
Costs Decision

Site visit made on 8 February 2022

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 04 March 2022

Costs application in relation to Appeal Ref: APP/K1128/W/21/3282469 Dennings, Wallingford Road, Kingsbridge TQ7 1NF

- 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 Dick Whittington Developments Ltd for a full award of costs against South Hams District Council.
 - The appeal was against the failure of the Council to issue a notice of their decision within the prescribed period on an application for the erection of six new dwellings.
-

Decision

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

Reasons

2. Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. Parties in planning appeals and other planning proceedings normally meet their own expenses.
3. The PPG indicates that a Local Planning Authority's handling of a planning application prior to the appeal could give rise to an award of costs where such handling amounts to unreasonable behaviour. The guidance provides that if the Local Planning Authority will fail to determine an application within the prescribed time limits, and where this leads to an appeal against non-determination, they should explain why permission would not have been granted had the application been determined within the relevant period.
4. The PPG also includes examples of the types of behaviour that may give rise to a substantive award of costs against a Local Planning Authority. Amongst other matters, these can include, "preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations" and "vague, generalised or inaccurate assertions about a proposal's impact which are unsupported by any objective analysis".
5. The evidence before me in the appeal indicates that the Planning Authority decided to refuse the application contrary to the initial advice of their professional officers. Whilst Local Planning Authorities are not bound to accept the recommendations of their officers, as noted above the PPG provides that Councils are at risk of an award of costs if they prevent or delay development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.

6. As noted in the appeal decision, following the submission of the appeal against non-determination, the Council identified the reasons the Local Planning Authority would have given to refuse consent for the proposed development.
7. In terms of the first reason given by the Council to refuse consent and which concerns efficient use of land, I find that the Council's statements provide clear reasoning as to why it was maintained that the proposal would not reflect the density of housing at this location within Kingsbridge, and provided analysis of why that would fail to accord with the relevant policies of the development plan. In this respect, the Council also provided clear reasoning with regards to consideration of an alternative permission for a greater number of residential units at the site which, in view of the Council would be less harmful than the appeal scheme for six dwellings.
8. Whilst I have come to a different conclusion to the Council with regards to the pattern of local development and the wider development context and surroundings and the potential impact of the proposal on the character and appearance of the area, I find that the reasons for refusing consent as amplified within the Council's statement of case did provide clear reasons to demonstrate why the proposal was determined to be unacceptable on these grounds. Accordingly, I am not convinced that the LPA's concerns on this matter were so without foundation as to represent unreasonable behaviour.
9. In terms of the second reason given by the Council to refuse consent and which concerned whether the appeal scheme made adequate provision for any additional need for infrastructure arising from the development, it will be seen from the appeal decision that it was only during the course of the appeal that an enforceable and suitable mechanism to provide the necessary and agreed financial contributions, was submitted by the Appellant. The Council's statement is clear with regards to the requirement to provide those contributions. Accordingly, there can be no question that the Council have prevented or delayed the development or have acted unreasonably with regards to this reason to refuse consent.
10. The third reason given by the Council to refuse consent in the event that the appeal against non-determination was not made, concerned whether the development provides for adequate provision of surface water drainage measures. It will be seen from the appeal decision that whilst the Council's Specialist withdrew earlier objections to the scheme, that was on the basis that the potential fall back position to dispose of surface water via a sewer had been agreed in principle with South West Water.
11. In that regard, in my view and for the reasons given in the appeal decision, given that it had not been demonstrated that the fall back position was feasible, it would not have been appropriate to leave the details of the surface water drainage system to be secured by condition. The Council's statement of case is clear in this regard, and whilst it will be seen that I have not necessarily agreed with all of the points made by the Council, I find that the Council has not acted unreasonably with regards to generalised or inaccurate assertions about the appeal proposal's impact which are not supported by objective analysis.
12. Further to the above matters, the Appellant has put it to me that the Council's statement of case contained a significant amount of information which it is maintained was either unnecessary or not relevant, and refers to details

provided by the Council with regards to current local housing supply. Whilst I acknowledge the Applicant's view on these matters, I do not find it unreasonable that the Council provided such information so as to ensure that those matters can be considered as part of any planning balance.

13. For the above reasons, whilst I have not necessarily agreed with the Council on all of the matters raised, I do not find that the Council provided vague, generalised or inaccurate assertions about the proposal's impact that were unsupported by any objective analysis. Given that I have also found that the appeal scheme would conflict with the policies of the development plan when taken as a whole and that there are no considerations to indicate that the proposal should be determined other than in accordance with the development plan, I conclude that the Council has not prevented or delayed development which should clearly have been permitted.
14. In conclusion of the above, I find that the unreasonable behaviour resulting in unnecessary or wasted expense, as described within the PPG, has not been demonstrated in this case and that, therefore, an award of costs is not justified.

Mr A Spencer-Peet

INSPECTOR