



Costs Decision

Site visit made on 28 February 2024

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 APRIL 2024

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3330141 8 Sutton Lane, Sutton Benger, Wiltshire SN15 4RU

- 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 William McMyn for a full award of costs against Wiltshire Council.
 - The appeal was against the refusal of planning permission for erection of 2 No. dwellings with detached garages and associated ancillary development.
-

Decision

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

Procedural Matter

2. For the avoidance of doubt, the associated appeal decision has not been affected by the application for costs. The two matters are entirely separate.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance 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.
4. In the associated appeal decision, after establishing that paragraph 11 d) ii. of the National Planning Policy Framework (the Framework) is not engaged with respect to the proposed development, I found that the proposed development would conflict with the development plan when considered as a whole and that the other considerations do not indicate that the appeal must be determined otherwise than in accordance with the development plan.
5. However, at application stage, paragraph 11 d) ii. of the Framework was engaged, meaning that the planning balance was to be undertaken differently than at the appeal stage.
6. In determining the planning application, the Council referred to the harm arising from the identified conflicts as not being significantly and demonstrably outweighed by any benefits, in accordance with paragraph 11 of the Framework. However, this is not the correct formulation of the test given at paragraph 11 d) ii. of the Framework, which instead states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
7. In this case, where, as identified in the associated appeal decision, the weight given to the adverse impacts and the weight given to the potential benefits of

the proposed development were not significantly different to each other, if the Council had correctly applied paragraph 11 d) ii. of the Framework it is likely that they would have concluded that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, meaning that the Framework's presumption in favour of sustainable development would apply.

8. Briefing Note No. 22-09¹ was of particular relevance at application stage, due to the Council's housing land supply position at that time. Paragraph 6.1(iii) of Briefing Note No. 22-09 states that the Council will positively consider speculative applications where there are no major policy obstacles material to the decision other than a site being outside settlement boundaries or unallocated. It has not been demonstrated that Briefing Note No. 22-09 was considered as part of the Council's decision-making, which was a material consideration which would likely have weighed in favour of the proposed development.
9. Taking all of the above into account, on a balance of probabilities I consider it likely that at the time the Council's decision was made, the proposed development should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The Council's behaviour in preventing development which should clearly have been permitted at that time was unreasonable.
10. This unreasonable behaviour caused the applicant to incur unnecessary expense in the appeal process in relation to professional fees incurred in the preparation of planning appeal documents and responding to issues raised by the Council in their Appeal Statement.

Conclusion

11. For the reasons given above, unreasonable behaviour resulting in unnecessary expense has occurred and a full award of costs is therefore warranted.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 (as amended) 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 Wiltshire Council shall pay to Mr William McMyn, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
13. The applicant is now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alexander O'Doherty

INSPECTOR

¹ 5 Year Housing Land Supply and Housing Delivery Test: Briefing Note No. 22-09 (April 2022) (Wiltshire Council)