



Costs Decision

Hearing held on 20 February 2024

Site visit made on 20 February 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2024

Costs application in relation to Appeal Ref: APP/C1435/W/23/3328328 Land off Potmans Lane, Lunsford Cross, Ninfield TN39 5JL

- 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 Barry Hepburn for a full award of costs against Wealden District Council.
 - The appeal was against the refusal of planning permission for frontage development of 13 no. dwellings comprising a mix of two, three and four bedroom detached and semi-detached houses.
-

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. It adds that local planning authorities are at risk of an award of costs against them if they behave unreasonably with respect to the substance of the matter under appeal, for example, by not determining similar cases in a consistent manner, by refusing planning permission on a planning ground capable of being dealt with by conditions or by preventing development that should clearly be permitted having regard to material considerations.
4. Outline planning permission was granted at the site for 13 units in 2016. In the officer's report for that application, it was stated that the site would have reasonable access to services and to public transport links and that, as the site is close to facilities within north Bexhill, it is not considered that the site's location would be unsustainable in location terms. Subsequent to this, in 2019, the Inspector for an appeal on the adjacent site stated in his decision that the site is not a particularly suitable location for the proposed development and that occupiers would be reliant on private cars to access everyday services. There is no suggestion that there has been a change in the proximity of such services to the site or the level of services or facilities since 2016.
5. It was not unreasonable, in the appeal before me, for the Council to adopt a stance on this issue to reflect the later 2019 appeal decision, which is in contrast to their earlier view in 2016.
6. It is noted that in determining an application for housing at the Corner House, which is effectively at the bottom of Potmans Lane, the officer's report identified that alternative forms of transport to the private care are reasonable

for a rural location. However that site is almost immediately adjacent to the bus stops in Lunsford Cross so has better access to this service than the appeal site; a point also noted in the officer's report for that application.

7. As such, in terms of the considerations to assess when evaluating the accessibility of the site's location, there was new evidence before them that wasn't before them at the time of the outline permission in 2016 and hence the change in the Council's stance in that time was not unreasonable. They have therefore not been inconsistent.
8. The second reason for refusal related to odour pollution. Southern Water were consulted on the application and requested an odour assessment be provided on the basis that they apply a precautionary buffer zone for any development located within 500 metres of the boundary of a Wastewater Treatment Works; which the appeal site is. Although the assessment was provided and showed that there would be no odour impact, it was not unreasonable for this to be requested given Southern Water's approach. Moreover, given the fundamental nature of the concern, it was not unreasonable to require this to be addressed before the determination of the application instead of dealing with it by a condition.
9. It is noted that odour was not an issue for the recent application for the Corner House, but the Council state that as that application was not for a major development, Southern Water would not have been consulted.
10. There is a lack of clarity regarding whether there is an extant planning permission at the site. However, this matter is a consideration secondary to the assessment of the development against the development plan. Clearly were the permission extant this would carry greater weight than if it wasn't. But even if it wasn't, the granting of outline consent and some of the reserved matters, would nonetheless be a significant material consideration. This is also recognised in the officer's report insofar as it states that there should be no change in the decision made by the Council if there is no change in circumstances since the granting of outline permission. As a result, it was clear the Council had regard to their previous decision as a significant material consideration and there was therefore no unreasonable behaviour on behalf of the Council in this regard.

Conclusion

11. In summary, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and so an award of costs is not justified.

A Owen

INSPECTOR