appeal dwelling that indicated it was not structurally unsound. Although, I ultimately came to a different conclusion, there is some ambiguity in the wording and explanation provided for policy H4 as to where the threshold of the relevant policy test lies, consequently it requires the exercise of judgement. Accordingly, the Council did not act unreasonably in finding a conflict with criterion (ii)(b) of policy H4.

6. Having found a conflict with the development plan, the applicant disagrees with the respective weight the Council then attributed to policy H4 and the contents of the Framework as a material consideration. However, the question of weight is a matter for the decision maker in each case, attributing what weight should be afforded to the relevant issues and concluding where the overall balance lies. This also requires the exercise of judgement.
7. The case officer's report expressly addresses the issue of weight under the section headed 'Material considerations relevant to the principle of development' and refers to the legal opinion provided by the applicant. Whilst the appellant disagrees with the reasoning given and considers it flawed, an adequate explanation is nevertheless provided. The degree of weight attributed to policy H4 is set out in the concluding paragraph of the report which then proceeds to undertake a balancing exercise broadly resembling that contained in paragraph 11(d)(ii) of the Framework.
8. Furthermore, the Council produced a statement of case that amplifies the Council's judgement supported by other appeal decisions which refer to saved policy H4. The statement of case refers to the Local Plan Review Consultation Paper, November 2017 clarifying that the Council consider it carries no weight.
9. Taking these factors together, the Council have provided a plausible explanation to substantiate their judgement including the degree of weight they respectively attributed to policy H4 of the LP and the Framework as a material consideration.
10. Therefore, overall, I do not consider that unreasonable behaviour has been demonstrated within the meaning of the PPG. As I am not persuaded that the Council has acted unreasonably in this case, it follows that the applicant was not put to unnecessary or wasted expense in testing their judgement at appeal.

Conclusion

11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Helen O'Connor

Inspector