



Costs Decision

Site visit made on 3 August 2022

by Peter D Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 September 2022.

Costs application in relation to Appeal Ref: APP/W0530/W/21/3286850 Bennell Farm, West Street, Toft CB23 7EN.

- 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 Edward Bennell (Bennell Developments Ltd) for a full award of costs against South Cambridgeshire District Council.
 - The appeal was against the refusal of planning permission for the erection of 41 dwellings including two self-build plots and associated development.
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Decision

1. The application for an award of costs is allowed **in part** 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 caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Awards against a local planning authority may be either procedural, relating to the appeal process or substantive, relating to the planning merits of the appeal. The appellant has raised concerns on both procedural and substantive grounds.
4. The procedural grounds relate to the appellant's assertion that the Planning Committee was unduly influenced by one Member in overturning the Officer's recommendation in respect of the appeal proposal and that the information provided to Members regarding the height of the apartments was incorrectly stated as 3 storey.
5. Procedural grounds are intended to relate principally to the appeal process itself although the PPG does state that behaviour at the application stage can be taken into account where it directly leads to the appeal.
6. In the first matter of Member behaviour, whilst it is of course incumbent on all Members to come to the Planning Committee meeting with an open mind, where this does not happen it is difficult to reach a view as to the degree to which an individual member's behaviour may influence the committee as a whole. I have viewed the Council's web streaming of the planning committee meeting, as it was referenced in the documents before me, and in this regard I am not satisfied that there is sufficient evidence to reach a conclusion of undue influence. There seemed to be a wide-ranging debate at the Committee regarding the proposal before the committee took its decision. In any event there are other procedures which would more appropriately deal with matters of Member conduct. In short I am not

persuaded that the views of one Councillor did unduly influence the Committee nor that the actions of the planning committee amounted to unreasonable behaviour.

7. In respect of the height of the development, whilst the case officer's report may have referred to a 3 storey height to the apartment blocks, it was made clear to Members at the committee meeting that what was being talked about was 3 floors of accommodation, the topmost of which was within the roof space. It was also clear from the site layout plans presented which of the units were 2.5 storeys in height and where they were located and on that basis the committee reached a view regarding their impact. I am not satisfied from viewing the evidence that there was any remaining doubt that the height of the apartments were two full storeys plus a floor of accommodation within the roofspace.
8. In respect of the procedural concerns I am not satisfied that there are grounds for an award of costs.
9. Regarding the substantive grounds, the appellant asserts that in taking its decision, contrary to the officer's recommendation, the committee did not properly consider the prevailing character and appearance of the surroundings and has failed to substantiate the reason for refusal on appeal.
10. In circumstances where the application is refused, contrary to the officer's recommendation, it is incumbent on the Committee to provide clear planning reasons for the refusal based on the policies of the Council's adopted Development Plan. It is clear from the evidence before me that Members were in agreement that there would be harm in terms of visual impact from the height, scale and density of development particularly in the south west corner of the appeal site and therefore conflict with SCLP Policy HQ/1 which sets out design principles for all development. The Committee considered, contrary to its officer, that the adverse visual impacts of the development on the character of the western edge of the settlement outweighed any benefits.
11. I acknowledge that the development to the east of the access road demonstrates similar forms and heights of development (indeed slightly higher) to that on the appeal site but it was not unreasonable for the Committee to conclude that it considered a lower, less dense form of development would be more appropriate on the village edge. Although a case has been referred to in Waterbeach the details of this and its relationship to the village are not before me and therefore I am not able to reach a view regarding comparability.
12. The matter of the impact of the development on the character, appearance and setting of the western edge of Comberton is a subjective decision as to the assessment of impact and the weight of this relative to the benefits and whilst I have reached a different conclusion to the Council in my main decision letter this of itself does not mean the Council's behaviour has been unreasonable.
13. I am satisfied that there does not appear to have been anything unreasonable in the manner in which the Committee reached a different conclusion to its officer.
14. With regard to whether the Council has substantiated the reason for refusal in its statement on appeal however I am concerned that the Council has acted unreasonably. Whilst there is a reasonable defence and substantiation of the first part of the reason for refusal around the visual impact of the higher denser form of development in the SW of the site there is a very limited attempt to substantiate the second part of the reason for refusal regarding what the Council considers to be a lack of high quality, accessible open space.

15. The on-site provision of informal open space on the south end of the site is easily accessible and exceeds what would be required for the number of houses proposed in SCLP Policy SC/7. Moreover, a planning obligation had already been signed providing financial contributions to off-site children's play, off-site sports pitch provision, allotments and green infrastructure enhancements. Given this, the Council's appeal statement does not make clear what is meant in the second part of the reason for refusal or its concerns. Accordingly, the Council has failed to substantiate this part of the reason for refusal which in turn means that the appeal proposal's supposed failing in respect of open space is vague, generalised and unsupported by any objective analysis - both grounds for unreasonable behaviour.
16. In conclusion, whilst I am satisfied that the Council had a basis for its decision in part and supported the reason for refusal with a relevant Development Plan policy, I am not satisfied that the second part of the reason for refusal was clear in its intent, demonstrated by the Council's inability to substantiate it. Thus, whilst the reason for refusal was justified in part and the appellant's wish to challenge the decision on appeal therefore carries some necessary costs, I consider that the appellant was put to unnecessary expense in having to defend the second part of the reason for refusal when it was not clear what the intention was or that it should have been applied in that form.
17. Whilst I do not support a full award of costs for the reasons above, I find that unreasonable behaviour has resulted in some unnecessary or wasted expense, as described in the *Planning Practice Guidance*, in respect of the second part of the reason for refusal and that a partial award of costs is justified.

Costs Order

18. 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 South Cambridgeshire District Council shall pay to Mr Edward Bennell (Bennell Developments Ltd) the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in preparing the appeal statement in respect of the second part of the reason for refusal relating to the provision of open space; such costs to be assessed in the Senior Courts Costs Office if not agreed.
19. The applicant is now invited to submit to South Cambridgeshire 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.

P. D. Biggers

INSPECTOR