

Costs Decision

Site visit made on 27 July 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09/12/2021

Costs application in relation to Appeal Ref: APP/V3310/W/20/3264473 Land North of Old Bristol Road, East Brent, Highbridge, Somerset

- 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 East Brent LVA LLP for a full award of costs against Sedgemoor District Council.
 - The appeal was against the refusal of planning permission for the construction of up to 40 dwellings, with all matters reserved for future determination, with the exception of access.
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Decision

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

Reasons

2. Planning Practice Guidance (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. The PPG provides a number of potential examples of unreasonable behaviour by Councils. These include preventing or delaying development which should clearly be permitted having regard to the development plan, national policy, and other material considerations, among other things.
3. In relation to pre-application advice given by the Council, PPG¹ is clear that such advice is not binding and does not pre-empt the democratic decision making process or a particular outcome. Furthermore, PPG² is clear that only refusing to enter into pre-application discussions may give rise to a substantive award against a local planning authority, and there is no evidence that this has been the case here.
4. Consequently, the planning committee were entitled to make a democratic decision that departed from the planning officer recommendation and pre-application advice received. To this end, the reasons for refusal were of substance and directly related to material planning considerations that required detailed assessment and reasoning in my decision. Logically, therefore, the reasons for refusal were substantive and reflected plausible concerns about impacts on the local community. The fact that I found these matters could ultimately be controlled by planning conditions does not undermine the substantiveness of the Council's reasons for refusal.

¹ Paragraph: 011 Reference ID: 20-011-20140306 Revision date: 06 03 2014

² Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014

5. PPG³ suggests that refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs. However, it was not clear at the outset that the matters at hand were acceptable in principle, that mitigation would be effective given the particular context of the proposal, site and surrounding land uses, and that a planning condition would be appropriate as a matter of course. This is reflected in the careful assessment and reasoning required in my decision. Ultimately, the matters were relatively complex, and the Council was entitled to probe them in detail during the application process and come to a different view to the planning officer's recommended one. They did not act unreasonably in this context.
6. There were apparent delays in requesting information, specifically in relation to noise and construction impacts. However, it appears there were substantive negotiations ongoing about other matters relating to the proposal during this time. Consequently, it is not clear that the need for further evidence on noise and construction impacts could have been anticipated any earlier during the process. Altogether, the Council and other statutory consultees and interested parties appear to have engaged in the application process in good faith and on a wide range of issues in order to reach an informed decision.
7. Other planning applications for residential development may have been approved by the local planning authority on sites with similar flood risk elsewhere in the area. However, there is no evidence that these other planning applications are otherwise comparable to the proposal in this case. In any event, I consider that the Council had an arguable case in relation to flood risk in relation to this appeal.
8. Overall, it has not been demonstrated that the Council acted unreasonably or caused the applicant to incur unnecessary or wasted expense in the appeal process.

Conclusion

9. For the reasons given, the application for an award of costs is therefore refused.

Liam Page

INSPECTOR

³ Paragraph: 049 Reference ID: 16-049-20140306 Revision date: 06 03 2014