



Costs Decision

Site visit made on 16 November 2021

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2022

Costs application in relation to Appeal Ref: APP/D2510/W/21/3274924 Land North of Peasgate Lane (plot field 82), Chapel Lane, Toynton All Saints PE23 5AF

- 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 Chris Jones for a full award of costs against East Lindsey District Council.
 - The appeal was against the refusal of planning permission for erection of a log cabin.
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Decision

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

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, 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. An application may be made on procedural grounds, relating to the appeal process, or substantive grounds relating to the planning merits of the appeal.
3. The appellant's claim is that the Council has misapplied policy SP15(2) in its determination of the application, rather than Policy SP15(3) and unreasonably persisted with this position at appeal. It is added that had the correct policy been applied, it would have led to permission being approved. The appellant further argues that the Council made vague, generalised or inaccurate assertions about the proposal's impacts, with particular reference to the Council's placing weight on unlit countryside footpaths as evidence of the site's unsuitable location. The appellant states that the Council's position that lighting of footpaths was a relevant material consideration was factually wrong and to argue otherwise was unreasonable.
4. The Council states that it has consistently dealt with similar proposals under Policy SP15(2), and refers to the explanatory supporting text of the East Lindsey Local Plan Core Strategy (July 2018) (the LPCS). The Council adds that even if it had considered the proposal under Policy SP15(3), permission would still have been refused. In respect of inaccurate assertions, the Council states that its reference to unlit footpaths was part of a wider point about the sustainability of the site and the potential to access key services and facilities.
5. As will be seen from my main decision, I determined on the evidence before me that SP15(3) was the most relevant part of the policy to the appeal. Although the Council refers to Policy SP15(2) in its officer report, its first

reason for refusal is a more rounded argument that the scheme is in an unsustainable location which is not physically well related to existing settlements and, due to the lack of genuine transport choice, would lead to the dependence on car based travel by future occupants, leading in its overall view to conflict with several development plan policies, not just Policy SP15.

6. My consideration of this issue has involved matters of planning judgement based on competing interpretations of development plan policy, for which the Council has set out its position in evidence, including giving reasons why the proposal would not accord with Policy SP15(3) in its appeal statement of case. Whilst I have not agreed with the Council's specific approach to Policy SP15, I have nevertheless agreed with its overall position in respect of the suitability of the site's location for tourism development. In addition, I have agreed with the Council on the further issue of landscape impact.
7. Therefore, even if I were to find the Council's approach to Policy SP15 to be unreasonable, its overall reasons for refusal mean that permission would have been refused in any event, including if the Council had assessed the initial proposal under Policy SP15(3). Consequently, an appeal would still have had to be made.
8. Ultimately, the Council has substantiated its position at appeal and, notwithstanding its actions in respect of Policy SP15, its refusal of the application did not prevent or delay development which should have been permitted. On that basis, the Council's behaviour did not involve the applicant in unnecessary or wasted expense in making the appeal.
9. On the issue of vague, generalised and inaccurate assertions about the proposal's impact, unlit footpaths were referred to in terms of the Council's assessment of the potential accessibility of local services from the site on foot. In this context, it was not unreasonable for the Council to point out that footpaths surrounding the site were not lit. This was not advanced as the sole reason access to and from the site on foot would be unsuitable, but one factor alongside the length of the footpaths and their route through agricultural fields.
10. Moreover, the Council's reasoning on this point was not solely in relation to Policy SP15, where the appellant's criticism lies, but also Policy SP22 which supports accessibility and reducing isolation. In this respect, I find the Council's analysis to be relevant to the issue. I am satisfied that it advanced a case that, overall, indicated that the proposal was contrary to the development plan and the Framework. Consequently, I find that the Council did not act unreasonably in this matter.

Conclusion

11. I therefore conclude that, for the reasons set out above, unreasonable behaviour resulting in unnecessary or wasted expense during the appeal process has not been demonstrated. Having regard to all matters raised, an award of costs is not justified, and no award is made.

K Savage

INSPECTOR