
Costs Decision

Site visit made on 9 June 2021

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6 July 2021

Costs application in relation to Appeal Ref: APP/E2530/W/21/3270413 Bumblebee Cottage, Mill Lane, Pickworth, NG34 0TE

- 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 Roy Knighton for a full award of costs against South Kesteven District Council.
 - The appeal was against the refusal of an application for planning permission for the erection of a dwelling.
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Decision

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

Preliminary matters

2. The application and response were made in writing
3. Although I set out the main points below, I have had regard to the full content of the written submissions.

The submissions for Mr and Mrs Knighton (the Applicants)

4. The Respondent has behaved unreasonably, and caused the Applicants to incur unnecessary and wasted expense by:
 - failing to demonstrate why the proposal would conflict with policy SP4;
 - failing to produce a statement of case, but rather relying on a delegated officer report which contains only vague, generalised, and inaccurate assertions such that the Respondent has failed to produce evidence to substantiate the reason for refusal;
 - preventing and delaying a development that should have been permitted having regard to the development plan, national planning policy and other material considerations;
 - taking almost six months to reach a decision and failing to respond to requests for updates;
 - failing to consider and respond to material submitted before the decision was made, including a decision regarding a similar site a West Willoughby (which decision is not addressed in the Respondent's costs response);
 - failing to have regard to its draft Design SPD, which indicates that the pattern of built form can be different at the edge of a village;

- failing to refer, in the delegated officer report, to a comprehensive Parish Meeting Response letter and largely ignoring local views, except for those of 2 objectors; and
- having regard to the threat of similar development on adjacent land, which is not a material consideration, as each case should be determined on its merits.

The submissions for South Kesteven District Council (the Respondents)

5. The delegated officer report explains why the proposal does not accord with Policy SP4, in particular that:
 - it is not adjacent to the existing pattern of development and not adjacent to a proposed allocation site;
 - it would extend obtrusively into the open countryside and is separated from the main built up part of the village by the stream and trees identified; and
 - it is in the open countryside, such that Policy SP5 would need to be satisfied.
6. The proposal was considered in the light of the information provided and a site visit.
7. Determination of the application was delayed by:
 - the need to query the accuracy of a plan;
 - a change in case officer;
 - high caseloads;
 - a desire to determine the planning application and lawful development certificate (LDC) application at the same time, as a matter of good practice;
 - a delay in obtaining legal advice on the evidence submitted with the LDC application; and
 - COVID-19 restrictions, including the inability to have a meeting on site.
8. The decision was issued as soon as practicable and, given the fundamental difference in opinions, which could not be resolved through amendments to the scheme, further feedback would have served no purpose. Furthermore, given the fundamental objections to the development in principle, the Design SPD is not considered relevant.
9. All the supporting information was considered, including the Parish response as part of the Statement of Community Consultation. Furthermore, the community support was not ignored, but the other criteria of SP4 were not met.
10. There was frequent correspondence with the agent throughout the process of the application.
11. There was no unreasonable behaviour. The issues raised by the Applicants are matters of judgement. The time taken to process the application is noted but no additional costs were incurred through further documentation, plans etc being requested.

Reasons

12. The Planning Practice Guidance (PPG) indicates that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costing to incur unnecessary or waste expense in the appeal process.
13. The Respondent was entitled to rely on its delegated officer report if it so wished. This explained, albeit in concise terms, why the appeal site was not considered to be on the edge of the village. Similarly, whilst I reached a different conclusion on this, together with the issues of whether the development would extend obtrusively into the open countryside and represent good design, these are essentially matters of judgement. The fact that I have reached different conclusions does not mean the Respondent's stance amounted to unreasonable behaviour.
14. It is regrettable that the respondent did not address its West Willoughby decision in its appeal submission, or even prior to refusing the application. However, my appeal decision makes clear that the West Willoughby decision had no decisive influence and it identifies points of distinction. Accordingly, there is nothing to indicate that, had the Respondent properly taken account of the West Willoughby decision, its decision would have been different, and the appeal would have been avoided. Even if the Respondent's behaviour could be regarded as unreasonable on this score, I cannot conclude that it caused the Applicant to incur unnecessary or wasted expense in the appeal process.
15. Although the delegated officer report indicated that the Parish Council made no representations on the application, it clearly referred to the substantial support from the local community, in the form of a Statement of Community Consultation. I am satisfied that, through that statement, the Respondent took account of the support from the Parish Meeting and indeed concluded that criterion (a) of policy SP4 was satisfied.
16. The draft Design SPD was not a significant factor in my decision to allow the appeal. Even if the Respondent should have given it greater consideration, there is nothing to indicate that the appeal, and associated costs, would have been avoided had it done so.
17. The delegated officer report referred to the threat of similar development on adjacent land. However, the Respondent's conclusion that the development would extend obtrusively into the open countryside and be inappropriate within the landscape and fail to make a positive contribution to local distinctiveness, was not dependent on that factor. Again, I am not persuaded that, had the Respondent not taken account of that threat, an appeal would have been avoided.
18. The Respondent took some 5 1/2 months to determine the application. The PPG indicates that, if an appeal against non-determination is allowed, the local planning authority may be at risk of an award of costs if there were no substantive reasons to justify delaying determination of the application and better communication with the applicant would have enabled the appeal to be avoided altogether. Several factors contributed to the delay in this case but, whether or not they justified it, the Applicant did not appeal on the grounds of non-determination, and I have seen nothing to demonstrate that better

communication would have enabled an appeal to be avoided, or that additional costs have been incurred as a result of the delay.

Conclusion

19. For all the reasons given, I am not persuaded that the Respondent is guilty of unreasonable behaviour which caused the Applicant to incur unnecessary or wasted expense in the appeal process. The application must therefore fail.

J A Murray

INSPECTOR