



Costs Decision

Site visit made on 31 August 2021

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Costs application in relation to Appeal Ref: APP/J4525/W/21/3270321 Land at Cragdale Gardens, Hetton-le-Hole, Houghton-le-Spring, Sunderland

- 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 Gentoo Group Limited for a full award of costs against Sunderland City Council.
 - The appeal was against the refusal of planning permission for 86 no. residential dwellings (Class C3).
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Decision

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

Reasons

2. The Planning Practice Guidance (the Guidance) 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.
3. The appellants submit that the Council has behaved unreasonably in a number of respects.
4. First, they consider that the Council has introduced fresh and substantial evidence at a late stage. With regards to character and appearance, this is an inherent consideration in respect of greenspace as evidenced by the supporting text of policy NE4 of the Core Strategy and Development Plan 2020 which emphasises the provision of attractive greenspace. The Council has therefore not behaved unreasonably in referring to character and appearance as an issue arising from the proposal.
5. References to education, affordable housing and off-site play provision were referred to in the context of an incomplete S.106 Agreement and the lack of a unilateral undertaking. These were matters of fact when the Council submitted its Statement of Case. The Council has therefore not behaved unreasonably in referring to them.
6. Second, the Council has prevented or delayed a development which should clearly be permitted. However, whilst I have allowed the appeal, I have identified that the proposal conflicts with a policy of the development plan and that a decision had to be made on balance. There are also other issues which are matters of planning judgement, including the effect on character and

appearance as well as whether contributions to greenspace elsewhere would be suitable. Given the consideration of the development plan and the nature of the issues involved, I do not consider that the Council's decision is so without foundation or substantiation as to represent unreasonable behaviour.

7. Third, that the Council has made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis. The appellants have provided evidence in respect of greenspace, including reference to the Council's Greenspace Audits. However, there is a subjective element in respect of the assessment of the issue of greenspace, including consideration of the functions of existing greenspace and whether financial contributions to improvements elsewhere would be more appropriate. The concerns of Members are set out in the Committee Minutes, and the Council has substantiated these concerns in its Statement of Case. Although I have allowed the appeal, viewed objectively and in context, the concerns of the Council are not without foundation or substantiation.
8. Fourth, that the Council has not determined similar cases in a consistent manner, and the appellants refer to a planning permission granted on greenspace at Keighley Avenue. However, it has not been demonstrated that the proposal at Keighley Avenue represents a direct parallel to the appeal proposal on matters including the nature of the greenspace affected, the functions it provided to the community, or development plan policy including allocations. Each application should be determined on its individual merits, and based on the evidence before me the Council has not behaved unreasonably in doing so in this case.
9. Finally, with regards to the S.106 Agreement, it is not unreasonable for the Council to refuse to sign an agreement which it has reasonable grounds to disagree with. For the reasons stated previously, I consider that the Council has not behaved unreasonably in respect of its concerns over the loss of greenspace and whether contributions to nearby greenspace would be appropriate. On that basis, as contributions secured through the S.106 go to the heart of the Council's reason for refusal, the Council has not behaved unreasonably in refusing to sign it. Whilst it may be possible to enter into an agreement on a without prejudice basis, there is no requirement for the Council to do so and the Council has not behaved unreasonably on this matter.
10. 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. For this reason, and having regard to all other matters raised, an award for costs is not justified.

David Cross

INSPECTOR