The Planning Inspectorate

Costs Decision

Hearing held on 7 February 2023

Site visit made on 7 February 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2023

Costs application in relation to Appeal Ref: APP/U1430/W/22/3309165
Villa Flair, Union Street, Flimwell TN5 7NT

- 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 L Sutton for a full award of costs against Rother District Council.
- The appeal was against the refusal of planning permission for Erection of a detached bungalow with three bedrooms and a detached store and double garage together with associated hardstanding, turning area and use of existing access on to the B2087.

Decision

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

Reasons

2. The Planning Practice Guidance (the PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. The applicant has made the application on substantive grounds. I address each of her points in turn.

(i) Preventing or delaying development which should clearly be permitted

4. The applicant has referred to the approach taken by the Council in considering the impact on the Area of Outstanding Natural Beauty (AONB) and the accessibility of the site to services and facilities. Whilst I accept that there were some discrepancies between the policies referred to in the Council's decision notice and those referred to in written and oral evidence, the Council's case in relation to the impact of the proposal on the AONB is clearly expressed in the reason for refusal. References to alternative policies do not alter the Council's case in this regard, given that those policies primarily relate to the same considerations. The same logic applies to the Council's approach to policies concerning the principle of development.

5. It is regrettable that there were many policies omitted from the reason for refusal, including the neighbourhood plan policies which are part of the development plan and were raised by interested parties. I do understand the appellant's frustration in this regard. However, none of the additional policies referred to add any determinative consideration that isn't reflected in the original policies referred to. In this regard, the Council did not act

unreasonably. Furthermore, it is very difficult to understand how this would have led to any unnecessary or wasted expense in the appeal process.

6. Whilst I concur with the applicant that Objective 2 of the AONB Management Plan is complied with, this is not the only policy consideration in relation to the impact of the proposal on the AONB. The reasons given by the Council were reasonable and the effect of the development on the AONB is a subjective matter as opposed to an objective issue. As such, this is not a consideration which indicates unreasonable behaviour.

7. The applicant broadly contends that the Council's position on access to services and facilities would rule out any additional residential development in Flimwell. However, I do not accept that argument, particularly given the conclusions I have reached in relation to the poor access of the site to services and facilities.

8. Whether or not the appeal site is previously developed land is not a determinative consideration in this case and as such, the Council's approach in considering this matter could not have led to any unnecessary or wasted expense in the appeal process.

(ii) Not determining similar cases in a consistent manner

9. Much has been made by the Applicant of the appeal decision issued under PINS reference APP/U1430/W/21/3285269 (the 'Whatlington appeal'). However, the appellant's own application for costs, at paragraph 2.6, demonstrates that there are many differences between the two appeals.

10. Furthermore, and most importantly, the Inspector in that case found no harm to the AONB. As a result, the approach advocated at National Planning Policy Framework (the Framework) Paragraph 11d) was different to that applied by the Council in relation to this appeal. In the case of this appeal the Council considered that there would be harm to the AONB and that such harm would mean that Paragraph 11d)ii was not engaged. For that reason alone, the Council did not act unreasonably in coming to the conclusions it did, even in the context of the Whatlington appeal decision.

11. In addition, the Inspector in considering the Whatlington appeal, did find harm with regard to the policies concerning the settlement boundaries and those pertaining to access to services and facilities.

(iii) refusing planning permission on a planning ground capable of being dealt with by conditions

12. Whilst there are several conditions which I have imposed which address some of the Council's concerns, these elements of the proposal do not amount to the totality of the Council's case in relation to the effect on AONB nor the site's access to services and facilities. As such, the Council did not act unreasonably in forming the conclusions it did in this context.

(iv)failure to produce evidence to substantiate each reason for refusal on appeal

13. As already expressed in relation to point (i) none of the additional policies referred to altered the main issues or the central arguments made by the Council in relation to its case. As such, the Council has not acted unreasonably nor caused unnecessary or wasted expense.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated. As such, the application for an award of costs is refused.

Luke Simpson

INSPECTOR