



Costs Decision

Hearing held on 5 September 2023

Site visit made on 5 September 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Costs application in relation to Appeal Ref: APP/K2420/W/23/3316829 Land to the south-west of Lutterworth Road, Flanders Close, Burbage, Hinckley

- 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 Redrow Homes and Peter Andrew Farmer for an award of costs against Hinckley and Bosworth Borough Council.
 - The appeal was against the refusal of planning permission for the erection of up to 80 residential dwellings (Use Class C3), open space provision and associated infrastructure, with all matters reserved except access.
-

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.
3. In this case, the planning application was refused permission for two different reasons. The first pertained to the effect of the development upon the character and appearance of the surrounding area; and the second related to the effect of the development upon highway safety.
4. In the case of the first reason for refusal, the Council identified a potential breach of Policy DM4 of the Site Allocations and Development Management Development Plan Document (2016) (the Development Plan). Amongst other matters, this policy seeks to ensure that proposed developments maintain the character of the countryside. In order to ensure this, the policy lists several types of development that might be appropriate in these areas.
5. The appellant has suggested that this policy contrasts with the requirements of Policy 1 of the Burbage Neighbourhood Plan (2021) (the Neighbourhood Plan), even though this policy has not been cited on the Council's decision notice. Amongst other matters, this seeks to support development adjacent to the settlement boundary.
6. However, Policy 1 of the Neighbourhood Plan is clear that it should be read in conjunction with other policies. In result, the application of Neighbourhood Plan Policy 1 does not preclude an assessment against other policies, such as Policy DM4. Therefore, I do not believe that the adoption of the Neighbourhood Plan

has superseded policies in the Development Plan. This means that I am unable to find the approach taken by the Council to be unreasonable.

7. It has been suggested that the application of Policy 1 of the Neighbourhood Plan allows for the creation of market housing on the periphery of the settlement, which would not be supported by Policy DM4 of the Development Plan.
8. However, Policy DM4 sets out numerous types of development that might be acceptable in these areas and the wider development plan sets out locations where market housing might be acceptable. In result, the approach taken by the Council sets out a strategy for the delivery of market housing. Therefore, I cannot conclude that the approach taken by the Council to be unreasonable or lacking in justification.
9. The Council submitted evidence at a late stage. This was outside of the previously provided timetable for the submission of evidence. However, in doing so, the Council knew that there was a likelihood that I might not accept the submitted additional evidence. This is what occurred, and I have not had regard to this evidence in reaching my decision.
10. However, the appellant prepared a rebuttal statement if the Council's late evidence was accepted. Although I have noted this, the decision to prepare the rebuttal statement was the decision of the appellant and was not a requirement of the process. In result, this is not evidence of unreasonable behaviour that result in wasted and unnecessary expense on the part of the appellant.
11. The planning application was also refused planning permission due to the potential effect on highway safety. However, the reason for refusal was clear in that the Council considered that there would be harm to locations including the junction of Lutterworth Road and Flanders Close. This reason is therefore precise.
12. Following the submission of the appeal, the Council withdrew the second reason for refusal. However, this took place at an early stage, which prevented the need for the appellant's Statement of Case to consider highway matters in substantial depth.
13. The appellant was also not required to enter into discussions regarding the effects of the development upon highway safety at the hearing. In result, I do not find that the approach taken by the Council to be unreasonable and resulted in wasted expense for the appellant.
14. In consequence, I cannot agree that the Council has acted unreasonably in this case. As such, I do not believe that the appellant was put to unnecessary or wasted expense. Therefore, an award of costs is not justified.

Conclusion

15. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

Benjamin Clarke

OINSPECTOR