
Costs Decision

Site visit made on 10 May 2021

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2021

Costs application in relation to Appeal Ref: APP/C1760/W/20/3252467 Land between Yew Tree Cottage and Ivy Cottage, Romsey Road, East Wellow

- 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 Mrs Beverley Davies for a full award of costs against Test Valley Borough Council.
 - The appeal was against the refusal of planning permission for construction of one self-build dwelling and detached garage for occupation by operator of Carlo's Ices and Tea Rooms.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. The Planning Practice Guidance (PPG) advises that costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur unnecessary or wasted expense in the appeal process.
3. The appeal site lies outside of the settlement boundary. Policy COM2 of the Test Valley Borough Revised Local Plan 2011-2029 (LP) stipulates that it should either be essential for the development to be located in the countryside or the proposal should be appropriate under specified policies.
4. The officer report considered whether there is an essential functional need for a dwelling based on the evidence of the business, and came to the conclusion that there was not. For the reasons set out in my decision, I have taken the same view. Therefore, the proposal does not meet the requirements for a rural worker dwelling in the countryside under LP Policy COM10.
5. The Council did not treat Carlo's as a community facility under LP Policy COM9. In my opinion, this approach was incorrect. However, the policy requires the community to be involved in the preparation of the proposal. The supporting text explains that there should be extensive parish council and community involvement and the proposals should be supported. Notwithstanding the numerous representations of support, there was no evidence of parish council support or extensive community involvement in the preparation of the proposal. Consequently, it was reasonable for the Council to conclude that the conditions for a community led scheme were not met.

6. It was legitimate to conclude that the proposal was non-compliant with LP Policy COM2. Any grant of permission would need to be justified by other material considerations. It is argued that the Council has failed to take account of personal circumstances, letters of support and the fact that the proposal would be self-build. As clearly set out in the officer report, these factors were taken into account but were deemed not to outweigh the conflict with the development plan. The courts have held that the weight, if any, which should be given to a particular consideration is a matter for the decision maker's discretion. That the Council reached a different planning judgement does not constitute unreasonable behaviour.
7. The appellant is aggrieved that the Council placed weight on the lack of footpath or lighting along Romsey Road. Whilst I accept that this situation may be common in rural areas, many of the residential streets in Wellow have pavements. Paragraph 84 of the National Planning Policy Framework is cited in support of the appellant's case, but this relates to sites for local business and community needs. Unreasonable behaviour on this point has not been demonstrated.
8. It is suggested that the Council has ignored the emerging neighbourhood plan. However, plan preparation is in its early stages with no draft available as yet. The emerging plan carries negligible weight and therefore I do not consider that the failure to include reference to it within the officer report constitutes unreasonable behaviour.
9. The appellant contends that the Council gave no credence to a formal paid-for pre-application enquiry with the Highway Authority which indicated that the proposed access was acceptable. The Highway Authority response misled the appellant into thinking that a 1.5m offset would be appropriate. However, the local planning authority was entitled to rely on the advice of its expert consultee at the planning application stage. Discussions over the relevant offset figure (which I note was finally agreed at 0.75m) would have been better taking place prior to the application being determined but they were a necessary part of the planning process. The Council did not wait for an amended block plan showing a narrower offset but this was not unreasonable behaviour, given that the application was being refused on other grounds.
10. There is no substantive discussion within the officer report over whether conditions could have been used to make the proposal acceptable. However, for the reasons set out in my decision, such conditions relating to occupancy and tree protection would not have made the scheme acceptable.
11. Accordingly, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense in the appeal process, as described in the PPG, has not been demonstrated. As such, an award of costs is not justified.

Robert Parker

INSPECTOR