Planning Inspectorate

Costs Decision

Site visit made on 19 November 2024

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Costs application in relation to Appeal Ref: APP/C1570/W/24/3344328
Clarendon House, Wicken Road, Clavering, Essex CB11 4QT

- 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 and Mrs Samuel and Claire Bampton and Cattermole for a full award of costs against Uttlesford District Council.
- The appeal was against the refusal of planning permission for the erection of 4 no. dwellings including 2no. single storey, 1no. one and half storey and 1no. two storey, with associated cart lodge/garage parking and landscaping.

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. Paragraph 049[1] of the PPG highlights the examples of unreasonable behaviour by Local Planning Authorities where costs can be awarded. The applicant has submitted that the Council has acted unreasonably in that they have acted contrary to well-established case law and have made vague and inaccurate assertions.

4. The Council's stance on the application of paragraph 11.d) of the National Planning Policy Framework (the Framework) has been unclear at times. When determining the application, the Council applied the presumption in favour of sustainable development, as at the time they could not demonstrate a 5 year housing land supply. However, during the appeal the Council have indicated that the emerging local plan has reached the Regulation 19 stage, and consequently a 4 year supply is applicable in accordance with paragraph 226 of the Framework. The Councils evidence suggests the current level of housing supply is 4.12 years[2]. However, the applicant highlights that the Council is under achieving in meeting its Housing Delivery Test thus a 5 year supply would still be applicable.

5. Despite the ambiguity, I do not find that the Council has been inconsistent in the application of policy in this matter, as they maintained that the proposal would harm the character of the countryside and found the location of the development would be unsustainable. The application of weight is a matter of

[1] Paragraph: 049 Reference ID: 16-049-20140306
[2] Uttlesford District Council 5-Year Housing Land Supply Statement – Published 20 August 2024

planning judgement for the decision maker. Consequently, in exercising their planning judgement the Council found that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As such, I do not find that they have acted unreasonably.

6. In regard to the issue of abandonment, I find that the Council has not fully assessed the case in respect to the criteria for abandonment set out in the well-established case law[3]. Whilst the Council suggest that they have adopted a proportionate response to these tests, the issues pertaining to the period of non-use; condition of the land; other uses and the owners' intentions have not been fully explored. Furthermore, the Councils approach to the historic and photographic evidence supplied by the applicant, raises concerns in respect to their objectivity in respect to this evidence. Thus, I find that the Council has behaved unreasonably in regard to these matters.

7. In regard to the consistency of the Councils decision making, each case is dealt with on its own merits. The Council provided several references to decisions on other schemes within the authority to highlight similar material considerations that related to this scheme. I am not bound by other decisions of the Council, and I acknowledge that the details supplied in respect to these other sites appears more as a commentary of the considerations of these cases. However, these do not represent an inconsistent approach given that site specific factors relating to each case have been highlighted, which is not an unusual or unreasonable approach.

8. The applicant highlights that the reference to policy ENV3 of the Uttlesford Local Plan (ULP) in the reason for refusal is not applicable to the appeal site. Whilst I acknowledge the scheme does not remove any trees and is a private piece of land (i.e. not traditional open space), it nevertheless represents a visually important space in the countryside, which the policy seeks to protect. It is evident from the Council's submissions that they considered that the current status of the appeal site contributed positively to the intrinsic character and beauty of the countryside. This was evident from the site visit. As such the Council was justified in its application of the policy within its reasons for refusal and thus not unreasonable in this regard.

9. The applicant also highlight that the Council made vague and generalised assertions about the sites impact on the countryside. However, the Council has been consistent in their consideration of this matter. I acknowledge that further justification has been supplied by the applicant in regard to the wire frames[4] submitted at the appeal stage. Nevertheless, the Council had regard to this, and other additional information submitted, within its Statement of Case. In regard to this matter, I find the Council did consider the proposal against all the details submitted and reached a conclusion that was objective and reasoned in its analysis. Therefore, I cannot conclude that the Council have behaved unreasonably in this matter.

10. For a costs application to be successful, unreasonable behaviour must also result in unnecessary costs being incurred by the successful party. Whilst I have found that the Council did behave unreasonably about the application of the case law regarding the abandonment issue, and the clumsy phrasing in

[3] Trustees of Castell-y-Mynach Estate v Taff-Ely BC [1985] JPL 40
[4] Appendix A – Appellants Statement of Case

respect to the photographic evidence supplied by the applicant, the application would almost certainly have been refused in any case. The PPG states that where a Council has refused a planning application for a proposal that is not in accordance with the development plan policy, and no material considerations including national policy indicate that planning permission should have been granted, there should generally be no grounds for an award of costs against the Council for unreasonable refusal of an application[5].

Conclusion

11. As parties in planning appeals and other planning proceedings normally meet their own expenses, I therefore find that unreasonable behaviour by the Council, resulting in unnecessary and wasted expense, as described in the PPG, has not been demonstrated and that no award of costs is justified.

Robert Naylor

INSPECTOR

[5] Paragraph: 050 Reference ID: 16-050-20140306