



Costs Decision

Site visit made on 2 November 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Costs application in relation to APP/G1630/W/23/3325421

Land off Ruby Avenue, Bishops Cleeve GL52 7ZN

- 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 Rooftop Housing Association Ltd for a full award of costs against Tewkesbury Borough Council.
 - The appeal was against the refusal of planning permission for proposed residential development to erect 22 units with associated car parking; development 100% affordable
-

Decision

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

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. This application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense for the applicant.
3. Firstly, the applicant contends that it was unreasonable for planning permission to have been refused contrary to the officer recommendation. Members of planning committees are entitled to make decisions that are contrary to the officer recommendations that they receive. The applicant's case is that Council officers took advice from their professional consultees, which the Committee acted against without sufficient evidence.
4. However, both the decision notice and the Council's Statement of Case outline and expand upon the reasons that led to the refusal of the application due to specific circumstances relating to the site and proposal, with the decision notice providing clear references to local and national policy to justify the decision taken for each of the reasons. While it can be seen from my decision that I did not agree with the Council's conclusions on the matters, I nevertheless find that they adequately outlined the reasoning for each.
5. I acknowledge the Financial Viability Assessment submitted during the application, the conclusions of the Council's independent assessor in this regard, and the ultimate decision of the Council to withdraw this reason for refusal. Nevertheless, it remains that the Committee is entitled to form an opinion contrary to the Officer recommendation and, even if I were to find that this was unreasonable in this instance, it remains that the proposal would still have been refused for other reasons such that the appeal would still have proceeded.

6. Secondly, the applicant contends that the Council acted unreasonably in its late concession regarding reasons for refusal 1 and 2, being whether the proposal would comply with paragraph 97 of the National Planning Policy Framework insofar as it relates to services and facilities; and whether it would provide affordable housing in a seamless and integrated manner.
7. On the basis of the evidence before me, approximately one month after the publication of another appeal decision in the area on 11 September 2023, the Council conceded that it could not demonstrate the required level of housing land supply and that, in accordance with the Framework, there were no adverse impacts of granting permission for the proposal that would significantly and demonstrably outweigh the benefits. This timescale does not appear to be unreasonable, given that the Council would have had to have internal discussions on the matter.
8. I acknowledge the reference of the appellant to the Statement of Common Ground dated August 2023, which they state showed that the Council had conceded the point much earlier, thereby creating a greater delay. However, this is not my reading of that Statement. The Council, in that statement, is clear that it believes a five year housing land supply can be demonstrated using the standard method, and maintains this approach. However, the Council acknowledges that on other schemes Inspectors have not accepted this approach, and have found that no such housing land supply can be demonstrated. The Council states that if the same conclusion is reached in this case, then it would be content to accept that the titled balance is engaged. The Council does not explicitly accept a lack of 5 year housing land supply in this case, or indeed that there are no adverse impacts of granting permission for the proposal that would significantly and demonstrably outweigh the benefits, until after the publication of the September 2023 appeal decision.
9. Finally, the appellant contends that the appeal was generally undefendable as a whole from the Council's perspective. In particular, they point to the lack of development policy plans cited in the first reason for refusal, relating to services and facilities. However, the Council makes clear reference in this reason for refusal to the Framework, which is a material consideration. I note that the relevant reserved matters application in respect of the Cleavelands permission was not submitted within the required timeframe, such that its designation of the site as a 'High Street' does not carry any weight and that under the circumstances no marketing campaign for the use of the site was required. Nevertheless, it remains that another implementable planning permission does remain at the site. This too is a material consideration. While I did not agree with the Council's conclusion regarding the impact of the proposal on services and facilities, it remains that material considerations existed that justified the Council taking the stance it did, such that the lack of specific local plan policy in this regard does not, in itself, lead to the approach taken to be unreasonable.
10. Overall, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance has not been demonstrated, and an award of costs is not justified.

C Rafferty

INSPECTOR