Costs Decision

Site visit made on 26 April 2022

by Philip Mileham BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2022

Costs application in relation to Appeal Ref: APP/C1570/W/21/3282082
Land at Old Mead Road, Henham, CM22 6JL

- 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 Elsenham Nurseries & Poultry Farm Limited for a full award of costs against Uttlesford District Council.
- The appeal was against the refusal of planning permission for an outline planning application, with all matters reserved except scale & access, for the erection of up to 6 dwellings and associated work.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The 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.

3. The appellant considers that the proposed development should not have been refused planning permission having regard to the fact an identical proposal has extant approval on the site albeit subject to variances in the level of Planning Obligations that would be provided.

4. The appellant has described in their costs application a number of elements of wasted expense in relation to legal fees incurred during the Council's determination process. However, it should be noted that this costs decision relates to those costs incurred in the making of this planning appeal rather than any costs incurred during the original determination of the proposal by the Council.

5. The appeal to which this costs application relates, was made following the Council's reasons for refusal which included the seeking of affordable housing contributions on the appeal site. As set out in the main appeal decision, the proposal would not trigger an affordable housing contribution by virtue of the site size but also that other nearby but not adjacent land, was no longer within the appellant's ownership contrary to the views of Council Officers. Furthermore, an intervening property referred to by the Council in their committee report (known as 'the Chalet') which was formerly in the appellant's ownership was registered to another owner in 2005.

6. Whilst it is unclear whether the sale of the property in 2005 predated the adoption of the Uttlesford Local Plan (ULP) in January 2005 and any new policy requirements it included, there is nothing before me to indicate that the nearby land was still within the appellant's ownership when the proposal was determined. There is no evidence before me to indicate there had been any attempt by the appellant to deliberately circumvent the Council's policies by sub-dividing the land to avoid a planning obligation.

7. In addition to the above, the wording of Policy H9 of the ULP does not make reference to the seeking of contributions for affordable housing from wider but contiguous sites within the same ownership. As set out in the appeal decision, the site would not trigger the thresholds in either the ULP policy or the Framework due to it being below 0.5 hectares and being for 6 dwellings. As such, there was no planning policy support for the Council's approach towards the seeking of affordable housing contributions on the appeal proposal. There is no evidence before me to indicate support for the Council's approach was set out elsewhere such as within a Supplementary Planning Document (SPD) that would have provided justification for refusing the proposed development for this reason.

8. The appellant had submitted a legal opinion to the Council in relation to the seeking of contributions towards affordable housing. The Council's committee report recognised that seeking such contributions would be unlikely to be sustained if an appeal were made, but nonetheless, a contribution was sought. There is no evidence in front of me as to how the seeking of such a contribution would have meet the tests at paragraph 57 of the National Planning Policy Framework (the Framework). Therefore, I consider it was unreasonable for the Council to seek affordable housing contributions on the appeal proposal. As a result, this appeal has been generated as a direct consequence of this unreasonable behaviour.

9. In its' determination of the proposed development, the Council included a reason for refusal in relation to highway safety having regard to visibility. The Council indicated in the reasons for refusal of planning permission that visibility was substandard which was based on the visibility splay not being calculated in accordance with the technical advice note CA185 from the Design Manual for Roads and Bridges (DMRB) issued in November 2019. There is no evidence to indicate that the DMRB technical advice had changed between the fallback permission being granted and the refusal of the appeal development. Furthermore, the site access point has not altered from the fallback and a period of around 3 months had elapsed between the fallback permission being approved on 23 April 2021 and the appeal proposal being refused by the Council on 21 July 2021.

10. There is no evidence before me to justify why the advice within DMRB CA185 in respect of the visibility splays was not identified at the outset. As such, I consider that the Council has acted unreasonably by failing to reflect the appropriate technical advice in a timely manner. This is notable having regard to the fact that the date of publication of the technical advice was significantly in advance of the appeal proposal being submitted. As a result, I consider the appellant has incurred unnecessary expense in having to prepare supporting evidence relating to this reason for refusal.

Conclusion

11. For the above reasons I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has been demonstrated and that a full award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Uttlesford District Council shall pay to Elsenham Nurseries & Poultry Farm Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Uttlesford District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Philip Mileham

INSPECTOR