
Costs Decision

Site visit made on 28 March 2024

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2024

Costs application in relation to Appeal Ref: APP/M2325/W/23/3332286 Land adjacent to Edgeley, School Road, Westbury with Plumpton FY4 5LJ

- 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 Richard Ellis for a full award of costs against Fylde Borough Council.
 - The appeal was against the refusal of planning permission for Erection of single detached dwelling.
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Decision

1. The application for a full 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. Unreasonable behaviour may be procedural and/or substantive. Examples of unreasonable behaviour include preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations, failure by a local planning authority to produce evidence to substantiate each reason for refusal on appeal, and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
3. The appellant states that the Council has acted unreasonably in deciding to refuse the application subject of the appeal because it failed to have regard to two material planning considerations, which the appellant considers to be of significant weight. The first is a housing allocation to the north of School Road, which is the subject of two planning applications¹. The second is a planning permission at Four Winds, Whitehill Road². The appellant also considers that the Council has acted unreasonably by maintaining that the site is not previously developed land.

Housing allocation/planning applications

4. The appellant considers that the Council has acted unreasonably, in arguing that one house at the appeal site would lead to unacceptable and inappropriate urbanising impact on the rural character of the area, while failing to have

¹ Planning application references 19/0284 and 22/0461.

² Planning application reference 21/0755.

regard to the site's environs and the Council's adopted aspirations for those environs resulting from a housing allocation to the east, the development of which would change the character of the area.

5. When describing the character and appearance of the area relating to the appeal site, and in undertaking its assessment of the impact of the proposed development on the character and appearance of the area, particularly along School Road, neither the Council's Officer Report, nor its decision notice, make any reference to this housing allocation, or any planning applications relating to it.
6. By allocating the site for housing, the Council indicates that residential development is acceptable in principle. Subsequent development of this allocation would influence the character and appearance of the wider area. As such, this housing allocation is material to the consideration of any proposal whereby the character and appearance of this area is of relevance, as is the case with the appeal scheme and both reasons for refusal. The Council's failure to consider this material consideration as part of the assessment of the proposal, a point that was specifically raised in the appellant's Planning Statement, is unreasonable behaviour.
7. However, for a number of reasons, I am not convinced that this has led the appellant to incur unnecessary or wasted expense in the appeal process. Evidence relating to this housing allocation had already been prepared as part of the Planning Statement provided at the planning application stage. Had the Council explicitly considered the housing allocation in their assessment at the application stage, this would have been only one of several considerations to weigh in the overall planning balance. Given the lack of certainty relating to the form any future development may take on this allocated site, as well as the physical separation that would remain between this allocation and the appeal site, it does not automatically follow that having considered the allocation, the Council would have determined the application differently, thereby avoiding the need for this appeal.
8. Further, it is not necessarily the case that the Council would have shared the appellant's view with regards to the extent to which this allocation would change the character and appearance of the area, in the context of concluding whether the proposal is infill development, or whether it would harm the character and appearance of the area. Therefore, it seems likely that the appellant would have considered it necessary to include evidence relating to the housing allocation as part of the appeal process, in any event.
9. While the Council did not expressly reference the housing allocation in the Officer Report, the Council has addressed it as part of the appeal, highlighting that no planning permission is yet in place for the allocated site and that any detailed proposals would need to have regard to its location. The Council also note that the appeal site would remain physically separated from the allocation by a stretch of open land. As such, the Council has reasonably substantiated its position as part of the appeal, which is in fact one that I have ultimately agreed with.

Planning permission at Four Winds

10. The appellant considers that the Council has acted unreasonably by failing to act in a consistent manner, given the similarities between the proposal and the approved development at Four Winds.
11. While the Council's Officer Report and decision notice do not specifically reference the Four Winds planning permission, these documents do set out clearly why the Council determined that the appeal scheme would not comprise infill development. This assessment gives due regard to the physical characteristics of the site and surroundings.
12. The Council has provided a detailed explanation within its Statement of Case (SoC) as to why it considers that the appeal site differs in character from that of Four Winds. I do not consider this approach to be unreasonable, in fact I have also noted differences between the two sites. Given that the Council considered there to be differences, it is not unreasonable that the Four Winds permission was not referred to in the Officer Report or Decision Notice. Having taken this view, the Council has not acted in an inconsistent or unreasonable manner in reaching a different decision. It has considered the appeal scheme based on the specific circumstances of this case.

Whether previously developed land

13. There remains dispute between the main parties as to whether the appeal site is previously developed land or not. However, it is clear to me from the Council's submissions that in considering whether the proposal would constitute minor infill development, or whether the proposal would be detrimental to the rural character of the area, this issue was one of many considerations and it does not appear to have been, in itself, determinative. Consequently, even if the Council had taken a contrary view, the appeal process would not have been avoided and the appellant would have considered it necessary to prepare the relevant evidence to support his case.
14. In conclusion, while the Council's failure to consider the housing allocation as a material consideration is unreasonable, it has not been demonstrated that this unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process, as described in the PPG. For these reasons the application for costs is refused.