



Costs Decision

Site visit made on 12 July 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2022

Costs application in relation to Appeal Ref: APP/W1850/W/22/3290424 Castle End Farm, Lea HR9 7JY

- 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 Hall of Churcham Homes Ltd for a full award of costs against Herefordshire Council.
 - The appeal was against the refusal of planning permission for under section 78 of the Town and Country Planning Act 1990 for a failure to give notice within the prescribed period of a decision on an application for planning permission for residential development of 9 dwellings.
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Decision

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

Reasons

2. Irrespective of the outcome of an appeal, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph 049 of the PPG sets out the examples of unreasonable behaviour by local planning authorities. It states that in any appeal against non-determination, the local planning authority should explain their reasons for not reaching a decision within the relevant time limit, and why permission would not have been granted had the application been determined within the prescribed period.
4. The applicant contends that the Council has acted unreasonably by preventing a development which should have been permitted and matters were capable of being dealt with by condition; by making vague, generalised or inaccurate assertions about the proposal's impact which are unsupported by any objective analysis and evidence to substantiate the reasons for refusal. The applicant also contends that the Council have not adhered to deadlines and failed to promptly review their case following submission of the appeal.
5. Despite the applicant's comments including that the proposal provides a mix of housing; its accessibility to services and facilities; design and housing land supply I have found that the Council had reasonable concerns about the impact of the proposed development, as seen from my decision.
6. Although I acknowledge that the Council's evidence in respect of the noise impact is somewhat lacking, in coming to my decision, it is apparent to me that

the Council had legitimate concerns in relation to other matters based on the evidence provided, including in respect of highway safety and the historic environment. In my view, concerns relating to these matters could not be overcome through the imposition of planning conditions.

7. Whilst I understand the sense of frustration associated with the application process it is not unreasonable to expect Officers to properly evaluate the application. There is no substantive evidence before me to indicate that the Council have not provided information in a timely manner or failed to adhere to deadlines during the appeal process. In this particular regard it would not be reasonable to conclude that the Council had behaved unreasonably in terms of procedure based on the evidence before me.
8. I have noted the advice of the Council's internal departments. However, the decision is one which is a matter of planning judgement. It is within the gift of Planning Officers to either concur with their advice or take a different view from that of their consultees. They are not duty bound to follow the advice, provided that there are sufficient planning grounds to come to a contrary view.
9. The applicant contends that the impact upon the historic environment has been considered previously and refers to appeal decisions that he considers relevant. However, it is apparent that the previous schemes are materially different to the development before me. In any event every appeal must be considered on its own merits, as I have done.
10. The putative reasons for refusal are complete, precise, specific and relevant to the application. They clearly state the policies of the Herefordshire Local Plan – Core Strategy that the proposal would be in conflict with. The Council has substantiated its position at appeal rather than making vague, generalised or inaccurate assertions.
11. I am not persuaded that the Council have failed to pay regard to other permissions in the area including the prior approval on the appeal site. Again, consideration of the weight to be given to these schemes is a matter of planning judgement for the decision taker to come to a view based on the individual merits of the case.
12. The appellant contends that the site has been identified for inclusion within the settlement boundary of the Lea Neighbourhood Development Plan, but the Council made a U-turn. It is not within the scope of a Section 78 appeal to consider such matters. I therefore afford this matter negligible weight.
13. As a result, it follows that I do not agree that the Council has acted unreasonably in this case given the concerns relating to the proposal.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. For this reason an award of costs is not justified.

B Thandi

INSPECTOR