



Costs Decision

Site visit made on 24 May 2024

by S. Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 03 June 2024

Costs application in relation to APP/W3005/W/24/3336447

Land adjacent to Trevelyan, Blackwell Road, Huthwaite NG17 2RG

- 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 Evolution Homes for a full award of costs against the decision of Ashfield District Council.
 - The appeal was against the refusal of planning permission for the construction of 9 residential dwellings.
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Decision

1. The application for a full award of costs is allowed.

Reasons

2. 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.
3. The applicant submits that the Council has acted unreasonably in so far that it has failed to substantiate its reasons for refusal, wrongly concluded that the proposal does not accord with policy ST1(d) of the Ashfield Local Plan Review 2002 (LP), and that the reasons for refusal do not correlate with the debate of the Planning Committee.
4. Members of the Planning Committee were entitled to reach a decision that was contrary to that in the officer report which recommended approval of planning permission. However, the reason for refusal in the Council's decision notice refers specifically to conflict with policy ST1(d) of the LP which seeks to restrict development which would prejudice the comprehensive development of the area.
5. Policy ST1(d) of the LP relates to a development plan where the appeal site and the land to the rear falls within countryside. It is not based upon the land being allocated for housing or any other form of development. In this context, I find that the Council has afforded unacceptable weight to a perceived conflict with policy ST1(d) of the LP. In other words, it has unreasonably applied the policy to a proposed or draft housing allocation for the site in an emerging development plan and which is unconnected with the adopted LP. The site and surrounding land may or may not be allocated for housing. In respect of the adopted LP, the land is classified as countryside and where no development is specifically earmarked or planned. In this regard, I find that the Council did not reasonably consider whether the proposal would prejudice comprehensive development associated with the adopted LP.

6. The Council alleges that the proposal would amount to piecemeal development and that it would stifle the possible residential development of wider land given that it is proposed to be allocated for housing in an emerging development plan for the area. For the reasons outlined in my decision, I do not find that the Council has reasonably substantiated its concerns in this regard. The technical evidence before me does not indicate that the proposal would prejudice the development of wider land within the proposed housing allocation. The Council essentially claims that allowing the development now, and prior to knowing whether the land would be allocated for housing in conjunction with wider land, would be premature. When the Council made its decision to refuse planning permission, it was not close to submitting the emerging local plan which has now been submitted to the Secretary of State.
7. While there has been a change of planning circumstance from the Council's decision to refuse planning permission and the consideration of this appeal now in terms of the submission of a new development plan for Examination, there is no reasonable evidence before me to indicate that if the wider land were to be allocated for housing the appeal proposal would prejudice residential development within any such housing allocation. Furthermore, the Council has not put forward reasonable objective evidence to substantiate its claim that the proposal would be unacceptable from a functional, safe, and accessible point of view.
8. I do not find that when the Council refused planning permission, it reasonably had regard to paragraph 50 of the National Planning Policy Framework 2023 which states '*refusal of planning permission on grounds of prematurity will seldom be justified where a draft plan has yet to be submitted for examination*'. The Council's decision to refuse planning permission was very much predicated on the possible allocation of a larger piece of land for housing, but this was at a time when the emerging local plan had not been submitted to the secretary of state for Examination. At the time of making its decision to refuse planning permission, there is no evidence to indicate why the Council felt that it should depart from the position that '*prematernity will seldom be justified where a draft plan has yet to be submitted for Examination*' and, furthermore, at decision making stage, no reasonable or objective evidence was provided to show '*clearly how granting permission for the development concerned would prejudice the outcome of the plan making process*'.
9. I cannot be certain of exactly what was said at the Planning Committee meeting. The committee minutes that have been sent to me do not include very detailed discussions about the planning application. The officer report that was considered by planning committee included information about the fact that the local planning authority could not demonstrate a deliverable five-year supply of housing sites. In addition, the Council's statement of case also refers to this matter. In my judgement, the evidence supports the claim made by the Council that housing land supply matters were considered by members of the planning committee, from a 'tilted balance' point of view, when it reached its decision to refuse planning permission.
10. However, housing land supply matters are not determinative in respect of the consideration of this application. This is because I find the Council has displayed unreasonable behaviour in so far that firstly, it has not adequately substantiated why it made its decision to refuse planning permission at Planning Committee stage, and, secondly, it has afforded inappropriate weight

to the alleged conflict with policy STD1(d) of the LP. In respect of the latter, this throws into doubt whether the Council has reasonably applied the 'tilted balance' both at decision making and appeal stages.

Conclusion

11. For the above reasons, I conclude that the Council has acted unreasonably, and the applicant has been put to wasted time and expense in pursuing the appeal. Therefore, a full award of costs is justified.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 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 Ashfield District Council pay to Mr Lee Evans (Evolution Homes) the costs of the appeal proceedings; such costs to be assessed in the Senior Courts Costs Centre if not agreed. The proceedings concerned an appeal described in the heading of this decision.
13. Mr Lee Evans (Evolution Homes) is now invited to submit to Ashfield District 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.

S. Hartley

INSPECTOR