



Costs Decision

Site visit made on 12 March 2024

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 May 2024

Costs application in relation to Appeal Ref: APP/L2630/W/23/3324120 Caistor Lane, Caistor St Edmund NR14 7QT

- 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 Lambford Homes Ltd. for a full award of costs against South Norfolk District Council.
- The appeal was against the refusal of outline permission (with all matters reserved) for one detached single-storey dwelling with garage and gardens.

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. In summary, the applicant considers that the Council acted unreasonably in how it considered national policy, in particular the requirements of paragraph 11d of the National Planning Policy Framework (the Framework). They also consider that the Council failed to substantiate their reason for refusal relating to the character and appearance of the area. Overall, they consider these issues amount to preventing development that should have been permitted, having regard to its accordance with national policy and other material considerations.
4. In terms of national policy, the applicant's concern is that the Council did not properly consider the benefits of the proposal, either in terms of using the correct test or not considering all relevant factors. The Council's officer report is clear throughout that the decision was being made in the context of paragraph 11d. While the wording of the overall conclusion differs slightly to that of the Framework it is nevertheless understandable in that context; they considered the adverse impacts would significantly and demonstrably outweigh the modest benefits of a single dwelling.
5. Any reference to the South Norfolk Local Plan in their report, conclusion and decision is not unreasonable. S38(6) of the Planning and Compulsory Purchase Act (2004) states that decisions must be made in accordance with the development plan unless material considerations indicate otherwise. Paragraph 11d does not alter this. The Council's logic, which is understood from their report when read fairly and as a whole, is that the so-called 'tilted balance' does not weigh in favour of the proposal and is not a material consideration which weighed in its favour. While not having a 5-year supply may activate

paragraph 11d, this does not mean the development plan is no longer relevant. The Council still needed to consider the proposal against the development plan. It is therefore right that they considered the requirements of Policy DM1.3 in their assessment. How much weight to be given to relevant policies and any conflict with them is a planning judgement. This, and the overall planning balance, are judgements the Council were entitled to make.

6. That the applicant disagrees with these judgements is not evidence of unreasonable behaviour. Furthermore, for the reasons given above, it is not unreasonable for the decision notice to have referred to relevant development plan policies. That the notice does not refer to the Framework is neither here nor there, as it is clear from all evidence on what basis the decision was made. I am therefore content there was no unreasonable behaviour in this regard.
7. Similarly, these planning judgements are not necessarily tied by the outcomes of any previous appeals. Those referred to by the applicant all differ in some way to the appeal proposal. Even where schemes have been allowed outside settlement boundaries elsewhere, it does not automatically follow that all such development is acceptable. It is entirely correct for the Council to assess this proposal on its own merits and there is no persuasive evidence that they have ignored other relevant decisions.
8. Paragraph 11d requires the decision maker to consider the benefits and impacts against the Framework as a whole. That the Council sought to describe these considerations against the economic, social and environmental facets of sustainable development, rather than reference to specific paragraphs of the Framework, is also not evidence of unreasonable behaviour. The officer report, and subsequent evidence, was clear as to how the Council considered the impacts and benefits. I am therefore satisfied that they substantiated their reasons for refusal in this regard.
9. The officer report concludes that ecological enhancements could be secured by condition. It also goes into some detail about matters relating to drainage and nutrient neutrality. These issues have not therefore been ignored. They do not appear, however, to have identified these as particular benefits in the planning balance. Again, it is generally a matter of planning judgement as to what is considered a benefit and the weight to be given to it. The fact there is some disagreement about this does not constitute unreasonable behaviour. Even if the Council were wrong not to specifically highlight these issues in their assessment, I am not persuaded it would have made any difference to the outcome. Indeed, the Council has not sought to alter their position based on the applicant's case where such benefits have been highlighted. As such, the appeal, and any associated costs, would still likely to have been necessary.
10. I am also satisfied the Council have substantiated their reasons for refusal with regard to the effect on character and appearance. I find much of the applicant's argument again relates to disagreements about the Council's judgement on these matters. The application was in outline and so issues such as design, layout and landscaping would be addressed at reserved matters. However, it is still necessary, and possible, to consider the effect of this development on the character and appearance of the area. Much of the Council's reasoning is not specific to any particular design or layout. Rather, it is based on the likely urbanising effect of the development on what is an open and undeveloped

area, the siting of a dwelling in a backland location and the departure from the largely linear character of the settlement.

11. It was also reasonable for the Council to conclude that any form of housing development, along with the associated domestic paraphernalia, would have the impact the Council were concerned about. These issues would be apparent whatever final form of development was proposed. The officer report and reason for refusal were sufficient for me to understand their concerns. The reasons were adequately substantiated and there was no unreasonable behaviour.
12. That the policies referred to in the decision notice also refer to issues such as design and layout is also not of particular concern. Obviously, any policies on design or local character will refer to matters that were 'reserved' in this case. Nevertheless, the Council's concerns with regard to distinctive local characteristics were clearly focussed on the existing countryside character of the site and the linear pattern of development on Caistor Lane. The policies referred to were therefore still relevant.
13. The Council's reference to Policy DM4.5 does not result in a new reason for refusal. They did not raise new issues for me to consider. Their concerns about the development remained consistent throughout. Any additional issues raised by their mentioning of this policy were minor in nature and did not alter the applicant's overall case. I do therefore consider the Council were unreasonable in how they considered or referenced policies or that this resulted in any wasted or unnecessary expense.
14. As I have dismissed the appeal, it also follows that I do not consider the Council were unreasonable in terms of preventing development that should clearly have been permitted having regard to national policy and any other material considerations. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has not occurred in this case and an award of costs is not warranted.

S J Lee

INSPECTOR