Costs Decision

Site visit made on 7 May 2024

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2024

Costs application in relation to
Appeal Ref: APP/E2530/W/23/3334444
Land north of South Heath Lane, Fulbeck, Lincolnshire NG32 3HX

- 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 Ms Alix Fane for a full award of costs against South Kesteven District Council.
- The appeal was against the refusal of planning permission for erection of 9 no. dwellings comprising 7 no. affordable housing units and 2 no. market housing units; formulation of new private drives and associated hard landscaping to provide vehicular and pedestrian access from South Heath Lane.

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. The applicant considers the Council have acted unreasonably when considering the planning merits of the application and failing to consider the planning balance with regards to local and national planning policy as well as other material planning considerations. The applicant also considers that the Council have been inconsistent in dealing with planning applications of similar nature.

4. The applicant has largely reiterated arguments detailed in the statement of case for the appeal including matters on the Affordable Homes Update Written Ministerial Statement May 2021, section 38(6) of the Planning and Compulsory Purchase Act 2004, section 70(2) of the Town and Country Planning Act 1990, the South Kesteven District Council Local Plan 2020, affordable housing, viability, planning balance, and revisions to the National Planning Policy Framework in December 2023.

5. As can be seen in my appeal decision, I have allowed the appeal concluding that on the planning balance, the adverse impacts are outweighed by the benefits of the scheme. Whilst the Council reached a different conclusion, they nevertheless undertook a planning balance weighing the harm and benefits and this is detailed in both the Officer Report and their statement of case. The Council have therefore not acted unreasonably in this regard.

6. The applicant has referred to a number of appeal decisions including Broad Town appeal[1] and Aythorpe Roding appeal[2], claiming that the Council have not dealt with similar applications in a consistent manner. Both these decisions had various main issues which the Inspectors weighed up in a planning balance. As discussed above, in dealing with the scheme subject of this appeal, the Council weighed up the issues in a planning balance. The Council have dealt with the proposed scheme in a consistent manner with other developments and therefore have not acted unreasonably.

7. The applicant also considers that the Council have acted unreasonably in procedural terms by not working in a positive and proactive manner. This includes not engaging fully at pre-application stage or during the application process, not extending the determination period, and not complying with section 35 (2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

8. The Council argue that they have acted in a positive and proactive manner by determining the application within the required timescales and stating that pre-application submission for this scheme was withdrawn. It may be that the Council could have been more flexible in terms of extending the determination date to allow for the submission of further information. Nevertheless, even if I found that the Council had acted unreasonable, from the evidence before me, I still consider it would have led to the submission of an appeal and therefore would not have resulted in unnecessary or wasted expense.

9. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Chris Baxter

INSPECTOR

[1] PINs ref: APP/Y3940/W/20/3249284
[2] PINs ref: APP/C1570/W/23/3314018