
Costs Decision

Site visit made on 24 November 2021

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 March 2022

Costs application in relation to Appeal Ref: APP/P2935/W/21/3282765 Land east of the A192, Fairmoor, Morpeth, Northumberland NE61 3JN

- 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 Apinder Ghura, Chan Commercial Ltd for a full award of costs against Northumberland County 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 planning permission for the construction of 58no. dwellings with associated landscaping, access and infrastructure works.
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Decision

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

Reasons

2. The costs applicant was not the original planning applicant as the application was transferred to them whilst it was under consideration by the Council. However, based on the information before me I have no reason to believe that correspondence between the Council and the original applicant would not have been made available to their successor.
3. 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 or wasted expense in the appeal process.
4. The applicant considers that the Council behaved unreasonably by not substantiating nor providing evidence to support their case that the site was required for employment purposes. The applicant also considers that the Council introduced a new objection to the proposal at the appeal stage in respect of the mix and suitability of house types for affordable housing.
5. The Planning Practice Guidance (PPG) states that local planning authorities are at risk of costs being awarded against them if they behave unreasonably with respect to the substance of the matter under appeal including by way of failure to produce evidence to substantiate each reason for refusal on appeal. It also points out that there is a risk of costs in relation to procedural matters at the appeal including prolonging the proceedings by a local authority introducing a new reason for refusal. In this appeal whilst there was no decision notice the Council set out a series of notional refusal reasons in their statement of case.
6. The proposal would be contrary to the development plan which allocates the appeal site for employment uses. The applicant's case attempted to

demonstrate that there were material considerations that would indicate that a decision should be made otherwise than in accordance with the development plan.

7. The Council's statement of case included their explanation of their objection to the loss of employment land which ran to fourteen paragraphs. This also referenced evidence in five documents within appendices¹. Whilst the applicant may not agree with the Council's position nor that the evidence was compelling in support of their case, the Council nevertheless set out clearly what their position was, explaining why they considered that the proposal was contrary to the development plan and why they did not agree with the applicant's assessment.
8. The Council produced evidence to support their notional employment land reason for refusal. Although the applicant considered that the evidence was not up to date this was effectively their planning judgement rather than a failure of the Council to present evidence in support of their case. The Council did not act unreasonably in this respect.
9. The Council's objection in respect of affordable housing included that the mix of house sizes and formats would be unsuitable. The Council point to the issue being raised in response to the revised layout and therefore that a response from their Housing Enabling Officer was not received until after the appeal was made.
10. Although responding to the original layout, the Housing Enabling Officer's initial consultation response focused on need and number of affordable homes. It did not mention the suitability or otherwise of the broadly similar range of house types proposed and made no reference to size of format of dwellings other than a note that the 'mix' of affordable homes should reflect a specified evidence base.
11. However, although not explicit, that response did at least point the applicant in the direction of various documents including the 2018 Partial Strategic Housing Market Assessment Update (SHMA). This would have given an indication of the size and format of affordable homes the Council considered were required. It is reasonable to assume that an applicant will have investigated this or sought clarification from the Council. Assuming they did so, the Housing Enabling Officer's subsequent consultation response which explicitly referred to the SHMA's housing format recommendations, setting out desired configurations, would not have come as a surprise.
12. It was unhelpful of the Council not to be more explicit about particular requirements in this regard at an earlier stage if they felt them determinative. I have no information before me about any discussions that may have taken place between the Council and either applicant in this regard including whether or not this particular aspect was explored. However, this does not mean that the Council acted unreasonably in the PPG's terms particularly in light of the failure of the applicant to put forward any detailed proposals or a mechanism to deliver affordable housing on the site. Given the written representations procedure and timescales this notional refusal reason did not prolong the

¹ Northumberland Employment Land Review (2011), Employment Land and Premises Demand Study (2015), Employment Land: Strategy Considerations and Assessment of Sites Technical Paper (2018), the Northumberland Employment Land Take-up Study (2018) and Employment Site Schedule 2016/17 (2018).

proceedings in this case and the applicant had the opportunity to address the matter in their final comments.

13. In any event, bearing in mind the PPG's guidance that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense, the applicant has not shown how wasted expense was incurred in this respect.
14. Unreasonable behaviour leading to unnecessary or wasted expense in the appeal process in the terms set out in the PPG has not been demonstrated. Consequently, an award of costs is not justified, and the application is therefore refused.

Geoff Underwood

INSPECTOR