



Costs Decision

Site visit made on 20 June 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2023

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3315399 Land to the east of 279 Quemerford, Calne, Wiltshire SN11 8LA

- 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 Julian Miller of JLS Building & Developments Ltd for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for Outline planning application for the erection of 4 dwellings and associated works.
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Decision

1. The application for a full award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. Paragraph 031 of the PPG states that unreasonable behaviour in the context of an application for an award of costs may be either procedural or substantive.
3. Paragraph 049 of the PPG sets out some examples of unreasonable behaviour by local planning authorities. The applicant considers that the Council have exhibited unreasonable behaviour on a number of these.
4. It was not unreasonable for the Council to conclude that the proposal would conflict with the settlement strategies of the development plan by virtue of the location of the proposal being outside of the settlement limits of Calne. It will be seen from my decision that I have also come to the same conclusion on this matter. The Council was aware that the tilted balance was engaged at the time of the decision. This is clear from the Planning Officer's Delegated Report. The Council also carried out a 'Planning Balance' in their conclusion where the benefits of the proposal are acknowledged. However, I agree that a more refined assessment of the 'balancing exercise' could have been carried out, as well as acknowledging all of the benefits of the scheme put forward by the applicant.
5. Nevertheless, I have carried out my own 'planning balance' in my decision and concluded that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Therefore, the allegation that the Council failed to carry out the balancing exercise correctly has not resulted in any unnecessary or wasted expense in the appeal process.

6. Furthermore, I note the examples provided by the applicant of similar sites where less weight was afforded to development plan policies and more weight attributed to the sustainable location of the site and contribution towards the housing shortfall. However, the weight to be afforded to both the adverse impacts and the benefits of a proposal is a matter of planning judgement for the decision maker. Due to this finely balanced balancing exercise, I consider that it was reasonable for the Council to come to a different conclusion on the 'planning balance' of the proposal to that of the other examples provided. I therefore do not consider that the Council have not determined similar cases in a consistent manner, and they have not behaved unreasonably in this regard.
7. It was not unreasonable for the Council to omit reference to the remaining 6 dwellings granted planning permission under the outline consent¹ to the west of the appeal site, most notably in respect of the impact upon residential amenities. Whilst I have ultimately found in favour of the applicant on this matter, the proposal involved an additional access/turning head to the rear of 281 and 283 Quemerford. Furthermore, this outline consent was also within the development limits, where the principle of development was in line with the development strategy for the area. Therefore, the proposal is not directly comparable with the proposal before me, and thus the Council have not behaved unreasonably.
8. In addition, I consider that the Council provided objective analysis on both the proposal's impact on landscape and residential amenity, despite the information submitted by the applicant in support of the proposal. Whilst I took a different view from the Council in regard to the proposals impact on residential amenity, the decision on these matters is one which is subjective. They did not make assertions about matters and they did not make exaggerated conclusions. Therefore, I am not persuaded that the Council has acted unreasonably to have concerns regarding the impact of the development on either the living conditions of existing occupants or on its landscape impact.
9. Finally, the applicant argues that the tone of both the Delegated Report and the Council's response to the application for costs is confrontational. Whilst this must have caused the applicant some frustration, I find nothing to suggest that a decision was not reached on the basis of the merits of the proposal. The alleged tone of the report has not resulted in any unnecessary or wasted expense in the appeal process.

Conclusion

10. For the reasons set out above, I conclude that I find that no wasted or unnecessary expense has been incurred by the applicant in the appeal process. The application for a full award of costs is refused.

Laura Cuthbert

INSPECTOR

¹ Application ref 13/04855/OUT