



Costs Decision

Hearing held on 13 December 2023

Site visits made on 12 and 14 December 2023.

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Costs application in relation to Appeal Ref: APP/D0515/W/23/3327578 Land off Upwell Road, March, PE15 9EJ

- 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 Allison Homes for a full award of costs against Fenland District Council.
 - The appeal was against the refusal of planning permission for a development described as "outline planning application for residential development of up to 110 dwellings alongside associated site infrastructure and open space – all matters reserved except for access."
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Planning Practice Guidance (PPG) tells us that in general, parties in planning appeals and other planning proceedings normally meet their own expenses. All parties are expected to behave reasonably to support an efficient and timely process. Where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary or wasted expense in the appeals process, they may be subject to an award of costs. The aim of the costs regime, amongst other things, is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice.
3. The PPG gives examples of unreasonable behaviour which may result in an award of costs against a Council. A substantive award of costs may be made where (and the list is not exhaustive) the Council has: prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The application for costs asserts that the Council failed to approve an application which complied with policy which caused the applicant unnecessary delay and wasted expense.
5. Whilst the Council is not duty bound to follow the advice of its professional officers if a different decision is reached the Council must clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. In this case, the Council's planning officer concluded that that the proposed development complied with policy and

recommended approval. At Committee Members resolved to refuse the application as the site is not allocated for housing and therefore the principle of development is unacceptable due to the sites undesignated nature. No policies are quoted in the Committee minutes or within the reason for refusal.

6. The Council's submission at the Hearing confirmed that they considered the proposal did not comply with Policy LP4 of Fenland Local Plan (2014) (LP). This policy relates specifically to housing. Part B of the policy relates to the criteria for assessing housing development proposals and states "for small scale housing proposals on the edge of market towns, or any housing proposals within market towns, see, in particular, Policy LP16. There is no definition of small scale contained within the LP.
7. To aid in determining proposals for small scale development the Council produced a Guidance and Clarification Note about Policy LP4 Part 4 – Criteria for Assessing Housing Development Proposals (so-called "windfall" policy). This states that any site for between 1 to 249 dwellings may be considered as having potential for development. The Council state that this has not been adopted but has been used in the determination of small scale windfall sites for many years.
8. It was the Council's view that due to the scale of the proposal combined its location behind existing dwellings it did not constitute small scale development. However, this view was only raised during the appeal process, with the reason for refusal making reference to the site not being allocated. I have found that based on the evidence before me that the proposal complied with policy. Additionally, there is no requirement, apart from developments of 250 dwellings or more, for housing to be located on allocated sites.
9. In the planning judgement, it appears to me that having regard to the provisions of the development plan, national planning policy and other relevant considerations, the proposed development should reasonably have been permitted. The refusal of planning permission therefore constitutes unreasonable behaviour contrary to the basic guidance in the National Planning Policy Framework (the Framework) and the PPG and the applicant has been faced with the unnecessary expense of lodging the appeal with regards to the first reason for refusal.

Conclusion

10. I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and that an award of costs is justified in this regard.

Costs Order

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Fenland District Council shall pay Allison Homes the costs of the appeal proceedings described in the heading of this decision.
12. The applicants are now invited to submit to Fenland District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as the amount, such costs to be assessed in the Senior Courts Costs Office if not agreed.

Tamsin Law

INSPECTOR