



Costs Decision

Site visit made on 6 February 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2024

Costs application in relation to Appeal Ref: APP/U1105/W/23/3325280 Exton Lodge, Mill Lane, Exton, Devon EX3 0PJ

- 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 Philip Jordan for a full award of costs against East Devon District Council.
 - The appeal was against the refusal of planning permission for a single dwelling with access.
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Decision

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

Reasons

2. The planning application was refused on the basis that the proposed development did not comply with the relevant planning policies of the adopted development plan. The applicant contends that the planning policies are out of date and therefore should not have been given primacy over the National Planning Policy Framework (the Framework).
3. I understand that at the time of the planning application the Council could not demonstrate a deliverable five-year housing land supply (5YHLS) and in accordance with Footnote 8 of the 2021 version of the Framework indicated that for schemes for the provision of housing in areas without a 5YHLS would mean that the planning policies would be considered as out of date.
4. However, Section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended) sets out that regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Framework does not alter the fact that the development plan should be the starting point for determining planning applications, particular as the relevant policies in this case are consistent with the Framework.
5. As the Council could not demonstrate a deliverable 5YHLS, it was necessary to formally consider the presumption in favour of sustainable development as part of the determination of the planning application. However, having read the Committee report, I consider that officers undertook the required test set out in the Framework when reaching their recommendation to the Members. As such, this represents a proper consideration of the 'tilted balance' required by Paragraph 11(d).
6. The applicant has also commented that the evidence accompanying the emerging East Devon Local Plan 2020 – 2040 supports the sustainability of the

site and that this information was not given due consideration by the Council. As the emerging Local Plan has been put on hold and was at an early stage of the preparation, I have already considered in my appeal decision that the evidence accompanying it can only be given limited weight. The Council have confirmed in their rebuttal that they considered no weight could be attributed to that information and that there was no reason to make reference to it in the Committee report. Whilst it is unfortunate that no reference was made, given that it could only be applied limited weight at the very most, it would have been unlikely to have tipped the balance in favour of approving the application.

7. I note the applicant's assertion that the Council referenced appeal decisions in their committee report that were made prior to the Council not being able to demonstrate a five-year housing land supply. Two appeal decisions were referenced in the Committee report¹. One related to the site itself and therefore it would seem pertinent to make some form of reference to that appeal decision at the very least. The other decision was only mentioned as part of the Council's case that the site, also in Exton, was not sustainably located and therefore the appeal site is not either. As such, I do not consider that the Council behaved unreasonably by referencing either appeal decision.
8. Regarding two other sites in Exton where the Council granted permission for housing on sites referred to as Marandor² and Exton Farm³, whilst the Exton Farm site is not a similar proposal, I can see similarities between the appeal proposal and the scheme approved at the Marandor site. However, both of those other sites have different locational contexts and are therefore not directly comparable to the appeal site. Again, it is unfortunate that reference was not made to these permissions in the Committee report, but I consider that they would not have provided a suitable reason for Members to overturn the recommendation of officers.
9. The officers' actions during the Committee meeting and the advice that Members were given by officers are difficult for me to comment on and take into account as part of this costs application as I have not been provided with substantive evidence demonstrating the discussion that took place during the meeting. As such, I am not convinced that officers behaved in an unacceptable manner during the meeting.
10. In conclusion, it has not been sufficiently demonstrated that unreasonable behaviour resulting in unnecessary or wasted expense occurred and an award of costs is therefore not warranted.

K Reeves

INSPECTOR

¹ Appeal references APP/U1105/W/15/3069998 and APP/U1105/W/19/3226312

² East Devon District Council planning application reference 22/2549/OUT

³ East Devon District Council planning application reference 19/2132/MFUL