



Costs Decision

Site visit made on 18 July 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2023

Costs application in relation to Appeal Ref: APP/J3720/W/23/3316018 Land north of Mill Lane, Broom, Warwickshire B50 4HR

- 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 Karl Lockley of Lockley Homes (the applicant) for a full award of costs against Stratford-on-Avon District Council.
 - The appeal was against the refusal of grant of planning permission for 8no. custom-build carbon-neutral dwellings with associated ancillary development.
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Decision

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

Reasons

2. Parties in planning appeals normally meet their own expenses. However, 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. Costs applications may relate to events before the appeal. A cost application needs to clearly demonstrate how the alleged unreasonable behaviour has resulted in unnecessary or wasted expense.
3. The PPG gives examples of where a local planning authority is at risk of an award of costs at the appeal, such as refusing to enter into pre-application discussions or to provide reasonably requested information, failure to produce evidence to substantiate a refusal reason, or not determining similar cases in a consistent manner.
4. The applicant contends that the Council behaved unreasonably for not offering pre-application advice; not correctly applying the 'tilted' balance'; affording the incorrect weight to the emerging Site Allocations Plan (the SAP); incorrectly including character of the area as a reason for refusal and not acting consistently in relation to a nearby housing development.
5. The National Planning Policy Framework (the Framework) encourages pre-application advice, but it is not mandatory. Indeed, different Councils offer different pre-application services and it is not uncommon for planning applications to be submitted to Councils without any form of pre-application enquiry or engagement having taken place.
6. The applicant submitted a request for pre-application advice in December 2021 for an outline application for 8 Self Build Custom Houses (SBCH). From the correspondence submitted it is clear there was dialogue and a meeting between the applicant and the Council. The Council advised the applicant that it was waiting for a response from its Policy team regarding the counting and

registration of SBCH and hence was not able to give any further advice on the principle of development at that time. In the circumstances, the Council advised the applicant to withdraw the pre-application request and rightly, in my view, refunded the pre-application fee. Whilst I appreciate this may have been frustrating for the applicant, the Council did engage and refund money for a service it was unable to provide at the time. This does not amount to unreasonable behaviour.

7. It was open to the applicant to have submitted a new pre-application request when the SBCH data became available later in the year and the Council's position would be clearer. The Council's SBCH Demand & Supply Position note was made in April 2022. However, in June 2022 the applicant chose to proceed with the submission of a permission in principle application for 8 SBCH, aware of the Council's settlement strategy, that the Council could demonstrate a 5-year supply of housing land but had a shortfall of SBCH plots.
8. Following the end of the statutory consultation period for the application, the Council emailed the applicant in July 2022 to advise that it could not support the application due to the site's location, which the Demand & Supply Position had helped inform. The Council also included a second reason for refusal relating to character of the area. This is capable of being an issue pertinent to the 'location' element of a permission in principle application, especially as the site lies within character areas identified and protected in the Neighbourhood Plan. Consideration of such matters does not go beyond the requirements of a permission in principle application in this instance, and the Council was within its rights to consider it. Furthermore, there is nothing to prevent the Council from separating character issues from housing strategy/settlement hierarchy issues and making separate reasons. Indeed, I took a similar approach with the main issues in my decision. This does not amount to unreasonable behaviour on behalf of the Council.
9. Whilst the Council had informed the applicant that it would likely refuse the application based on the site's location, it is unclear why the Council did not advise about any concerns relating to the character of the area. I can therefore appreciate how the applicant might have inferred from the Council's earlier advice that the character of the area was not an issue of concern. That said, Section 70 of the 1990 Act¹ requires that where an application is made to the local planning authority it may grant or refuse planning permission. Even if it can be helpful to do so, the legislation does not impose a legal duty upon a local planning authority to enter into discussions with an applicant to resolve problems in a 'live' application or inform them in advance of any likely reasons for refusal.
10. I appreciate that the applicant has had to defend the second reason for refusal and prepare additional documentation from a specialist to support his appeal. However, the Council's delegated officer report discussed the landscape and character of the area so the applicant was aware of the issue before electing to lodge an appeal. It is not uncommon for applicants to have to produce various additional documentation to defend matters at appeal. In this case, the applicant chose to appoint a consultant and submit a Landscape and Visual Appraisal to support his appeal.

¹ Town and Country Planning Act 1990 (as amended)

11. The applicant also chose to proceed with the application when he knew the likely outcome was for a refusal as the Council had told him. In proceeding with the application he was therefore prepared to defend his position at appeal and incur some associated costs if he later decided to do so. The preparation of an additional report may have resulted in some additional costs to the applicant, but I have not found the Council's behaviour to be unreasonable on this matter.
12. The applicant also contends that the Council did not correctly apply the tilted balance. In the submitted delegated officer report the Council clearly referred to the tilted balance and set out its rationale for its planning judgement and stance on the matter, even including appeal decisions for housing schemes elsewhere in the district where Inspectors had come to similar conclusions on the tilted balance. The Council's development plan had a clear housing strategy and settlement hierarchy, and the lack of SBCH does not trump all other matters, as I found in my decision. The Courts have held that the weight that should be given to a particular consideration is a matter for the decision-maker. I am satisfied the Council applied its planning judgment in a rational manner and hence did not act unreasonably.
13. The applicant further contends the SAP should have been given 'very limited minor weight', and the SAP should not have been mentioned on the refusal reason. The fact the SAP is listed in the refusal reason prompts an assessment of it as a material consideration and weight that should be afforded to it. The Framework advises that Council's may give weight to relevant policies in an emerging plan according to their stage of preparation. The plan has been through a Preferred Options public consultation. The Council afforded the SAP only limited weight, as I have done. This is a matter of planning judgment and does not amount to unreasonable behaviour.
14. The applicant accuses the Council of taking a contradictory stance when compared to a housing scheme allowed on the eastern edge of the village in 2016, in referring to Broom being a sufficiently sustainable location. Whilst that may have been stated, that application required consideration of different factors, such as the application was in outline and was a community-led rural exception scheme in the Parish of Bidford-on-Avon, in broad accordance with the development plan, and which included affordable housing that could be secured by a planning obligation. That application is not directly comparable to the scheme before me. I am satisfied, on the evidence before me, that the Council's position is not contradictory to a decision made some six years ago, and that the Council has not behaved unreasonably in refusing the appeal scheme.
15. Overall, I find the Council has not behaved unreasonably. Consequently, I need not concern myself as to whether wasted expenditure has occurred, as both tests need to be satisfied before an award of costs can be made.

Conclusion

16. I find that unreasonable behaviour, resulting in unnecessary or wasted expense at appeal as described in the PPG, has not been demonstrated. An award for costs is therefore not justified.

K. Stephens INSPECTOR