

Costs Decision

Hearing (Virtual) Held on 28 April 2021

Site Visit made on 29 April 2021

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Costs application in relation to Appeal Ref: APP/W3005/W/20/3263882 Land off Millers Way, Kirkby in Ashfield, Nottinghamshire NG17 8RF

- 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 Peveril Homes Limited for a full award of costs against Ashfield District Council.
 - The appeal was against the refusal of planning permission for 54 dwellings and associated highways, drainage and landscaping infrastructure.
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Decision

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

The submissions for Peveril Homes Limited

2. The costs applications were submitted in writing.
3. The appellant has applied for an award of costs on three grounds. The appellant considers that the Council have acted unreasonably by delaying development that should clearly be permitted having regard to development plan, national policy and other material considerations; failing to substantiate refusal reason three and making vague or generalised assertions about the likely impacts of the scheme on biodiversity not supported by objective evidence; and refusing permission on grounds which were capable of being dealt with by condition and not previously raised with the appellant.

The response by Ashfield District Council

4. The Council's response was made in writing.
5. The Council consider that they have substantiated its reasons for refusal and there is no conflict with paragraph 049 of the Planning Practice Guidance (PPG). It is indicated that the refusal reasons identify the harm resulting from the proposal and supports this with regard to local and national planning policy as well as other material considerations. The Council have indicated that their statement of case substantiates the reasons for refusal with also evidence given by a professional and highly experienced ecologist. It is indicated that the Council were only able to determine the application on the evidence presented to them and planning conditions would not satisfactorily resolve the issues.

Reasons

6. Paragraph 030 of the 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.
7. Paragraph 049 of the PPG states that examples of unreasonable behaviour by local planning authorities 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 provide 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.
8. The Council is not duty bound to follow advice of its professional officers however, if a different decision is reached the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. On the matters subject of the three refusal reasons, advice had been given from professional bodies including Sports England, Nottinghamshire County Council Highways Authority and Nottinghamshire Wildlife Trust. None of these bodies raised any fundamental objections to the scheme with some supporting the scheme on the proviso of the imposition of planning conditions. Further information had been requested by some of the professional bodies which were subsequently made requirements in the recommended planning conditions of the Officers Committee Report.
9. In respect of the first refusal reason, the Council failed to grasp clear evidence, including information in the Ashfield District Council Playing Pitch Strategy 2017-2020, that there was a surplus of pitches in the specific locality of Kirkby. The proposal, through financial contributions, would enhance other recreational facilities in the area. Whilst the Council argue that the appeal site is not unequivocally surplus to requirements, they do fail to accept that the proposal meets the specific requirements detailed in Policy RC3 of the ALPR and paragraph 97 of the National Planning Policy Framework.
10. The Council have indicated that the application was determined on the basis of the evidence presented. With regards to highway concerns, the relevant anecdotal evidence of residents and Committee Members own experiences of the local highway conditions were taken into account when reaching a decision on the proposed scheme. Highway safety is of utmost importance however, there was a lack of substantial evidence presented at the Hearing to substantiate a refusal on highway grounds that was specific to the increase of vehicular traffic from the scheme.
11. The alleged harm to protected species on adjacent land to the north has not been substantiated other than by means of vague assertions that an increase in footfall to the area to north may affect the protected species. The Council had raised matters relating to hedgerow and bramble. It is also noted that the Defra Biodiversity Metric 2.0 Calculation Tool (Defra metric) was used by the Council to provide quantitative evidence that there was harm to biodiversity on the site. The Defra metric is not a recognised tool in planning policy and insufficient evidence was submitted in terms of the methodology for the calculation.

12. It will be seen from my decision that I consider the scheme to be in accordance with development plan policies and national policy. It is entirely correct that the proposal should be assessed in accordance with Section 38(6) of the Town and Country Planning Act 1990 which specifies that development proposals must be determined in accordance with the development plan unless material considerations indicate otherwise. Local representations that were made on the proposal, some specific to open space, highway and biodiversity matters, are material considerations however so is the advice from professional officers. From the evidence before me, the representations made by local residents were not based on objective analysis.
13. Overall, the evidence provided in relation to the three reasons for refusal were vague, generalised and not supported by objective analysis. Planning conditions recommended in the Officer Committee Report, some of which supported by professional officers, would have enabled the proposed development to go ahead. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other material considerations, the proposal should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the guidance in the PPG and the appellant has been faced with the unnecessary expense of lodging the appeal.
14. I acknowledge comments made by the Council including reference to the Town and Country Planning (Development Management Procedure) (England) Order 2015 and caselaw *Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC [2020] EWHC 518 (Admin)*. These matters however, do not alter my findings above.
15. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified.

Costs Order

16. 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 Ashfield District Council shall pay to Peveril Homes Limited the costs of the appeal proceedings described in the heading of this decision.
17. The applicant is now invited to submit to the 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.

Chris Baxter

INSPECTOR